



**BOARD OF COUNTY
COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA
COMMISSION AGENDA**

SPECIAL CALL MEETING

FRIDAY, DECEMBER 30, 2011 - 2:00 P.M.

**County Commission Chamber
Indian River County Administration Complex
1801 27th Street, Building A
Vero Beach, Florida, 32960-3388
www.ircgov.com**

COUNTY COMMISSIONERS

**Gary C. Wheeler, Chairman
Peter D. O'Bryan Vice Chairman
Wesley S. Davis
Joseph E. Flescher
Bob Solari**

**District 3
District 4
District 1
District 2
District 5**

**Joseph A. Baird, County Administrator
Alan S. Polackwich, Sr., County Attorney
Jeffrey K. Barton, Clerk to the Board**

1. **CALL TO ORDER** **2:00 P.M.**

2. **INVOCATION** Commissioner Wesley S. Davis

3. **PLEDGE OF ALLEGIANCE** Alan S. Polackwich, Sr., County Attorney

4. **COUNTY ATTORNEY MATTERS**
 1. To consider the assignment of the Facility Lease Agreement for the Vero Beach Sports Village, from MiLB Vero Beach, LLC, a Florida limited liability company, to Verotown, LLC, a Delaware limited liability company, and related documents.

5. **ADJOURNMENT**

Anyone who may wish to appeal any decision which may be made at this meeting will need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal will be based.

Anyone who needs a special accommodation for this meeting may contact the County's Americans with Disabilities Act (ADA) Coordinator at (772) 226-1223 (TDD # 772-770-5215) at least 48 hours in advance of meeting.

The full agenda is available on line at the Indian River County Website at www.ircgov.com The full agenda is also available for review in the Board of County Commission Office, the Indian River County Main Library, the IRC Courthouse Law Library, and the North County Library.

***Commission Meeting may be broadcast live by Comcast Cable Channel 27
Rebroadcasts continuously with the following proposed schedule:
Tuesday at 6:00 p.m. until Wednesday at 6:00 a.m.,
Wednesday at 9:00 a.m. until 5:00 p.m.,
Thursday at 1:00 p.m. through Friday Morning,
and Saturday at 12:00 Noon to 5:00 p.m.***



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

Alan S. Polackwich, Sr., County Attorney
William K. DeBraal, Deputy County Attorney
Brooke W. Odom, Assistant County Attorney

MEMORANDUM

TO: Board of County Commissioners
FROM: Alan S. Polackwich, Sr., County Attorney *ASP*
DATE: December 28, 2011
SUBJECT: Assignment of Vero Beach Sports Village Facility Lease Agreement from MiLB Vero Beach, LLC ("MiLB") to Verotown, LLC ("Verotown")

BACKGROUND.

On May 1, 2009, the County leased the former Dodgertown facility to MiLB for a five year term, with two five year renewal options. Under the lease, MiLB agreed to manage, operate and maintain the facility, and pay rent of \$1 per year; the County agreed to make certain improvements to the facility by stated completion dates. MiLB's obligations under the lease were guaranteed by its parent organization, National Association of Professional Baseball Leagues, Inc. ("NAPBL"). The guaranty was deemed necessary because MiLB was a single purpose entity formed by NAPBL for the purpose of entering into the lease.

On June 1, 2011, the County and MiLB amended the lease to include the "Cloverleaf Property" which the County obtained by swap with the City of Vero Beach. The amendment also provided that the County would construct four youth dimension baseball fields on the Cloverleaf Property in 2011, and a regulation size soccer field in the area of practice field number four in 2011. The youth dimension baseball fields are under construction and expected to be completed in April 2012, and the County and MiLB are further discussing exactly what type of soccer or athletic field will be built in the area of practice field number four.

APPROVED FOR 12.30.11 B.C.C. SPECIAL CALL MEETING
COUNTY ATTORNEY'S MATTERS

Alan S. Polackwich, Sr.
COUNTY ATTORNEY

Indian River Co.	Approved	Date
Admin.	<i>[Signature]</i>	12/28/11
Co. Atty.	<i>[Signature]</i>	12.28.11
Budget	<i>[Signature]</i>	12/28/11
Dept.	---	---
Risk Mgr.	---	---

Against this background, MiLB has put together an arrangement in which MiLB will join with Peter O'Malley (through a solely owned limited liability company named POM Vtown, LLC), Peter's sister, Terry O'Malley Seidler, and two former major league baseball players, Hideo Nomo and Chan Ho Park (Ms. Seidler and Messrs. Nomo and Park may participate through trusts or other controlled entities), to operate the Vero Beach Sports Village going forward. Specifically, the five individuals or entities have formed Verotown, a Delaware limited liability company authorized to do business in the state of Florida. MiLB is requesting that the County approve an assignment of the facility lease agreement from MiLB to Verotown.

