

**LEASE AGREEMENT  
FOR CENTURYLINK SPORTS COMPLEX  
(2019-2023 Seasons)**

**THIS LEASE AGREEMENT** (the "**Agreement**") is made this 8<sup>th</sup> day of January, 2019 between Lee County, Florida, a political subdivision and charter county of the State of Florida, whose mailing address is PO Box 398, Fort Myers, Florida 33902 (the "**County**"); and Kaufy Baseball, LLC, a Florida limited liability company whose mailing address is 12846 Brodick Court, Jacksonville, FL 32224, the majority owner of the Miracle Baseball Club ("Kaufy Baseball" or "**Miracle**"). The terms "**Kaufy Baseball**" and "**the Miracle**" may be used interchangeably throughout this Agreement. Collectively, the County and Kaufy Baseball/Miracle are referred to throughout as the "**Parties**".

**WHEREAS**, the County owns and operates a facility known as the CenturyLink Sports Complex/Hammond Stadium (the "**Stadium**"); and

**WHEREAS**, the County entered into a Lease Agreement dated December 16, 2014 for the 2015-2019 seasons with SJS Beacon Baseball, LLC ("**SJS**").

**WHEREAS**, Kaufy Baseball has acquired ownership of the Miracle Baseball Club (the "**Miracle**") as part of the transactions described in that Asset Purchase Agreement dated November 1, 2018 between SJS and Kaufy Baseball; and

**WHEREAS**, SJS and Kaufy Baseball entered into that certain Assignment and Assumption of Stadium Lease dated January 8, 2019, pursuant to which SJS assigned all obligations under the Stadium Lease with the County to Kaufy Baseball; and

**WHEREAS**, the Miracle desires to continue to use the Stadium as its practice field and home field for the 2019 through 2023 League Season play in the Florida State League of Professional Baseball Clubs and for other mutually agreed-upon uses; and

**WHEREAS**, the County and Kaufy Baseball believe entering this Agreement will be mutually beneficial to both parties.

**NOW THEREFORE**, in consideration of the mutual promises, covenants and conditions contained herein, the parties agree as follows:

**1. RECITALS**

The above recitals are true and correct and incorporated herein as though fully set forth below.

## **2. TERM**

a. The term of this Agreement is for a period of five years commencing January 1, 2019 and terminating December 31, 2023. Kaufy Baseball, at its option, may renew this Agreement for an additional 5 year term under the same terms and conditions, except the County will have the right to seek an adjustment to the Lease Payment and Utilities reimbursement costs (identified in Sections 4 and 8 respectively) based upon the average Consumer Price Index (CPI) for the preceding five years and subject to other mutual agreements of the parties at the time Kaufy Baseball exercises its renewal option.

b. The Florida State Baseball League Season runs from approximately the beginning of April through the first part of September and may be extended for League playoff games, if any are necessary. The length of the Season will be subject to the requirements of the Florida State League. Kaufy Baseball and the Miracle agree to advise County no later than March 1 of each year during the term of this Agreement as to the Season game schedule and the exact dates of future Seasons.

## **3. USE OF STADIUM**

a. The County hereby grants Kaufy Baseball the license and privilege of using the Stadium areas as depicted and described on attached Exhibit A, for holding its training practices, tryout and exercise sessions, and Baseball League games during the Season as defined in this Agreement.

b. During the Season, the Miracle will play a minimum of 70 regular Season home games, in addition to those League All-Star and playoff Games of the Miracle's choice, unless prevented from playing by government regulations, the Florida League rules, weather conditions, factors beyond the control of the Miracle and the County, or pursuant to a written Agreement consistent with subsection (c) below.

c. Kaufy Baseball agrees substantially all home games will be played at the Stadium unless the County and Kaufy Baseball agree in writing to the contrary or the provisions of subsection 3.i become applicable.

d. Competitive games during the Season, other than those of the Florida State League, may be played in the Stadium only with the mutual consent of the County and the Minnesota Twins.

e. On game days the Miracle may present other entertainment in conjunction with or supplementary to the League games, if the content of the entertainment is consistent with family-oriented entertainment. Game day entertainment is limited to four hours prior to the announced game start time and four hours after the official completion of the Miracle game. Events must conclude no later than 11:00 pm and must adhere to the county's noise ordinance; this does not include time for cleanup.

