

**LICENSE AGREEMENT BETWEEN
ST. PETERSBURG COLLEGE AND CITY OF CLEARWATER**

THIS AGREEMENT is entered into by and between the Board of Trustees of St. Petersburg College (“COLLEGE”), a political subdivision whose mailing address is Post Office Box 13489, St. Petersburg, FL, 33733-3489, and the City of Clearwater (“CITY”), a Florida Municipality whose mailing address is Post Office Box 4748, Clearwater, FL, 33758-4748, and collectively referred to as the “PARTIES.”

WHEREAS, the CITY owns Jack Russell Memorial Stadium, located at 800 Phillies Dr, Clearwater, FL 33755 (“Stadium”) and the Eddie C. Moore Softball Complex located at 3050, 2994, 2780 Drew Street, Clearwater, FL 33755 (“Complex”), and collectively referred to as “Licensed Areas.”

WHEREAS, the COLLEGE previously owned the Joe DiMaggio Sports Complex and transferred ownership to the CITY in consideration for the perpetual use of the Joe DiMaggio Sports Complex by the COLLEGE’s baseball team.

WHEREAS, in 2017, the COLLEGE desired a new space for its baseball and softball teams to practice and compete.

WHEREAS, in 2017, the CITY and COLLEGE entered into a License Agreement whereby the COLLEGE’s baseball and softball teams utilized the Licensed Areas.

WHEREAS, the Parties desire to enter into a new License Agreement for the use of the Licensed Areas.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties agree that the above terms, recitals, and representations are true and accurate and are incorporated herein by reference, and the Parties further agree as follows:

- 1 PRIORITY OF USE: The CITY hereby grants the COLLEGE a non-exclusive license to use the Stadium for baseball games and practices during the College Season (as described in section 6). The COLLEGE shall have the first priority for use of the Stadium after maintenance but shall provide the CITY with a schedule of both practices and games. The COLLEGE shall work in good faith to coordinate its practices and game times with the Clearwater High School baseball team and the City’s out-of-market sports tourism initiatives. To assist the CITY in scheduling the use of the Stadium, the COLLEGE will provide a seasonal schedule and updated monthly schedules on the 15th of each month. In the event of schedule changes, the CITY will make all reasonable efforts to accommodate the COLLEGE.

The CITY hereby also grants the COLLEGE a non-exclusive license to use the Complex for softball games and practices during the College Season (as described in section 6). The COLLEGE shall have the first priority for the use of the Complex after maintenance and the City’s out-of-market sports tourism initiatives. The COLLEGE shall provide the CITY

with a schedule of both practices and games and shall work in good faith to coordinate its practices and games times with the CITY's out-of-market sports tourism initiatives. To assist the CITY in scheduling the use of the Complex, the COLLEGE will provide a seasonal schedule and updated monthly schedules on the 15th of each month. In the event of schedule changes, the CITY will make all reasonable efforts to accommodate the COLLEGE.

- 2 AREAS OF USE: The COLLEGE shall have the non-exclusive use of the Licensed Areas described below, during the dates and times agreed to by the Parties:

Jack Russell Memorial Stadium:

- Main field and spectator viewing areas
- Batting cages
- Turf practice field
- Locker room / bottom floor facility
- Public restrooms
- Storage shed along right field line
- Press Box / PA Booth

Eddie C. Moore Complex

- Field
- Batting cages
- Bullpen
- Press Box
- Training Room

- 3 "SPC Official / College Official" is hereby defined as those individuals employed by the COLLEGE or expressly acknowledged as volunteers for the COLLEGE. "Allowable User" is hereby defined as those expressly permitted to use the Licensed Areas under this Agreement by the COLLEGE and during dates and times scheduled by the COLLEGE and approved by the CITY.
- 4 EMERGENCY CLOSURE OF FACILITIES: The Parties mutually agree that the CITY has the authority to close and reopen its facilities, buildings, and/or portions of its facilities and buildings for normal occupancy and operations during, or in preparation for imminent periods of emergencies. Such periods may include hurricanes, tornados, epidemics, pandemics, civil unrest, any declared public emergency, or other related emergencies. The COLLEGE shall not enter or attempt to enter such closed spaces until reopened for normal occupancy and operation by the CITY or unless the COLLEGE requests and receives express permission from the CITY. The CITY shall not be responsible for any losses that result from such closures. To the extent reasonable, the CITY will provide the COLLEGE with advanced notice of any such closures and, when reasonable, will help the COLLEGE secure alternative space.