DISCUSSION AND ANALYSIS.

Under the proposed arrangement the facility lease agreement would be assigned from MiLB to Verotown. MiLB and the County would agree that the lease is in good standing without default by either party, and MiLB and the County would release each other for any past actions.

The new tenant would be Verotown. The managing member of Verotown is Peter O'Malley's limited liability company, POM Vtown, LLC. According to news reports, Pat O'Connor would operate as president and chief operating officer, and Peter O'Malley would operate as chairman of the board and chief executive officer. Craig Callan would continue to be involved, consistent with his role in the past.

Other issues addressed during the assignment discussions were:

- Verotown is a single purpose entity formed on December 8, 2011. Accordingly, the County Attorney was concerned that its obligations under the lease be guaranteed. An agreement was reached that NAPBL's guaranty would remain in place until either a new guarantor acceptable to the County is substituted, or Verotown posts a surety performance bond.
- The County Attorney was also concerned that the County would soon be in technical breach of the lease with respect to the completion dates of the cloverleaf baseball fields and the soccer field. Verotown agreed to extend these dates into 2012.

With the exception of these minor changes, the lease will be unchanged from its current form. A copy of the proposed Second Amendment to Facility Lease Agreement, approving and implementing the assignment and addressing these other issues, is attached.

RECOMMENDATION.

The County Attorney recommends that the Board approve the proposed Second Amendment to Facility Lease Agreement, and authorize the Chairman to sign it.

ATTACHMENT(S).

Proposed Second Amendment to Facility Lease Agreement

ASP:LAC

Attachment(s) as noted above.

Prepared by, record and return to:
Office of the County Attorney
1801 27th St., Vero Beach, FL 32960
Telephone: 772.226.1424

SECOND AMENDMENT TO FACILITY LEASE AGREEMENT

THIS SECOND AMENDMENT TO FACILITY LEASE AGREEMENT ("Second Amendment") is made and entered into as of the ___ day of December 2011, to that certain Facility Lease Agreement by and between Indian River County, a political subdivision of the State of Florida ("County") and MiLB Vero Beach, LLC, a Florida limited liability company ("MiLB"), dated as of May 1, 2009 ("Facility Lease Agreement"), as amended by that certain First Amendment to Facility Lease Agreement, dated as of June 1, 2011 ("First Amendment") (the Facility Lease Agreement, First Amendment and this Second Amendment are collectively "Amended Facility Lease Agreement"). This Second Amendment is entered into by and among County, MiLB, Verotown, LLC, a Delaware limited liability company authorized to do business in the State of Florida ("Verotown"), and National Association of Professional Baseball Leagues, Inc., a Florida non-profit corporation ("NAPBL").

WHEREAS, on or about May 1, 2009, County and MiLB entered into the Facility Lease Agreement whereby County leased to MiLB the Land, the Facility and the FF&E, and transferred to MiLB the exclusive right and obligation to use, manage, operate and maintain the Facility for the term set forth therein; and

WHEREAS, on or about June 1, 2011, County and MiLB entered into the First Amendment addressing a land swap with the City of Vero Beach and certain improvements to the Facility; and

WHEREAS, MiLB wishes to assign the Amended Facility Lease Agreement to Verotown, and County and NAPBL are amenable to such assignment; and

WHEREAS, County, MiLB and Verotown wish to make minor amendments to the Amended Facility Lease Agreement, as set forth herein,

NOW THEREFORE, in consideration of the mutual undertakings herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.

2. **Definitions.** Except as set forth herein, all capitalized terms herein shall have the same meaning as set forth in the Facility Lease Agreement and the First Amendment.

3. **Assignment.** MiLB hereby assigns to Verotown all of its right, title and interest in and to the Amended Facility Lease Agreement, and Verotown hereby accepts such assignment. All references in the Facility Lease Agreement and the First Amendment to "MiLB" are hereby changed to "Verotown." Verotown assumes and agrees to pay and perform all obligations of MiLB under the Amended Facility Lease Agreement. County hereby consents to the assignment of the Amended Facility Lease Agreement to Verotown.

