

Facility Lease Agreement

Lessor: Indian River County, Florida
A political subdivision of the State of Florida
1801 27th Street
Vero Beach, FL 32960
(Hereinafter "County")

Lessee: Vero Beach Foundation Gators Football and Cheer Corporation
A Florida non-profit Corporation
8526 105th Ave
Vero Beach, FL 32967
(Hereinafter "League")

Witnesseth That:

WHEREAS, the County is the owner of a 39 acre parcel of land commonly known as the Victor Hart Sr. Community Enhancement Complex (VHSCEC), located at 4715 43rd Avenue, Vero Beach, Florida; and

WHEREAS, Victor Hart Sr. Community Enhancement Complex consists of two baseball fields (the Jackie Robinson Field and the Ralph Jay Lundy Senior Field), a football field (Wilson-Chisholm), a basketball court, a children's park with play equipment, restroom facilities, tennis wall and courts, covered pavilions and a fitness trail, fencing, parking, concession activities stand, press boxes and announcers booths; and

WHEREAS, the League is a 501(c)(3) non-profit corporation organized under the laws of Florida. The League is formed to develop, promote and foster sports talent for individuals by organizing local youth football and cheerleading; and

WHEREAS, the League has a present need to use Wilson-Chisholm Field and the restrooms (together hereinafter the "Premises") for their home game field to facilitate their football program; and

WHEREAS, the County believes that leasing the Premises to the League for one (1) year would be in the public interest by providing a useful amenity for the recreational enjoyment of football enthusiasts in the Gifford Community as well as in Indian River County; and

WHEREAS, the County and the League understand that the initial obligations set forth in this agreement reflect the current nature of the League's limited financial capabilities, and that both parties intend that these obligations and responsibilities will be reevaluated over time; and

NOW, THEREFORE, for in consideration of the Premises and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties agree as follows:

Section 1 – Adoption of “Whereas” Clauses.

1.01 Incorporation of Recitals: The above recitals are true and correct and are incorporated herein.

Section 2 – The Lease Agreement

2.01 Duration: The County shall lease the Premises to the League for the term of one (1) year at the rate of one dollar (\$1.00) a year. The lease agreement (hereinafter “Agreement”) shall be automatically extended for one year under terms similar to this Agreement, unless one party notifies the other party in writing of its intent to not renew at least sixty (60) days prior to the expiration of the first year period. If the County and the League agree to extend the Agreement, the League’s obligations will be reevaluated by the County and the League. Substantial changes to the Agreement may be made only with the written approval of the County and the League. The effective date of this Agreement is August 13, 2019.

2.02 Contact Persons: The initial contact person for the League shall be the League’s President, Calvin Moment, whose address is 8526 105th Ave, Vero Beach, Florida, 32967 and whose phone number is (772) 388-6015 (hereinafter “League’s Representative”). The contact person for the County shall be Mike Redstone, the Manager of Recreation whose address is the Recreation Department Office, 1590 9th Street SW, Vero Beach, Florida 32962, and whose number is (772) 226-1727 (hereinafter “Manager”). Parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the League’s Representative and the Manager for attempted resolution. The League’s Representative and the Manager shall be responsible for overall coordination and oversight relating to the performance of this Agreement. The League and the County will update the information in this subsection on or before the annual anniversary date of this Agreement.

Section 3 – The Premises

3.01 The Premises: The premises is located in an area commonly known as the Wilson/Chisholm Football Fields located within the Victor Hart Sr. Community Enhancement Complex. The Agreement does not include any other areas of VHSCEC with the exception of a limited use of Lundy Field as set forth in Section 5.

3.02 League’s Use of The Premises: The Premises shall be used by the League for the purpose of developing, promoting and fostering sports talent by organizing local and statewide youth, football competitions as well as cheerleading competitions. This includes meetings of the League’s Board of Directors, player registration, concession stand activities, football games and practices. Concession stand activities as used herein shall only include the sale of regularly distributed non-alcoholic beverages and snacks. Any license for operation of concessions shall be the responsibility of the League. The League may also conduct fundraising activities on the Premises subject to notifying the Manager thirty (30) calendar days in advance of the activity. The League shall obtain any and all necessary licenses, approvals or permits required for any use of the Premises. No other use is authorized without the written approval of the Manager.