f. Kaufy Baseball may offer two additional concerts during the Season that allow patrons on the playing field during the event as long as field protection, approved by the County, is put on the field. The County has the unilateral authority to withdraw permission for patrons to be on field at any time, and without recourse, in order to protect the playing surface from abnormal damage. Kaufy Baseball may offer other concerts and events without limitation, so long as patrons remain in the seating area and the County provides prior approval for any equipment or other items placed upon the field in conjunction with the concert or event. Kaufy Baseball will be responsible for any damage incurred.

g. Kaufy Baseball is permitted to use the Premises for purposes other than those specified above during the Season or at other times, with prior written County approval. The County retains the right to use the Stadium on the days the Miracle does not have games or practices, and will coordinate with Kaufy Baseball in advance to avoid conflicts. County may schedule the Stadium for special events during the term of this Agreement, to the extent events do not conflict with Miracle games or other planned Miracle events. During the non-baseball season, the County has priority with respect to scheduling the Stadium use. Kaufy Baseball is entitled to generate concessions during County scheduled events, subject to the provisions set forth in Section 6.

h. If the Stadium is used by the County or another governmental entity as a Hurricane Recovery Site, the County will use best efforts to make Terry Park or JetBlue Park available as an alternative playing site. However, nothing contained herein obligates the County to provide an alternative site. Likewise, no right is conferred upon Kaufy Baseball under this Agreement with respect to use of Terry Park or JetBlue Park.

#### **4. LEASE PAYMENTS**

a. The Lease Payment during the term of this Lease is \$2363.57 per month plus taxes as set for in Section 17. The Lease Payment will increase by 3% per year effective on the Lease Agreement anniversary date. Kaufy Baseball agrees to pay a one-time lease extension fee equal to one full Lease Payment on or before April 1, 2019.

b. Lease Payments are due no later the 20<sup>th</sup> day of each month during the term of this Lease Agreement, commencing on January 20, 2019 and concluding December 20, 2023.

c. Lease payments may be mailed or hand-delivered to the following address:

Lee County Parks and Recreation  
Attn: Fiscal Department  
3410 Palm Beach Boulevard  
Fort Myers, Florida 33916

## **5. MIRACLE REVENUE**

a. Kaufy Baseball is responsible for all costs associated with the revenue generating items identified below and is entitled to all revenue derived from the following sources:

- (1) Programs
- (2) Parking on game days in those areas identified on attach Exhibit A
- (3) Admission tickets
- (4) Advertising, subject to the terms of Section 9
- (5) Television, cable and radio broadcasting rights, subject to the provisions of Section 10
- (6) Operation of a souvenir facility at the facility for non-spring training events.

b. The Miracle has the right to bring in specialty equipment machines, such as video game machines and speed-pitching machines, which are not concessions or novelty related. All machines must be family-oriented. The placement or location of the machines on the Stadium premises must be mutually agreed by the County. The County will not share in any revenue derived by the Miracle from the machines. Kaufy Baseball will be required to provide appropriate insurance for the machines consistent with Section 13.

c. Kaufy Baseball has the right to rent certain designated areas of the Stadium on non-game days for the purpose of meetings, birthday parties, and other mutually agreed private or corporate gatherings or activities. These designated areas are limited to the Stadium seating bowl, picnic areas, suites, press dining room, parking lots, boardwalk, group decks, and fourth floor offices. Kaufy Baseball must request use of the Stadium for rental activities in advance to avoid scheduling conflicts with the County. Kaufy Baseball must pay rental fees to the County for use of the designated rental areas in accordance with the Lee County Administrative External Fees and Charges Manual in effect at the time of the event. Use of playing fields and practice fields for non-game day scheduled events is prohibited without the prior written consent of the County. Softball fields may be rented by the Miracle in conjunction with rental activity by obtaining a permit through the site supervisor. The Miracle will be responsible for any cleaning after use.

