

01-13-019

**AMENDMENT NO. 1 TO LEASE AGREEMENT BETWEEN
CITY OF DELRAY BEACH AND BDBBS, INC. DATED FEBRUARY 13, 2003**

THIS AMENDMENT NO. 1 to the Lease Agreement is entered into by and between the CITY OF DELRAY BEACH (Lessor) and ELEV8 SPORTS INSTITUTE, INC. (formerly BDBBS, INC.) (Lessee) on this 12th day of December, 2013.

WITNESSETH:

WHEREAS, the parties desire to amend the description of the playing fields as described in the Lease Agreement entered into February 13, 2003 to reflect the present playing field layout that was created when Robert P. Miller Park was reconstructed in 2008.

WHEREAS, the parties desire to amend the Lease Agreement entered into February 13, 2003 to require ELEV8 SPORTS INSTITUTE to perform or otherwise pay for maintenance of all the playing fields, practice infield areas, the bullpen area and ball park equipment in exchange and consideration for the primary use of certain areas of Robert P. Miller Park and Currie Commons Park from 8:00 A.M. to 3:00 P.M. Monday through Friday as described herein, with City to have primary use of these areas at all other times.

WHEREAS, the parties agree to amend the Lease Agreement entered into February 13, 2003 to give ELEV8 SPORTS INSTITUTE primary use of Field 7 (known as "Sergio" field) until 6 P.M. Monday through Friday, with City to have primary use of Sergio field at all other times.

WHEREAS, the parties agree to amend the Lease Agreement entered into February 13, 2003 to require ELEV8 SPORTS INSTITUTE to pay a usage fee for use of fields outside the times agreed upon in the Lease Agreement in accordance with the CITY'S usage fee structure.

WHEREAS, the parties desire to amend the Lease Agreement entered into February 13, 2003 to update the agreement to comport with the recent changes in state law pertaining to public records.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The parties hereby represent that the above recitals are hereby incorporated as if fully set forth herein.

2. The parties desire to amend section 3.01 of the Lease Agreement entered into February 13, 2003 as follows:

3.01 Lessee shall be responsible for the maintenance of fields 1,2,3,4, 5 and 7 at Robert P. Miller Park as indicated in the diagram attached as Exhibit "C"; maintenance of the practice infield areas; turf maintenance for the sports turf areas of Currie Commons Park; maintenance of the bull pen areas; and maintenance of the ballpark equipment at no cost to Lessor. ~~Lessor shall contract with Lessee for the maintenance of fields 5, 6 and 8 as indicated in the diagram attached as Exhibit "C". At such time when the Lessor determines through examination of Lessee's records that Lessee has sufficient funds available, the parties agree that they will renegotiate the terms for maintenance of the fields.~~

3. The parties desire to amend Section 3.02 of the Lease Agreement entered into February 13, 2003 as follows:

3.02 During the lease term, and in accordance with the reasonable requests or schedule of Lessor, including any extensions thereof, Lessee shall perform, pay for and otherwise provide the following:

~~(a) Mow, edge, drag, lime, repair bases, fertilize, irrigate, treat for insects and weeds, and such other associated general maintenance which is commonly performed to render and maintain a baseball field in playing condition on those fields now included on the leased land. Lessee shall add clay as may be required for regular maintenance and the cost of such clay shall be shared equally with Lessor.~~

~~(b) Replace all sod on the baseball fields; provided, however, if it is clearly shown that damage to the grass surface is from an athletic event or program not contemplated in this lease or under the control of Lessee, Lessee shall not be responsible for said sod replacement.~~

~~(c) Replace batting cage nets as necessary. The cost of replacing batting cage nets shall be shared equally between Lessor and Lessee.~~

~~(d) Maintain and/or replace windscreen as necessary with costs to be shared equally between Lessor and Lessee.~~

maintenance for areas described in Section 3.01 pursuant to the standards described in Exhibit "D", attached, with Lessee to pay fifty percent (50%) of the costs associated with the following:

(a) The cost of clay and sod to be added to areas described above as part of regular turf maintenance.

(b) The cost of replacing batting cage nets.