3.03 Required Documentation to Use the Premises: The League shall provide the Manager with the following information within five (5) days of signing this Agreement, and no later than May 15th of each following year, unless otherwise provided in this Agreement:

- a) Names and contact information for the League Board of Directors as well as the name and contact information for the League's Representative pursuant to Section 2.02;
- b) Confirmation of continued active status as a nonprofit organization in the State of Florida;
- c) Proof of insurance identified in Section 12 of this Agreement;
- d) A sworn notarized statement regarding background screening of coaches and assistant coaches per subsection 6.04 of this Agreement; and
- e) A schedule of League events including fundraising activities, practices and games for purposes of scheduling maintenance of the fields by July 1st of each year. Changes to the schedule shall be submitted to the Manager at least 72 hours in advance.

Section 4 – The Wilson-Chisholm Field

4.01 Exclusive Use of the Wilson-Chisholm Field: The County grants unto the League the exclusive right to use the Wilson-Chisholm Field during May - November basis for purposes of conducting League practices and games. The League shall deliver to the County a list of its scheduled games in accordance with subsection 3.03. Subject to availability and without causing undue interference with regular activities and events previously scheduled by the League, the County reserves the right to utilize the Wilson-Chisholm Field for games or special events at no charge to the County. The County agrees to provide a two (2) week notice to the League of the time and date it intends on using the Wilson-Chisholm Field.

4.02 League's Control of the Wilson-Chisholm Field: The League will have control over the Wilson-Chisholm Field during the season to conduct games, practices and events. Control does not include denying the County access to the Wilson-Chisholm Field for inspection or otherwise. Both the League and the County will have keys to unlock the gates and access the Wilson-Chisholm Field

Section 5 – The Lundy Field

5.01 Non-Exclusive Use and Control of the Lundy Field: The County grants unto the League the non-exclusive right to use the Lundy Field from May 1st – November 1st of any given year (hereinafter "Primary Season") subject to County approval upon request by the League.. The League shall deliver to the County a list of its proposed practices in accordance with subsection 3.03. At any time the Lundy Field is not being used by the League, it may be used by another sports group for a compatible use (football, baseball, etc.). Both the League and the County will have keys to unlock the gates and access the Lundy Field.

Section 6 – The League's Initial Obligations and Responsibilities

6.01 General Obligations: The League agrees to:

- a) Not charge admission to any game under this Agreement;
- b) Not sell, give, permit or otherwise distribute any alcoholic beverages or tobacco products on the Premises or at VHEC;

- c) Use the Premises solely for the purpose of providing youth football and cheerleading activities;
- d) Leave the Premises free of litter, personal items, materials and equipment at the end of each day;
- e) Provide in-kind services as delineated in sub-section 6.02;
- f) Maintain and replace, at the League's expense and without obligation or liability to the County, all items or equipment belonging to the League that are on the Premises.
- g) Take great care to ensure that Wilson-Chisholm Field is kept in its current condition by rotating practices and drill areas and following field use best management practices and guidance from the County.

6.02 In-Kind Services: In lieu of payment of the annual maintenance costs to the County, the League agrees to initially provide at a minimum the following in-kind services:

- a) Maintain the designated containers for trash;
- b) Place daily litter and trash located on the Premises, including the field, the bleachers, the parking area(s), the restrooms, the concession activity stands and the common areas into the designated containers so that the trash and litter can be properly disposed of;
- c) Clean and sanitize restrooms, including but not limited to, keeping the restrooms stocked with toilet paper, soap, and hand towels that the County will provide to the League;
- d) Provide the paper product supplies for the restrooms on the Premises;
- e) Painting of the field line as needed and color is approved by the County's Parks and Conservation Resources Director and consistent with color scheme of other facilities owned by the County; and
- f) Maintain scoreboard system including, but not limited to, the wireless control. League shall be responsible for replacement of scoreboard controller if lost, stolen, damaged or misplaced.