## **6. CONCESSIONS**

a. The Miracle is the sole concessionaire for the Miracle game days and other events at the Stadium. The Miracle must obtain and maintain all applicable licenses or permits necessary to sell beer and wine. "Concessions" as used in this Agreement means food and beverages, including the food and beverages sold at picnics and catered events.

b. The County agrees to offer the Miracle an opportunity to operate concession stands at all County sponsored events using the Stadium, except those events where the applicable license agreements expressly prohibit the operation of outside vendors. The Miracle agrees to negotiate in good faith with event promoters to determine percentages of gross sales of Miracle operated concessions that will be returned to event promoters.

c. The County retains the right to inspect and inventory Concessions Equipment at any time deemed reasonable and necessary by the County, including without limitation, at the beginning and end of the Miracle Season.

d. The Miracle, as concessionaire must be consistent with the terms of this Agreement, use its best efforts to manage and promote the concessions and products, and must strictly comply with the reasonable standards, specifications, processes, procedures, and requirements of this Agreement. In the event the Miracle does not comply with the repair, maintenance and other associated conditions of this Agreement, the County will have the right to perform the work and charge the cost thereof to the Miracle.

e. The Concessions and everything located within the Stadium under the Miracle's control as concessionaire must be maintained in good condition and must be kept in first class, clean, safe, and sanitary manner consistent with the County requirements and the industry standard of cleanliness and product quality for other first class stadium facilities. Miracle must conduct the concessions business generally at the highest level of cleanliness, safety, and neatness at all times as reasonably practicable.

## **7. MIRACLE PERSONNEL**

The Miracle will furnish/contract and pay for ushers, ticket-takers, ticket sellers, parking lot attendants, gate attendants, security personnel required by the Florida State League or otherwise desired by the Miracle, personnel required for traffic control as determined by the Miracle, a ten-person tarpaulin crew (if needed), Public Announcer (P.A.) personnel, press-box staff, grounds crew required in excess of the County commitment under Section 11, operations persons, and other personnel necessary in connection with the games or other events sponsored by the Miracle while they are in progress as well as immediately prior and subsequent thereto. The Miracle must promptly inform and consult with the County regarding any expected attendance for a single event of over 2,500 persons. Notwithstanding anything to the contrary in this Agreement, the parties agree that the Miracle will be responsible for the costs of traffic control as well as all other game day expenses.

## **8. UTILITIES**

The County will furnish utilities, including but not limited to: field lighting, heating, and water used in connection with the operations as well as the maintenance of the Stadium. Miracle will provide reimbursement for utility costs to County in the amount of \$3,939.27 per month. The utility reimbursement amount will increase by 3% per year on the Lease Agreement anniversary date. This reimbursement amount is due at the same time and in the same manner as the Lease Payments. The Miracle will use reasonable efforts to control its usage of utilities.

## **9. ADVERTISING**

Subject to the prior Agreement between the County and the Minnesota Twins, the Miracle has the exclusive right to place all advertising within the Stadium during the Season. Advertising concerning alcohol or tobacco is subject to the applicable state statutes. Any advertising of questionable taste is subject to the prior approval of the County. The Miracle may mount or install advertising signs during the Season with the prior approval of the County, but may not, in any manner whatsoever, mar, damage, deface, or injure the Stadium. Placement of additional advertising on light poles is prohibited. Subject to the prior Agreement between the County and the Minnesota Twins, the Miracle will retain all scoreboard or outfield board advertising rights during the Season. The Miracle has the right to sell advertising on the public address system and may acknowledge sponsors of special promotions.

## **10. TELEVISION, CABLE, AND RADIO RIGHTS**

The County agrees that the Miracle may sell television, cable, and radio broadcasting and advertising rights to its games. Any costs incurred under this Section will be paid for by the Miracle. The contracting studio will be permitted reasonable access to the Stadium for the purposes of the broadcasts.

