

**AMENDED AND RESTATED LAKE MYRTLE SPORTS COMPLEX  
MARKETING AGREEMENT FOR SOCCER ADVERTISING REVENUE**

**THIS AMENDED AND RESTATED MARKETING AGREEMENT** (the "Agreement") is entered into as of the Effective Date defined in Section 3, below, between Polk County (the "County"), a political subdivision of the State of Florida, by and through its Board of County Commissioners, 330 W. Church Street, Bartow, Florida 33830, the City of Auburndale (the "City"), and the Florida Youth Soccer Association, Inc. ("FYSA"), a Florida not for profit corporation, 2828 Lake Myrtle Park Road, Auburndale, Florida 33823.

**W I T N E S S E T H:**

**WHEREAS**, the parties previously entered into that certain Agreement dated May 11, 2009, (the "Prior Agreement") addressing the recruitment of corporate sponsorships for certain sports fields and improvements located within the Lake Myrtle Sports Complex (the "Sports Complex") in Polk County, Florida; and

**WHEREAS**, the parties have determined that it would be in their best interests to amend and restate their respective obligations as stated in the Prior Agreement;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements stated herein, the parties do hereby amend and restate the Prior Agreement in its entirety, as follows:

**SECTION 1. INCORPORATION OF RECITALS**

The recitals set forth above are true and correct and are incorporated into this Agreement.

**SECTION 2. TERMS AND CONDITIONS**

1. The County, acting through its Tourism and Sports Marketing Division shall serve as the parties' exclusive marketing and lead sales organization responsible for recruiting corporate sponsorships for (i) the Sports Complex's official title naming rights, (ii) the Sports Complex's Gold Level sponsorship packages, (iii) the Sports Complex's soccer fields and soccer stadium naming rights, and (iv) all "sponsorship inventory" as that term is defined in Paragraph 7, Section 2, below (collectively, the "Sponsorship Rights"). During the term of this Agreement, the City and the FYSA shall not enter into any sponsorship agreements affecting or pertaining to the Sponsorship Rights except those sponsorship agreements recruited in accordance with this Agreement. All sponsorship agreements between any party to this Agreement and a third party that affect or pertain to the Sponsorship Rights shall be subject and subordinate to the terms and conditions of the sponsorship agreements the parties enter pursuant to this Agreement. Sponsorship naming rights and other sponsorship rights pertaining to the Sports Complex's Collegiate Baseball Fields, Championship Baseball Stadium and Youth Fields, the Auburndale Trail, the Florida Youth Soccer Association Headquarters, the Polk County Tourism & Sports Marketing Headquarters, The Florida Sports Hall of Fame Headquarters, and the two (2) properties of land owned by the County that are contiguous to the Sports Complex are not part of the Sponsorship Rights and are all excluded from the scope of this

Agreement.

2. The County shall design and develop marketing/sales collateral, and work with the City and FYSA to design corporate sponsorship packages and proposals. The County will negotiate and finalize all sponsorship agreements with the approval of the City and FYSA.

3. All corporate sponsorship revenue (the "Sponsorship Revenue") obtained pursuant to this Agreement shall be allocated among the parties as stated in this Section 2.

4. Sponsorship Revenue shall be allocated among the parties, as follows:

- a. Forty percent (40%) to the City;
- b. Twenty percent (20%) to the FYSA;
- c. Twenty percent (20%) to the County;
- d. Ten percent (10%) will be held by the City in trust (the "Sponsorship Expense Fund") to pay for the parties obligations (the "Sponsorship Expenses") to corporate sponsors pursuant to all such sponsorship agreements; and
- e. Ten percent (10%) will be held by the City in trust as a dedicated soccer field maintenance improvement fund (the "Field Improvement Fund").