6.03 Licenses, Permits and Fees: The League shall be responsible for obtaining any license or permits required for the operation of the concession or for placing signs at the Premises. The League shall also be responsible for any and all fees related to the operation of their programs at the Premises.

6.04 Background Screening: The League is required to run a background screen on its coaches and assistant coaches, consistent with the requirements set forth in Section 943.0438, Florida Statutes, for sexual offenders and sexual predators. If the League wishes to add to the list of coaches or assistant coaches, it must first conduct a background screening and submit the name(s) to the Manager within 5 days of the approval of the background screening.

6.05 Thor Guard Lightening Operational System: The County maintains a Thor Guard Lightening Operating System for VHSCEC. The League is responsible for abiding by the rules in the event the alarm is activated and emergency shelter becomes necessary.

6.06 Non-discrimination. The League shall operate the Premises in a non-discriminatory manner complying with all local, state and federal laws, rules or regulations.

6.07 Improvements: The League shall not make or allow to be made any alterations, additions or improvements (hereinafter “Improvements”) without obtaining the prior written approval of the County, which consent shall not be unreasonably withheld, delayed or conditioned. The League shall deliver to the County a copy of the construction plans and specifications for all Improvements, if applicable, which the League proposes to make in or to the Premises. The League agrees that all approved work shall be done in a good and workmanlike manner. The League shall obtain, at the League’s expense, all necessary permits and approvals from governmental authorities for the commencement and completion of any such Improvements and shall finish furnish evidence of such approval to the County prior to the commencement of construction or installation of any such Improvements. All Improvements shall be constructed in accordance with all applicable building codes, laws, and regulations. All of League’s Improvements shall be deemed to be a part of the Premises, and the League shall be obligated to maintain and repair the same. All Improvements in or to the Premises shall, when made, become the property of the County and shall be surrendered to the County upon termination of this Agreement,

Section 7 – The County’s Obligations and Responsibilities

7.01 The County’s Obligations: Based on available staff and budget limitations, the County agrees to:

- a) Maintain Wilson-Chisholm Field with turf maintenance services;
- b) Do initial lining for the first game set forth in the League’s schedule;
- c) Provide field lighting for the Premises including all costs associated with maintenance of the equipment and bulb replacement;
- d) Pay for utilities including water, sewer, electric;
- e) Maintenance and operation of the Thor Guard Lightening Operating System.

Section 8 – Emergency County Use

8.01 Emergency County Use: In an emergency declared by the appropriate authorities under Chapter 252, Florida Statutes, the County reserves the right to use the Premises as a part of its emergency response and recovery operation as long as reasonably necessary in the County’s opinion. In such an event, the County shall restore the Premises at the County’s expense to the same condition as it was prior to the County’s use. For said restoration, time will be of the essence.

Section 9 – Rights to Assign

9.01 Assignment: Neither the County nor the League shall have the right to assign any or all of its rights and interests under this Agreement to any successor in business or parent company without prior written consent of both parties.

Section 10 – Indemnification

10.01 Hold Harmless: The League shall defend, indemnify and hold the County harmless from any and all claims for damages arising out of this Agreement, except for those claims arising out of the County’s own negligence. This includes, without limitation, attorneys’ fees, on account of injury of damage to persons, firms or corporations or to property directly or indirectly arising out

of or relating to this agreement, the performance or breach thereof, or the use or occupancy of the Premises, the parking lot area or other areas of the Premises by the League. In the event the League shall fail to defend any such action on behalf of the County to the satisfaction of the County, the County may, but shall not be obligated to, defend the same by counsel of its choice, the cost of which defense to be borne exclusively by the League. Nothing in this agreement shall be construed to affect in any way the County's rights, privileges, and immunities, including sovereign immunity as provided by Florida law.

Section 11 – Liability

11.01 Liability for Damage or Injury: The County shall not be responsible for any loss, damage or injury which may be sustained by any party or persons at the Premises other than the damage or injury caused solely by the negligence of the County.