(c) The cost to maintain and/or replace windscreens.

(d) The cost to repaint the "Green Monster" in Field 1 at the Robert P. Miller Field Complex.

4. The parties desire to amend Section 4.01 of the Lease Agreement entered into February 13, 2003 as follows:

4.01 ~~Lessee~~ shall have the primary use of the ~~baseball fields on the leased land~~ fields 1, 2, 3, 4, and 5 at Robert P. Miller Field Complex and the fields at Currie Commons Park between the hours of 8:00 A.M. through 3:00 P.M. on weekdays. ~~Lessor~~ shall continue to have primary use of the leased land from 3:00 P.M. through 8:00 A.M. and during all hours on weekends and holidays. Lessee shall have primary use of Field 7 (known as "Sergio" field) from 8:00 A.M. through 6:00 P.M. on weekdays, with Lessor to have primary use of this field from 6:00 P.M. through 8:00 A.M. on weekdays and during all hours on weekends and holidays. ~~Lessee~~ may be permitted the use of such facility on weekends between the hours of 8:00 A.M. through 3:00 P.M. upon thirty days notice and the consent of the Director of Parks and Recreation or his or her designee and in accordance with the City's usage fee structure, with all fees paid to Lessor. ~~Lessee~~ shall have the right to use the leased land for purpose of operating a baseball training school. ~~Lessee~~ shall permit the use of fields by other persons which it is not using during those periods when it has primary use of the fields, subject to approval by Lessor. If ~~Lessor~~ desires to permit the use of said unused fields by persons other than ~~Lessee~~, it may. In its permitting process, ~~Lessor~~ shall, on a request basis, establish which fields are not being used by ~~Lessee~~ and are available for the use of others.

5. The parties desire to amend Section 5.04 of the Lease Agreement entered into February 13, 2003 as follows:

5.04 Notice of termination shall be in writing, delivered by certified mail, return receipt requested, respectively sent to:

(Lessee) ~~BDBBS, Inc~~ ELEV8 Sports Institute, Inc
B. Michael Wiggins
Donald Uderitz, President
490 Dotterel Rd. 407 SE 1st Street
Delray Beach, Florida 3344433483

(Lessor) City of Delray Beach
Department of Parks & Recreation
100 N.W. 1st Avenue
Delray Beach, Florida 33444

It is the obligation of the parties hereto to provide the other with current mailing addresses.

6. The parties desire to amend Section 8.02 of the Lease Agreement entered into February 13, 2003 as follows:

8.02 Lessor shall not allow the use of the leased land by any other baseball training school, individual baseball instruction classes, baseball camps and clinics, or baseball travel team practices unless mutually agreed upon by Lessor and Lessee for so long as this lease is in effect.

7. The parties agree to replace Exhibit "C" of the Lease Agreement entered into February 13, 2003 with a new Exhibit "C", attached hereto, which reflects the present field layout at Robert P. Miller Park.

8. The parties agree to add Exhibit "D", attached hereto, to the Lease Agreement entered into February 13, 2003, which describes field maintenance duties to be performed by Lessee.

10. The parties desire to add Section 9.03 to the Lease Agreement entered into February 13, 2003 as follows:

9.03 Lessee shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Lessee agrees to:

a) Keep and maintain all records that ordinarily and necessarily would be required by the City.

b) Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.

d) Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the Lessee at the termination of the Lease Agreement and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

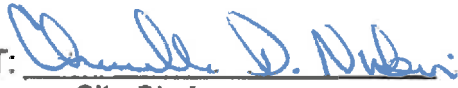
e) If Lessee does not comply with this section, the City shall enforce the Lease provisions in accordance with the Lease and may unilaterally cancel this Lease Agreement in accordance with state law.

11. All other terms and conditions of the Lease Agreement of February 13, 2003 not in conflict with this Amendment No. 1 shall remain in full force and effect and are incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 the day and year first above written.