5. The City shall track the Sponsorship Expenses and will annually report those expenses to the County and the FYSA within thirty (30) days after the end of the City's fiscal year. If the City's report states that the total amount of the Sponsorship Expenses for the City's prior fiscal year was less than ten percent (10%) of total Sponsorship Revenue for that fiscal year, then the excess amount deposited into the Sponsorship Expense Fund during the prior fiscal year shall remain in that fund for use in paying future Sponsorship Expenses and any future sponsorship recruitment expenses. If the City's report states that the Sponsorship Expenses for the City's prior fiscal year exceeded ten percent (10%) of total Sponsorship Revenue received for that fiscal year and the Sponsorship Expense Fund balance either is or is reasonably anticipated to be insufficient during the City's present fiscal year to meet the Sponsorship Expenses, then within sixty (60) days after delivery of the City's report, the parties shall contribute an amount to the Sponsorship Expense Fund that will be necessary to meet the Sponsorship Expenses for the present fiscal year. Each party's respective contribution to pay the actual (or reasonably anticipated) deficit in the Sponsorship Expense Fund shall be calculated, as follows:

- a. Fifty-six percent (56%) by the City;
- b. Twenty-two percent (22%) by the FYSA; and
- c. Twenty-two percent (22%) by the County.

6. The City shall administer the Field Improvement Fund making expenditures from time to time as it determines are reasonably necessary to keep and maintain the Sports Complex soccer fields in a safe, high quality state of repair.

7. As and when requested the City and FYSA shall assist the County's efforts to recruit corporate sponsors. The City and FYSA shall also provide required

sponsorship inventory available for the County's marketing efforts. For purposes of this Agreement, the term "sponsorship inventory" is defined to include the following: (i) all City-owned soccer related assets that are located on the Sports Complex, (ii) all promotional inventory provided by FYSA, and (iii) all events that FYSA hosts at the Complex.

8. All Sponsorship Revenue shall be paid to the City. The City shall account for all Sponsorship Revenue, administer the Sponsorship Expense Fund, and timely pay all Sponsorship Expenses. The City shall distribute the parties' proportionate shares of Sponsorship Revenue on a quarterly basis.

### **SECTION 3. TERMINATION AND EXCLUSIVITY**

1. The Effective Date of this Agreement shall be the date the last of the parties executes the Agreement.

2. The initial term of this Agreement shall be for five (5) years commencing upon the Effective Date and continuing in force and effect thereafter unless sooner terminated as stated herein. The parties may mutually elect to extend the term of this Agreement for two (2) five (5) year renewal terms by executing a written amendment to the Agreement.

3. Any party may terminate this Agreement upon providing the other parties one hundred eighty (180) days prior written notice. The parties shall not share any revenue obtained from a sponsorship agreement that a party may establish after the date the Agreement terminates. If the term of this Agreement expires or is terminated pursuant to this paragraph, then the parties shall continue to receive their proportionate share of Sponsorship Revenue from the sponsorship agreements in effect at the time this Agreement terminates until each such sponsorship agreement expires or is terminated in accordance with its respective terms and conditions. Similarly, the parties' obligation to fund the Sponsorship Expense Fund and the Field Improvement Fund shall remain until the sponsorship agreements then in effect expire or terminate.

### **SECTION 4. GENERAL TERMS AND CONDITIONS**

1. **Default and Remedy.** If any party materially defaults in its obligations under this Agreement and fails to cure the same within fifteen (15) days after the date the defaulting party receives written notice of the default from another party, then the non-defaulting party (or parties) shall have the right to (i) immediately terminate this Agreement by delivering written notice to the defaulting party; and (ii) pursue any and all remedies available in law, equity, and under this Agreement.

2. **Liability for Wrongful Acts or Omissions.**

i. To the extent specified under Section 768.28, Florida Statutes, the City shall be responsible for any damages and other liabilities caused by the negligent or wrongful act or omission of a City employee who is acting within the scope of the employee's office or employment while performing duties or obligations pertaining to this Agreement.

ii. To the extent specified under Section 768.28, Florida Statutes, the County shall be responsible for any damages and other liabilities caused by the negligent or wrongful act or omission of a County employee who is acting within

the scope of the employee's office or employment while performing duties or obligations pertaining to this Agreement.

iii. In their executing this Agreement the City and the County do not intend and in no way waive their respective rights to sovereign immunity. Accordingly, nothing stated in this Section 4 or in any other provision of this Agreement shall be interpreted or construed as waiving the City's sovereign immunity or the County's sovereign immunity. Any claims described in this Section 4 that are asserted against either the City or the County must comply with the procedures stated in Section 768.28, Florida Statutes.

iv. FYSA shall be responsible for any damages and other liabilities caused by the negligent or wrongful act or omission of its employees who are performing duties or obligations pertaining to this Agreement.