11.02 The League is an Independent Operator: The League is, and shall be at all times, an independent operator that is responsible to all parties for all of its acts or omissions.

11.03 AYCAA Charter Rules: The League shall operate consistent with Charter Rules except as otherwise provided in this Agreement.

Section 12 – Insurance

12.01 Insurance: The League shall procure and maintain throughout the term of this Agreement comprehensive general liability insurance providing for a minimum of \$300,000.00 per occurrence. If the League participates in Away Games, it shall also procure and maintain throughout the term of this Agreement automobile insurance providing for a minimum \$300,000 combined single limit. The insurance policies shall be written and with a company that is acceptable to the County's Risk Management Division (must have at least an A- VII rating with A.M. Best). The name of the insured on both policies must be the League and the County must be named as an additional insured. Within five (5) days of the execution of this Agreement, the League shall provide the County with both certificates of insurance showing the additionally insured and specifying the deductible of the referenced policies. Updated certificates of insurance must be delivered to the County no later than July 1 of each following year. The certificates shall provide for thirty (30) days prior written notice from the insurer to County of any cancellation or amendment to the said insurance policies. In the event the League fails to deliver the referenced certificates to the County in the above stated manner, the County may immediately cancel this Agreement or, but shall not be obligated to, procure the required policies.

Section 13 – Termination and Breach of the Agreement

13.01 Termination: The County shall have the right to terminate this Agreement without cause and thereby end any and all obligations created by this Agreement subject to sixty (60) day notice.

13.02 Breach of the Agreement: It is a breach of this Agreement if the League fails to maintain the required insurance pursuant to Section 12, and the County may automatically terminate this

Agreement. With the exception of Section 12, if the League defaults in performing any of its obligations or breaches any of the material terms of this Agreement, the County will serve written notice on the League and give it thirty (30) calendar days to cure the default or breach. If the League does not cure the default or breach within the thirty (30) day time period, the County may immediately terminate this Agreement and repossess the Premises.

13.03 Mediation: In the event of a dispute between the parties in connection with this Agreement, the parties agree to submit the disputed issue or issues to a mediator for non-binding mediation prior to filing a lawsuit. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Indian River County. The fee of the mediator shall be shared equally by the parties. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall be admissible as evidence in any subsequent proceeding concerning the disputed issue.

Section 14 – Notice

14.01 Notice: Wherever in this Agreement it shall be required or permitted that notice or demand be given or served by either party to or on the other, such notice or demand shall not be deemed to have been duly given or served unless in writing and either personally delivered or forwarded by registered or certified mail, postage prepaid, to the respective addresses hereinafter set forth.

To County:

Mike Redstone
Manager of Recreation
1590 9th St S.W.
Vero Beach, Florida 32962

With Copy To:

Indian River County Attorney
1801 27th Street
Vero Beach, Florida 32960

To League:

Calvin Moment
President
Vero Beach Foundation Gators Football and Cheer Corporation
8526 105th Ave
Vero Beach, FL 32967

Section 15 – Governing Law

15.01 Rules and Regulations: The League will observe, obey and comply with all rules and regulations of both its AYCAA charter and those adopted by the County and all laws, ordinances and regulations of other governmental units and agencies having lawful jurisdiction.

15.02 Venue: Venue for any lawsuit shall be in Indian River County, or in the event of a federal jurisdiction, in the United States District Court for the Southern District of Florida.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of this _____ day of _____, 2019.

VERO BEACH FOUNDATION GATORS
FOOTBALL AND CHEER CORP.

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

BY: _____
Authorized Representative

BY: _____
Bob Solari, Chairman

Print Name: _____

Date Approved: _____

Date: _____

BY: _____
Jason E. Brown, County Administrator

Approved as to form and legal sufficiency:

ATTEST: Jeffrey R. Smith
Clerk of the Court and Comptroller

BY: _____
Dylan Reingold
County Attorney

BY: _____
Deputy Clerk