CITY OF DELRAY BEACH, FLORIDA

ATTEST:


City Clerk

By:

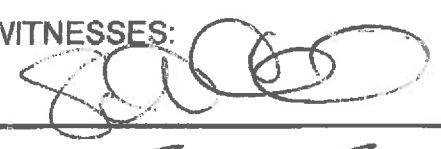


Cary Glickstein, Mayor

Approved as to form:

By:


City Attorney

WITNESSES:

ELEV8 SPORTS INSTITUTE, INC.

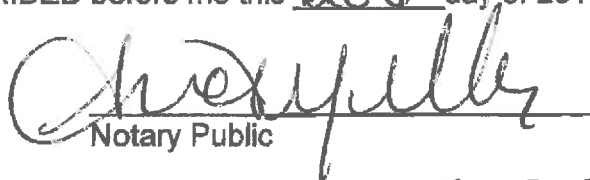
By:

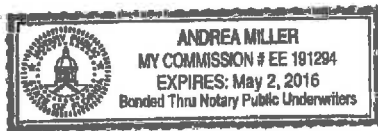

Donald Uderitz, President

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the state and county named above to take acknowledgements, personally

appeared Donald Uderitz known to me to be the person described in and who executed the foregoing instrument as CEO of a corporation organized under the laws of the state of Delaware. He acknowledges before me that he executed the foregoing instrument as such officer in the name and on behalf of the corporation and that he also affixed thereto the official seal of the corporation.

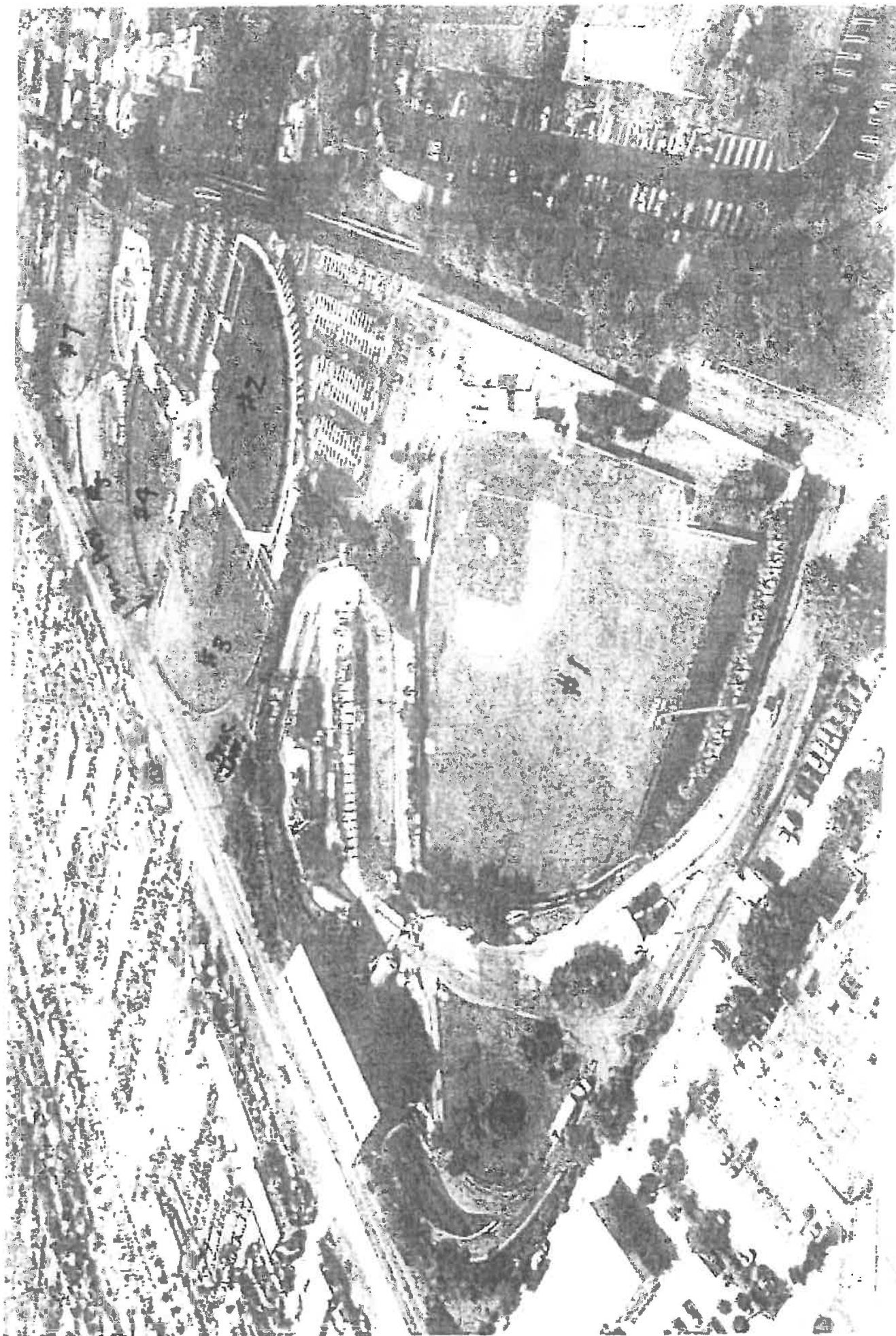
SWORN TO AND SUBSCRIBED before me this Dec 6th day of 2013.


