



**AGENDA REPORT  
November 13, 2018**

**Second Amendment to Stadium Complex Lease**

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**SUBJECT:**

Stadium Complex Lease Agreement between Brevard County & USSSA

**FISCAL IMPACT:**

The proposed Second Lease Amendment has no fiscal impact based on the intent of parties.

**DEPT/OFFICE:**

Agenda Coordinator

**REQUESTED ACTION:**

It is requested that the Brevard County Board of County Commissioners approve a Second Lease Amendment between Brevard County and USSSA, LLC, by and through UNITED STATES SPECIALTY SPORTS ASSOCIATION, INC, its manager.

**SUMMARY EXPLANATION and BACKGROUND:**

On August 3, 2015, the Brevard County Board of County Commissioners and USSSA entered into a Lease Agreement for the Space Coast Stadium Complex. Subsequently, the parties also entered into a Lease Amendment dated March 24, 2017. This agenda item presents the attached Second Lease Amendment for approval which contains the following substantive items:

1. The Second Lease Amendment clarifies the Board's intent regarding the room night guarantee requirement for USSSA. Since the actual date of full occupancy was at the end of the first quarter of 2018 and not January 1, 2018 as contemplated in the first Lease Amendment, the room night obligation for 2018 would be effectively prorated to the equivalent of nine months of obligation or 56,250 room nights for the year.
2. The room night obligations for the remainder of the lease term, as established in the original Lease and first Lease Amendment, would remain the same.
3. As a result of the amended obligation for 2018, USSSA would waive any entitlement to reimbursement of the pro rata ad valorem taxes of \$52,144.97 paid by USSSA for room nights generated in excess of 56,250 for 2018.
4. Paragraph 4 of Exhibit D of the original Lease is amended to clarify that USSSA is required to expend \$250,000 annually during the term of the lease for capital maintenance and capital improvements. This requirement is in addition to the

\$250,000 required to be deposited into the ARR Fund as provided in Article 7 of the Lease.

5. The Amendment provides additional protection for the County that was not included in the original Lease or prior Lease Amendment. This includes the requirement by USSSA to submit a report each calendar year that verifies expenditure of the required funds. Additionally, an audit provision has been added to the Second Amendment to provide the County the opportunity to inspect records relative to the aforementioned report.

Other than the items specifically referenced above, the terms of the original Lease Agreement and the prior Amendment shall remain the same. USSSA acknowledges that a strict reading of the original Lease and the First Amendment (which we believe deviates from the Board's original intent) as written could result in a penalty of \$62,250 in additional payments toward capital improvements and repairs based on the difference between 75,000 room nights and 56,250 in 2018. USSSA maintains it has contributed and expended far more than these "penalty" amounts for capital improvements and repairs in 2017 and 2018.

**CLERK TO THE BOARD INSTRUCTIONS:**

Return fully executed Second Amendment and fully executed Resolution to the County Manager's Office.

**ATTACHMENTS:**

**Description**

- **USSSA Second Lease Amendment 11-13-18**
- **USSSA Resolution 11-13-18**
- **USSSA Notice for webpage**



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November 14, 2018

MEMORANDUM

TO: Frank Abbate, County Manager

RE: Item J.3., Second Amendment to Stadium Complex Lease Agreement with USSSA, LLC

The Board of County Commissioners, in regular session on November 13, 2018, approved changing the date of the Agreement with USSSA, LLC, by and through United States Specialty Sports Association, Inc., its manager, from April 1 to March 31 of each year; approved keeping the same room night obligation of 75,000, and USSSA, LLC to waive any entitlement to the overage; approved a stronger audit provision; and authorized the Chair to execute the Amendment.

**Upon execution by the Chair, please return the Second Amendment to Lease Agreement to this office for attestation, distribution, and inclusion in the official minutes.**

Your cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

cc: County Attorney

SECOND AMENDMENT TO AUGUST 3, 2015 STADIUM  
COMPLEX LEASE, AND AMENDMENT TO AUGUST 3, 2015  
STADIUM COMPLEX LEASE DATED MARCH 24, 2017

WHEREAS, the parties recognize Paragraph 5 of the March 24, 2017 Amendment to August 3, 2015 Stadium Complex Lease, provides for the room night rental obligation to begin on the date the Tenant took possession of the Stadium Complex in 2017, and

WHEREAS, the Tenant was unable to complete repairs and begin holding events pursuant to a permanent certificate of occupancy until April, 2018, and

WHEREAS, the parties wish to adjust the room rental obligation to begin on April 1, 2018 to be consistent with the issuance of the certificate of occupancy, and

WHEREAS, the tax reimbursement provisions in Paragraph 14 of Exhibit D of the Amendment also address room rental guarantees and payments, and

WHEREAS, certain repair payments remain pending,

WHEREAS, paragraph 4 of Exhibit D of the Stadium Complex Lease as amended on March 24, 2017 required clarification and further definition.

NOW, THEREFORE, for value received and consideration of the covenants and terms that follow as well as those in the original Stadium Complex and Amendment to the August 3, 2015 Stadium Complex Lease dated March 24, 2017, the Landlord and Tenant agree as follows:

Section 1. Paragraph 5 of the Amendment to the August 3, 2015 Stadium Complex Lease dated March 24, 2017 is amended to read as follows:

Beginning on April 1, 2018 through March 31, 2019, the Tenant will guarantee that events scheduled, sponsored, booked or arranged in the Stadium Complex by the Tenant, whether directly or indirectly will generate (i) at least 75,000 room nights in Brevard County, Florida hotels and (ii) from April 1, 2019 through March 31, 2020, at least 75,000 room nights and (iii) from April 1, 2020 through March 31, 2021 and for each year thereafter until March 31, 2036 using the April 1<sup>st</sup> to March 31<sup>st</sup> year, the Tenant guarantees 100,000 total room nights each year (hereafter called the "room night guaranty") in Brevard County, Florida hotels. For the period running from April 1, 2036 to December 31, 2036, the Tenant guarantees at least 100,000 room nights. Tenant agrees to provide the information specified on Schedule 1 to this Exhibit D for the purposes of calculating room nights relating to each participant in a Tenant hosted or Tenant sponsored event in Brevard County during the Lease Term.