## **11. MAINTENANCE OF THE STADIUM**

a. The County, at its sole expense, will maintain and keep in good, neat, clean, presentable, and game-ready condition, the main playing field, practice fields, fences, parking lot, and all portions of the Stadium covered by this Agreement; and, it is understood and an express condition of this Agreement that the Miracle, in using these Stadium areas will keep them in the same condition.

b. The Miracle will be responsible for employment and payment of all concession workers as well as the crews necessary to clean the Stadium and maintain it at a high standard meeting with County approval. This includes but is not limited to: pressure washing the entire stadium every four to six games; and removal of trash and litter related to the Miracle events, immediately following the events.

c. The County is responsible for two groundskeepers on duty through the end of each game.

d. The County will maintain, repair and keep the parking area in good condition at its sole cost and expense.

e. On or before April 10th of each year, the Miracle will provide written notice to the County, via the Parks and Recreation Director, regarding any unacceptable condition pertaining to the County's maintenance and preparation of the main field, practice fields, parking areas, or other areas of the Stadium. Upon receipt of the notice, the County will investigate the complaint. If, in the County's reasonable opinion, the

complaint has merit, the County agrees to take immediate action to remedy the condition to the reasonable satisfaction of the Miracle; and, complete the remedial action within 15 days of the written notice, if possible.

f. The Miracle will provide acceptable janitorial services for the umpires' room, storage rooms, the fourth floor used by or through the Miracle, visitor's clubhouse, home team clubhouse, the Miracle offices, and any Minnesota Twins' offices, and any other areas used by the Miracle. The Miracle is responsible for cleaning restrooms during and after Miracle events. All cleaning must be done after each game or before the next game in a manner that meets County standards and approval.

g. The parties acknowledge and agree the Miracle is receiving the Stadium premises in excellent condition, unless the Miracle otherwise notifies the County to the contrary as provided in subsection 11.e. The County reserves the right and authority to inspect the cleanliness and conditions of the Stadium at all reasonable times and to clean any Stadium areas not meeting the County's reasonable standards. Any out-of-pocket costs incurred by the County to clean areas otherwise the responsibility of the Miracle will be the subject of an invoice to the Miracle. Any costs invoiced to the Miracle under this Section must be paid within 10 days of receipt of the invoice.

h. It is understood that the Miracle will use offices, equipment, and the scoreboard owned or controlled by the Minnesota Twins. A separate agreement between the Miracle and Minnesota Twins will govern the use and normal maintenance of the offices, equipment, and the scoreboard.

i. The Miracle will coordinate with the Minnesota Twins and the County to facilitate the transition from the Minnesota Twins' Spring Training Season to the commencement of the Miracle Season.

j. Any provision in the existing agreement between the County and the Minnesota Twins that conflict with any provision of this Agreement will supersede the conflicting provision of this Agreement.

## **12. INDEMNIFICATION**

a. The Miracle agrees to indemnify and hold the County, its officers, agents and employees harmless with respect to any injuries to or losses of personal property, personal injury, or death caused by the negligent or wrongful acts or omission of the Miracle, its employees, officers, or, agents in connection with the Miracle's use of the Stadium under this Agreement.

b. County agrees to be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act or omission of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held liable in accordance with the general laws of the State of Florida,

subject to the limitations set forth in Florida Statutes section 768.28.

### **13. INSURANCE**

a. The Miracle is required to obtain the following insurance coverage.

(1) Worker's Compensation insurance including a waiver of subrogation in favor of the County executed by the insurance company (where permitted by state law) and covering all costs, benefits, and liability under State Worker's Compensation and similar laws that may accrue in favor of any person employed by the Miracle; employers liability insurance with limits no less than \$1,000,000. The Miracle must cause all subcontractors to procure Worker's Compensation insurance consistent with the above, including a waiver of subrogation in favor of the County.

(2) Commercial general liability insurance, including but not limited to coverage for premises and operations, contractual liability, personal injury liability, and product-completed operations liability with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

(3) Comprehensive automobile liability insurance with a limit of \$1,000,000 per accident. All owned and non-owned and hired vehicles are to be insured.

(4) Florida statutory liquor liability insurance with a Combined Single Limit of \$5,000,000 per occurrence and \$5,000,000 in the annual aggregate, which policy must be endorsed to include the County and the Minnesota Twins as Additional Insureds.

(5) Umbrella or excess liability insurance is required with limits of \$5,000,000 for any one occurrence, subject to the same annual aggregate, and the excess will apply to commercial general liability, employer's liability, and automobile liability limits.