- 5 **HEALTH AND SAFETY:** The COLLEGE shall follow all health, safety, and emergency protocols of the CITY. This specifically includes measures to protect against COVID-19 or other epidemics, pandemics, viral or bacterial outbreaks or other communicable diseases. Such health, safety, and emergency protocols include, but are not limited to, maintaining appropriate social distancing, limiting hours of access, limiting capacity or attendance, proper use of personal protective equipment, increased sanitation and hygiene requirements and thermal scanning.
- 6 **THE COLLEGE SEASONS:** For baseball and softball, the following are considered to be the operating season: Spring (mid-January thru the last day of May) and Fall (mid-August thru the last day of September).
- 7 **TERM:** This Agreement shall be for two (2) years, commencing on February 16, 2023 and ending on February 15, 2025, unless terminated by either party for a material breach of this Agreement or as provided for herein. Thereafter, this Agreement may be extended for one (1) additional two (2) year period (Renewal Term: February 16, 2025 thru February 15, 2027) under the same terms and conditions as set forth herein if mutually agreed to in writing by the Parties, without obtaining additional approval by the Clearwater City Council.

This Agreement shall supersede all prior license agreements between the Parties.

The CITY may terminate this Agreement upon thirty (30) days written notice to the COLLEGE if the Clearwater City Council determines at a duly constituted City Council Meeting that the Licensed Area is needed for other municipal purposes.

- 8 **DIRECT CHARGES:** The COLLEGE is responsible to reimburse the CITY for all direct charges associated with their usage of the Licensed Areas. This would include field lighting utility charges and staff and field maintenance costs outside of the COLLEGE's approved schedule.
- 9 **IMPROVEMENTS:** The COLLEGE shall not construct any improvements on or otherwise alter, change, or improve any part of the Licensed Areas without the prior written consent of the Director of Parks and Recreation. Request by the COLLEGE to construct any such improvements on or otherwise alter, change, or improve any part of the Licensed Areas shall be presented to the Director of Parks and Recreation in written form, and the Director shall provide a response within a reasonable prompt time. If the Parks and Recreation Department Director gives consent to the COLLEGE, the consent shall be deemed conditional upon the COLLEGE acquiring any necessary permit to do so from applicable governmental agencies, furnishing a copy thereof to the Director of Parks and Recreation prior to commencement of the work and complying with all conditions of said permit in a prompt and expeditious manner.

- 10 **COMMUNITY OUTREACH:** The COLLEGE agrees to partner with the CITY and conduct two (2) environmental cleanups in Clearwater with the COLLEGE'S student athletes. The COLLEGE agrees to engage in volunteer outreach activities throughout the Clearwater community with a focus on youth sports.
- 11 **LIABILITY AND HOLD HARMLESS:** Each Party shall be responsible for its own negligence, or its respective agents' acts of negligence when acting within the scope of employment, in the performance of this Agreement. Provided, however, that the CITY's and COLLEGE's liability is subject to the monetary limitations and defenses imposed by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the Parties, nor shall anything herein be construed as consent by the Parties to be sued by any third party for any cause or matter arising out of or related to this Agreement.
- 12 **INSURANCE:** The COLLEGE, through the Florida College Risk Management Consortium (FCSRMC), shall obtain and maintain occurrence-type general liability insurance coverage in amounts not less than \$2,000,000 per incident and \$5,000,000 annual aggregate. The COLLEGE shall obtain and maintain commercial automobile liability insurance in amounts not less than \$1,000,000 combined single limit. The COLLEGE shall further, at its expense, obtain and maintain during the term of this Agreement statutory workers' compensation insurance and unemployment insurance for COLLEGE employees or volunteers. The COLLEGE will notify CITY at least thirty (30) days in advance of any cancellation or modification of insurance coverage required hereunder and shall promptly provide to the CITY, upon request, certificates of insurance evidencing the above coverage. Additionally, spectators to games and practices shall be covered under the general liability limits of \$200,000 per event and \$300,000 aggregate, as specified in Section 768.28, Florida Statutes. The CITY shall be listed as an additional insured on the general liability and automobile policies.
- 13 **GOVERNING LAW:** This Agreement shall be governed by and construed under the laws of the state of Florida. Venue shall be in Pinellas County Florida.
- 14 **REPAIRS AND IMPROVEMENTS:** The CITY shall be responsible for all repairs and improvements to the Licensed Areas.
- 15 **UTILITIES:** Provision and payment for utilities shall be the responsibility of the CITY, unless billed to the COLLEGE as direct charges pursuant to Section 8 of this Agreement.
- 16 **MAINTENANCE:** General maintenance and upkeep of the Licensed Areas shall be the responsibility of the CITY. However, the COLLEGE shall be responsible for the cleanliness and upkeep of the locker room areas and to return the Licensed Areas to the condition received at the beginning of each use.