Notary Public



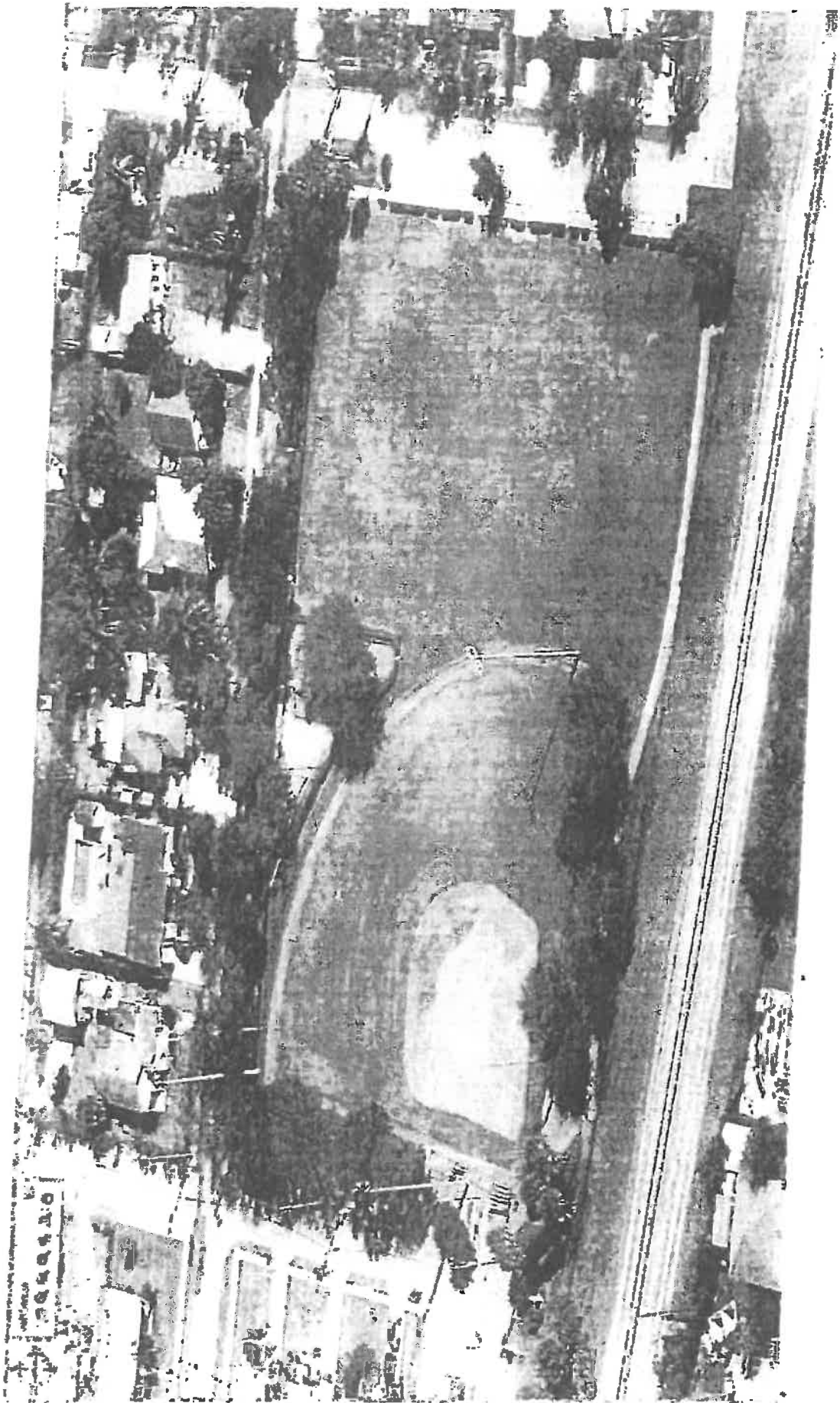
My Commission Expires: May 2, 2016

Exhibit C



Print #100507041
Date: 05/07/10
Lat/Lon: 26.435318 -80.07571
05-4-568-0484

Miller Park, Delray Beach FL



CURRIER CEMETERY PARK

Exhibit D

EXHIBIT "D"

1. SPORTS TURF MAINTENANCE

Lessee shall maintain sports turf for fields and their contiguous areas in a healthy, growing, green, trim condition by performing the following operations:

- a. All sports turf and contiguous areas shall be maintained by **Lessee**. At the Robert P. Miller Field Complex, these areas shall be comprised of "Celebration Bermuda" Grass. At Currie Commons Park, these areas shall be comprised of "Bermuda" Grass.
- b. **Lessee** shall add ball field clay (a minimum of 80/20 mix of clay and filler) and "Celebration Bermuda" Grass or "Bermuda" Grass pursuant to Section 1.a. above, as may be required for regular maintenance.
- c. **Lessee** shall be responsible for all regular baseball field maintenance which is commonly performed to render and maintain a baseball field in playing condition including, but not limited to, the following:
 - i. Fields shall be mown weekly, two (2) times per week from April to November and one (1) time per week from December to March, using a reel-type mower.
 - ii. Grass shall be fertilized five (5) times/year at 350lbs/acre, with more as needed.
 - iii. Grass shall be aerified two (2) times per year, and two (2) more times on wear areas, for a total of four (4) times per year.
 - iv. Herbicide shall be applied as needed for weed control.
 - v. "Pre-Emergent" shall be applied for weed control, two (2) times per year, with more as needed.