4. **Guaranty/Surety Bond.** NAPBL, by Guaranty dated May 1, 2009 ("Guaranty"), has guaranteed certain obligations of MiLB under the Facility Lease Agreement and the First Amendment. NAPBL hereby (i) consents to the assignment of the Amended Facility Lease Agreement to Verotown, (ii) consents to the amendments set forth in this Second Amendment, and (iii) agrees that the Guaranty shall remain in full force and effect and shall apply to the obligations of Verotown under the Amended Facility Lease Agreement to the same extent as if all references to MiLB in the Guaranty were changed to Verotown. County agrees to release and terminate the Guaranty upon (i) substitution of a new guarantor and guaranty reasonably acceptable to County, or (ii) posting of a surety performance bond conditioned on Verotown's performance of the Amended Facility Lease Agreement, which bond is in the amount of the Liquidated Damages plus \$100,000, and is in a form reasonably acceptable to County.

5. **Completion Dates of Improvements.** Sections 1.02(o), 8.03(a), and 8.03(b) of the Facility Lease Agreement and First Amendment, are hereby amended by changing the completion date of the cloverleaf baseball fields to May 31, 2012, and by changing the completion date of the regulation size soccer field to 2012.

6. **Good Standing – No Violation.** County, MiLB, Verotown and NAPBL agree that, as of the date hereof, the Amended Facility Lease Agreement is in good standing, neither County nor MiLB are in violation or default of any provision of the Amended Facility Lease Agreement, and County and MiLB are in full compliance with all provisions thereof. County and MiLB hereby release and satisfy each other with respect to any claims, causes of action or liabilities arising out of or relating to the Amended Facility Lease Agreement.

7. **Conforming Terms.** All remaining terms and conditions of the Amended Agreement are hereby conformed to be consistent with the amendments set forth herein.

8. **Remaining Terms.** All remaining terms and conditions of the Amended Agreement not amended or conformed herein shall remain in full force and effect.

9. **Recordation.** A copy of this Second Amendment shall be recorded on the Public Records of Indian River County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names as of the date set forth above.

ATTEST: Jeffrey K. Barton,
Clerk of Court

BOARD OF COUNTY COMMISSIONERS,
INDIAN RIVER COUNTY ("County")

By: _____
Deputy Clerk

By: _____
Gary C. Wheeler, Chairman

AFFIX SEAL:

Approved by BCC: December ____, 2011.

Approved:

Approved as to form and legal sufficiency:

By: Joseph A Baird
Joseph A. Baird, Administrator

By: [Signature]
Alan S. Polackwich, Sr., County Attorney

Signed, sealed and delivered in the presence of:

MiLB VERO BEACH LLC, a Florida limited liability company ("MiLB"), by National Association of Professional Baseball Leagues, Inc., a Florida non-profit corporation, its managing member

Print name: _____

By: _____
Print Name: _____
Print Title: _____

Print name: _____

STATE OF FLORIDA
COUNTY OF INDIAN RIVER

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of National Association of Professional Baseball Leagues, Inc., a Florida non-profit corporation, managing member of MiLB VERO BEACH LLC, a Florida limited liability company, who is personally known to me, or who has produced _____, as identification, who did not take an oath.

NOTARY PUBLIC, State of Florida

[SEAL]

Sign: _____
Print: _____
Commission No: _____
Commission Expires: _____

Signed and delivered in the presence of:

VEROTOWN, LLC, a Delaware limited liability company ("Verotown"), by POM Vtown, LLC, a Delaware limited liability corporation, its Manager

Print name: _____

By: _____

Print name: _____

Print Name: Peter O'Malley

Print Title: Manager

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

On _____ before me, _____, personally appeared Peter O'Malley who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

[SIGNATURES CONTINUED ON PAGE 5]

Signed, sealed and delivered in the presence of:

NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, INC., a Florida non-profit corporation ("NAPBL")

Print name: _____

By: _____

Print name: _____

Print Name: _____

Print Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, _____ of National Association of Professional Baseball Leagues, Inc., a Florida non-profit corporation, who is personally known to me, or who has produced _____, as identification, who did not take an oath.

NOTARY PUBLIC, State of Florida

[SEAL]

Sign: _____

Print: _____

Commission No: _____

Commission Expires: _____