- 17 SECURITY: Should security be necessary for specific COLLEGE events, the provision of security shall be the responsibility of the COLLEGE.
- 18 NO PAYMENTS: Except as provided in this Agreement, no other payments will be made between the Parties in connection with this Agreement.
- 19 INDEPENDENT CONTRACTORS: The Parties hereby acknowledge that they are independent contractors, and neither Party nor any of its agents, representatives, program participants, or employees shall be considered agents, representatives, or employees of the other Party. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the Parties. The Parties shall be liable for its own debts, obligations, acts, and omissions, including the payment of all required withholding, social security, and other taxes or benefits except as provided in this Agreement. No program participant, employee, or other third person is entitled to, and shall not, receive any rights under this Agreement. Neither Party shall have the right or authority nor hold itself out to have the right or authority to bind the other Party and neither shall either Party be responsible for the acts or omissions of the other except as provided specifically to the contrary herein.
- 20 NON-DISCRIMINATION: There shall be no discrimination on the basis of race, color, ethnicity, religion, sex, age, national origin, marital status, pregnancy, sexual orientation, gender identity, genetic information, or against any qualified individual with disabilities, or any other protected class under federal or Florida law in either the selection of participating students, employment of staff, or as to any aspect of this Agreement.
- 21 USE OF NAME OR LOGO: The Parties will not, and will cause to use names, logos, or marks associated with the other Party without the express written consent of the other Party. Notwithstanding, the COLLEGE shall have the right to utilize the electronic scoreboard, signage, or banners as necessary to promote attendance at its games and to advertise the Licensed Areas as its team home field.
- 22 SEVERABILITY: If any provision of this Agreement is held to be invalid or unenforceable for any reason, this Agreement shall remain in full force and effect in accordance with its terms disregarding such unenforceable or invalid provision.
- 23 CAPTIONS: The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.
- 24 NO WAIVER: Delay or failure to exercise any right or remedy hereunder will not impair such right or remedy or be construed as a waiver thereof. Any single or partial exercise of any right or remedy will not preclude any other or further exercise thereof or the exercise of any other right or remedy.

25 NOTICES: All notices hereunder by either Party to the other shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, addressed as follows:

If to CITY: City of Clearwater
 c/o Jim Halios
 100 S. Myrtle Avenue
 Clearwater, FL 33756

If to COLLEGE: St. Petersburg College
 P.O. Box 13489
 St. Petersburg, FL 33733

 Attention: Athletic Director
 Copy to: Office of the General Counsel

or to such other person or place as either Party may from time to time designate by written notice to the other Party.

25 NO PROPERTY RIGHTS: This Agreement shall be deemed to be a use agreement in the nature of a revocable, non-exclusive license and shall not be deemed to be a lease or conveyance of any real property rights nor shall this Agreement constitute an agreement for the use of real property that would subject the Parties to the provisions of any statute regarding landlord and tenant rights.

The COLLEGE agrees and shall not obtain any prescriptive rights, easements, or other legal or equitable interest in the Licensed Areas or any premises of the CITY by reason of the execution of this Agreement, or by compliance with the terms thereof. Ownership of the Licensed Areas shall at all times remain with the CITY, and the COLLEGE shall not do anything inconsistent with such ownership, except as may be permitted by this Agreement.

The granting of this license does not vest in the COLLEGE any interest in the Licensed Areas or any premises of the CITY which may be mortgaged, encumbered, or liened, and no action of the COLLEGE shall cause or create any interests in real estate or any encumbrance upon any such real property.

26 ENTIRE AGREEMENT: This Agreement sets forth the entire Agreement with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement of the Parties. All continuing covenants, duties and obligations herein shall survive the expiration or earlier termination of this Agreement.

WHEREFORE, authorized representatives of each Party hereby execute this Agreement as of the Effective Date.

**THE BOARD OF TRUSTEES OF
ST. PETERSBURG COLLEGE**

By: _____

Date: _____

CITY OF CLEARWATER, FLORIDA

Frank Hibbard
Mayor

Jennifer Poirrier
Interim City Manager

Approved as to form:

Attest:

Owen Kohler
Lead Assistant City Attorney

Rosemarie Call
City Clerk