**3. Limitation of Liability. IN NO EVENT, SHALL A PARTY BE LIABLE TO ANOTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS CONTRACT WHETHER BASED IN CONTRACT, COMMON LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.**

**4. Attorneys' Fees and Costs.** Each party shall be responsible for its own legal and attorneys' fees, costs and expenses incurred in connection with any dispute or any litigation arising out of, or relating to this Agreement, including attorneys' fees, costs, and expenses incurred for any appellate or bankruptcy proceedings.

**5. Waiver.** A waiver by either party of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach of this Agreement. The making or acceptance of a payment by either party with the knowledge of the other party's existing default or breach of the Agreement shall not waive such default or breach, or any subsequent default or breach of this Agreement, and shall not be construed as doing so.

**6. Force Majeure.** A party shall be temporarily excused from performance if an Event of Force Majeure directly or indirectly causes its nonperformance. Within five (5) days after the occurrence of an Event of Force Majeure, the affected party shall deliver written notice to the other party describing the event in reasonably sufficient detail and how the event has precluded the affected party from performing its obligations hereunder. The affected party's obligations, so far as those obligations are affected by the Event of Force Majeure, shall be temporarily suspended during, but no longer than, the continuance of the Event of Force Majeure and for a reasonable time thereafter as may be required for the affected party to return to normal business operations. If excused from performing any obligations under this Agreement due to the occurrence of an Event of Force Majeure, the affected party shall promptly, diligently, and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations under this Agreement. During any such time period the affected party shall keep the other party duly

notified of all such actions required for it to be able to commence or resume performance of its obligations under this Agreement.

7. **Modifications or Amendments.** No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to and executed in writing by both parties to this Agreement.

8. **Assignment.** A party shall not assign, transfer, or encumber this Agreement, or any interest herein, under any circumstances, without first obtaining the written consent of the other party, which consent may be withheld in the approving party's exercise of its reasonable discretion.

9. **Notice.** Any notice or correspondence required under this Agreement shall be provided in writing and delivered to the other party (i) in person, (ii) via registered or certified United States mail, postage prepaid with return receipt requested, or (iii) via nationally recognized overnight delivery service, and addressed to the party for whom it is intended at the place last specified by each party. The place for giving of notice shall remain such until it is changed by written notice delivered in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for delivery of notice:

For the County: Director  
Polk County Tourism and Sports Marketing  
2701 Lake Myrtle Park Road  
Auburndale, FL 33823

For the City: City of Auburndale  
Attn.: Bobby Green  
P. O. Box 186  
Auburndale, FL 33823

For the FYSA: Florida Youth Soccer Association, Inc.  
Attn.: Dale Burke  
2828 Lake Myrtle Park Road  
Auburndale, FL 33823

10. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement; any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

11. **Integration.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments,

agreements or understandings concerning the subject matter of this Agreement that are not contained in this document or its designated exhibits. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

12. **Controlling Law; Venue.** This Agreement shall be governed, construed and interpreted in all respects by the laws of the State of Florida. Any litigation with respect to this Agreement shall be brought only in the courts of Polk County, Florida or in the United States District Court, Middle District of Florida, located in Hillsborough County, Florida. By their execution of this Agreement, the parties waive their right to trial by jury as to any matter pertaining to the Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement as of the Effective Date.

**ATTEST:**  
RICHARD M. WEISS, Clerk  
CLERK OF THE BOARD

**POLK COUNTY**, a  
political subdivision of the  
State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

Date Signed by Chairman: \_\_\_\_\_

Approved as to form and sufficiency:

\_\_\_\_\_  
County Attorney's Office                      Date

**ATTEST:**

**FLORIDA YOUTH SOCCER  
ASSOCIATION, INC.**,  
a Florida nonprofit corporation

By: \_\_\_\_\_  
Corporate Secretary

By: \_\_\_\_\_  
\_\_\_\_\_, President

**ATTEST:**  
City of Auburndale, Clerk

**CITY OF AUBURNDALE**  
a \_\_\_\_\_

By: \_\_\_\_\_  
Shirley Lowrance

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_