(6) In order to avoid conflicts between insurance companies, the Miracle will use its best efforts to have all policies of insurance required by this Section issued by one insurance company. The required commercial general liability and umbrella liability insurance must be endorsed to include the County as an Additional Insured and state that the policies of insurance are primary insurance to the County without regard to any other insurance the County may have available. Additional insured coverage must be extended to include products-complete operations coverage. No policy may include a deductible or self-insured retention in excess of \$25,000. The Miracle will be solely responsible for satisfaction of all deductibles. Each policy will contain a severability of insurance/cross liability endorsement. The policies will also be endorsed so that the policies will not be canceled or materially reduced without 30 days prior written notice to the County.

b. The Miracle will provide copies of the certificates of insurance evidencing compliance with this Section to Lee County Risk Management. The certificates must carry a provision indicating the County will receive a 30-day advance written notice of cancellation or nonrenewal. It is the responsibility of the Miracle to comply with the terms



and conditions of each insurance policy as to payment of premiums, reporting of claims, and other requirements of the policy.

c. Any insurance deemed necessary by the Miracle might be secured at its own option and expense. Failure to obtain insurance does not relieve the Miracle from any obligations of liability outlined in this Agreement. County in no way represents that the insurance required is sufficient or adequate to protect the Miracle's interests or liabilities, but are merely minimums.

#### **14. ASSIGNMENT**

a. The Miracle has the right, with written notice to the County, to assign or transfer this Agreement, or any portion of its rights under this Agreement to a parent, subsidiary or related company of the Miracle, or to a non-governmental individual having substantial ownership of the Miracle.

b. Except as provided in subsection 14.a, the Miracle may not assign all or a portion of its rights or obligations under this Agreement without first obtaining the written consent of the County. County agrees not to unreasonably withhold consent, and to grant or deny its consent within 30 days of receiving a written request from the Miracle.

#### **15. DEFAULT**

a. If either party defaults in its performance of under this Agreement, the non-defaulting party will send the defaulting party a written notice specifying the nature of the default. The defaulting party must, within 15 days after receipt of the written notice, cure and remedy the default. Upon cure of the default, this Agreement will continue in full force and effect.

b. If the defaulting party fails to cure and remedy the default within 15 days after receipt of the written notice, then the non-defaulting party will have the right to declare, by written notice, that the Agreement is terminated, and upon termination, may pursue all remedies available under this Agreement and Florida law.

c. If the County is the defaulting party, the Miracle may (1) elect to play its games at sites other than the Stadium until the default is cured; (2) continue to play at the Stadium; or, (3) provide the services the County has failed to provide at the Miracle's expense and deduct these reasonable and verified expenses from the payments otherwise due to the County.

d. If the Miracle is the defaulting party, the County is authorized to enter and retake possession of the Stadium, with or without legal process, and to pursue all other remedies available under Florida law.

## **16. ALTERATIONS AND ADDITIONS**

a. The Miracle is not permitted to make alterations or additions to the physical structure of the Stadium without prior written approval from the County. The Miracle understands the County may deny permission for any reason.

b. If the County grants permission to make physical alterations or additions to the structure of the Stadium, the alterations or additions must be in compliance with all applicable federal, state and local laws, rules, regulations and permits. Any approved alteration or addition to the Stadium structure will be made at the Miracle's sole cost and expense.

c. Once completed and made part of the Stadium structure, approved alterations and additions become the property of the County unless otherwise agreed in writing prior to making the alteration or completing the addition.

d. Alterations or additions attempted or completed without prior written County approval will constitute default under this Agreement. The County will have the right to return the premises to its former condition, with all costs and expenses of this activity charged to the Miracle by invoice payable within 30 days of receipt.

## **17. TAXES**

a. The Miracle understands and agrees that Lee County is a political subdivision of the state of Florida and as such is a tax-exempt governmental entity.

b. It is the responsibility of the Miracle to pay all taxes due in connection with its operations as permitted by this Agreement, whether from sales, use, or based upon the leasehold interest.

## **18. PROMOTION**

a. The Miracle will use its best efforts to promote all events presented by the Miracle at the Stadium.

b. During the term of this Agreement, the County agrees to provide moral support and encouragement to the Miracle by including reasonable references to the Miracle in County publicity and promotional literature where possible.

c. Each party will have the right to use the other's name for promotional purposes upon prior review and permission by the other party.