 - vi. Pesticides shall be applied for ant and mole cricket control two times per year, with more as needed.
 - vii. All fence rows and clay areas shall be edged weekly.
 - viii. "Round-Up" shall be applied on all fence rows as needed.
 - ix. All warning tracks shall be weeded and cleaned regularly.

- x. Clay shall be dragged seven (7) days/week. Also fields shall be lined for all City-sponsored games.
- xi. All areas comprised of "Celebration Bermuda" Grass or "Bermuda" Grass shall remain free from litter.
- xii. All work involving the use of chemicals shall be in compliance with all Federal, State and local laws and will be accomplished by or under the direction of a Florida Certified Pesticide Applicators' license. Application shall be in strict accordance with governing regulations

2. INFIELD MAINTENANCE

Lessee shall be responsible for all regular infield field maintenance which is commonly performed to render and maintain the infield in playing condition including, but not limited to, the following:

- a. The infield area shall be laser graded as needed.
- b. Lip repair of infields shall be performed as needed.

3. BALLPARK EQUIPMENT MAINTENANCE

Lessee shall be responsible for the regular maintenance of the following ballpark equipment:

- a. The dugouts shall be swept and cleaned daily and trash and recycling bins shall be emptied daily.
- b. Batting cage nets shall be replaced as needed.
- c. Bases shall be repaired and replaced as needed. Break-away bases shall be used.
- d. Windscreen shall be repaired and replaced as needed.
- e. The "Green Monster" wall in Field 1 shall be repainted as needed.