## **19. NOTICE**

All notices required by law or under this Agreement will be provided in writing and delivered by hand or certified mail, return receipt requested, to the following addresses:

To County: County Manager, Lee County  
Post Office Box 398  
Fort Myers, Florida 33902-0398

With a copy to: Director, Lee County Parks and Recreation Department  
Post Office Box 398  
Fort Myers, Florida 33902-0398

To Miracle/Kaufy Baseball: President, Fort Myers Miracle  
14400 6 Mile Cypress Parkway  
Fort Myers, FL 33912

With a copy to: Kaufy Baseball, LLC  
c/o Andrew Kaufmann  
12846 Brodick Court  
Jacksonville, FL 32224

## **20. MISCELLANEOUS**

a. The County has the right to enter into the Stadium at all reasonable hours for any purpose not inconsistent with the terms of this Agreement, including the right to conduct inspections in a manner not inconsistent with the Miracle's reasonable security measures.

b. The Miracle acknowledge and agree that its rights to use the Stadium conferred under this Lease are subject to the Lease Agreement between the County and the Minnesota Twins Baseball Club (the "Twins"), and as such the Twins Spring Training games and related events take precedence over any rights the Miracle may have under this Lease to utilize the Stadium and the Twins shall have the right to approve any uses of the Stadium by the Miracle during January 15 through the end of spring training and related events but in no event later than April 15 of each year of the Lease term. The foregoing acknowledgement and agreement shall not in any way modify the existing agreements between the Twins and the Miracle, which are subject to the rules and regulations of major league and minor league baseball.

c. If the Stadium is condemned, destroyed, damaged due to fire, hurricane, windstorm, or other catastrophe, so as to make it unsuitable for the Miracle games, and the County is unable or unwilling to repair or rebuild the Stadium, within 15 days of the date the damage assessment is made, then the Miracle may declare this Agreement canceled and the obligations of the parties to each other will be terminated.

If the damage to the Stadium can be reasonably repaired within the 15-day period and the County elects to make the repairs, the County will be solely responsible for the cost and expenses of the repairs, and the Miracle agrees it will remain obligated under the terms and conditions of this Agreement. During the repair period, the Miracle may play their home games at an alternate stadium chosen by the Miracle at its sole discretion, and the Lease Payments during the repair period will be proportionally abated.

d. The Parties understand and agree that the County owns the land and the buildings comprising the Stadium and the CenturyLink Sports Complex physically located at 14100 Ben C. Pratt Six Mile Cypress Parkway, Fort Myers, Florida. The Miracle agrees not to take any action that will cause an encumbrance of the County ownership or title to such lands or facilities.

e. Section headings are for informational purposes only and are not part of the substance of this Agreement.

f. If any section, subsection, clause, or provision of this Agreement is deemed to be invalid by a court of law with competent jurisdiction, the remainder of the Agreement will remain in full force and effect.

g. This Agreement inures to the benefit of, and is binding upon, the Parties' successors and assigns.

h. This Agreement will be construed in accordance with and governed in all respects by Florida law. Venue for any action to enforce the provisions of this Agreement shall be in the Circuit Court of Lee County, Florida.

i. No waiver of any provision of this Agreement will be deemed valid unless waived in a writing signed by both parties. The failure of either party to insist upon strict performance of any provision of this Agreement may not be construed as a waiver or relinquishment of the right to require compliance in the future.

j. This is the entire agreement between the parties and may not be amended except by a writing executed with the same formality.

IN WITNESS WHEREOF, the Parties, by and through their authorized representatives, have executed this Agreement as of the dates below.

KAUFY BASEBALL, LLC

Witness: Brian Amaya

Print Name: Brian Amaya

By: Ad C Y

Name: Andrew C Kautmann

Title: Chief Executive Officer

Date: 12/07/18

Witness: Bailey Baker

Print Name: Bailey Baker

ATTEST:  
LINDA DOGGETT, CLERK

BY: Melina Butler  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: Brian Amaya  
Vice Chair



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

By: Andrew R. Fraser  
County Attorney's Office