Section 2. Paragraph 6 of the Amendment to the August 3, 2015 Stadium Complex Lease dated March 24, 2017 is amended to read as follows:

In any April 1<sup>st</sup> to March 31<sup>st</sup> room night period during the term of the lease, that the room nights guaranteed by the Tenant does not meet the thresholds set forth in Paragraph 5 of the Amendment to the August 3, 2015 Stadium Complex Lease (as amended in Section 1 of this Amendment above), the base amount of \$250,000 payable by the Tenant each calendar year in accordance with Paragraph 4 of the Amendment to the August 3, 2015 Stadium Complex Lease (as amended in Section 5 of this Amendment below) shall increase by a percentage equal to the shortfall in the number of room nights divided by the guaranteed number of room nights for that April 1<sup>st</sup> to March 31<sup>st</sup> room night year. 100,000 room nights shall be guaranteed during the period from April 1, 2036 to December 31, 2036.

Section 3. Paragraph 14 of Exhibit D of the Amendment to the August 3, 2015 Stadium Complex Lease dated March 24, 2017 is amended to read:

Beginning April 1, 2018, the Landlord agrees to provide the following reimbursement incentive to the Tenant with the goal of promoting tourism in Brevard County by increasing the number of room nights resulting from Tenant's operation of the Stadium Complex. The Tenant shall guarantee at least 75,000 room nights from April 1, 2018 through March 31, 2019 and 75,000 room nights from April 1, 2019 through March 31, 2020. From April 1, 2020 through March 31, 2021 and thereafter during the remaining Lease Term using the April 1<sup>st</sup> to March 31<sup>st</sup> room night year, and including the period running from April 1, 2036 to December 31, 2036, the Tenant shall guarantee 100,000 annual room nights in accordance with paragraph 5 of this Exhibit D.

1. The Landlord shall reimburse, on a pro-rata basis, any ad valorem taxes that are required to be paid by the Tenant relating to the Stadium Complex property being leased or subleased by the Tenant.
2. The pro-rata ad valorem tax reimbursement for 2017 taxes will be determined by multiplying the ad valorem taxes paid by the Tenant for 2017 by a percentage derived by dividing the number of additional room nights above and beyond the 75,000 room nights guaranteed by the Tenant from April 1, 2018 through March 31, 2019; for 2018 taxes reimbursement shall be calculated by a percentage derived by dividing the number of additional room nights above and beyond the 75,000 room nights guaranteed by the Tenant from April 1, 2019 through March 31, 2020. Tenant waives any reimbursement resulting from room nights in excess of 75,000 generated from April 1, 2018 through March 31, 2019.
3. The pro-rata ad valorem tax reimbursement for room nights generated from April 1, 2020 through March 31, 2021 and each subsequent room night year during the Lease Term, using the April 1<sup>st</sup> to March 31<sup>st</sup> year and the period running from April 1, 2036 to December 31, 2036, the pro-rata ad valorem tax reimbursement will be determined by multiplying the ad valorem taxes paid by

the Tenant by a percentage derived by dividing the number of additional room nights above and beyond the 100,000 room nights guaranteed by the Tenant.

4. The pro-rata calculation shall give the Tenant credit for additional room nights toward the calculation of the pro rata reimbursement percentage in the event the Tenant can demonstrate that it could have provided the claimed number of such additional room nights in Brevard County but were unable to do so due to the unavailability, in Brevard County, of a sufficient number of actual hotel rooms, motel rooms, vacation rental rooms and other rental rooms in establishments whose owners are required to pay the Tourist Development Tax.

Section 4. Paragraph 2.1.2 of the Stadium Complex lease dated August 3, 2015 is amended to allow payment of the listed repairs until the end of the 2019 calendar year.

Section 5. Paragraph 4 of Exhibit D to the Lease is amended as follows:

The Tenant will expend the base amount of \$250,000.00 each year during the term of the Lease for capital improvements and capital maintenance to the Stadium Complex that are agreed upon by the parties. This expenditure is exclusive of the deposit into the ARR Fund provided for in Article 7 of the Lease.

The expenditures shall be documented by Tenant providing a report (the "Report") of capital improvements and capital maintenance at the end of each calendar year. Tenant shall keep books, records, and accounts related to the expenditure of funds for capital improvements and capital maintenance, in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the Tenant in conjunction with the Report shall be open to inspection during regular business hours by an authorized representative of Landlord and shall be retained by Tenant for three (3) years after termination of this Lease Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1) Florida Statutes.

Expenditures pursuant to this paragraph shall not be subject to reimbursement by Landlord; however, nothing in this paragraph shall alter other existing provisions.

Section 6. All terms and conditions of the 2015 Stadium Complex and Amendment to the August 3, 2015 Stadium Complex Lease dated March 24, 2017 shall remain in full force and effect and are hereby ratified except as provided in this amendment which is the second amendment to the 2015 Stadium Complex Lease Agreement. In the event of a conflict between the original lease, the 2017 amendment and this amendment, this amendment shall prevail.

WHEREFORE, the parties have set their hands and seals this 20th day of November, 2018.

USSSA, LLC

BREVARD COUNTY, FLORIDA



By: CEO of United States  
Specialty Sports Association, Inc,  
Manager of USSSA, LLC



By: Rita Pritchett, Chair

As approved by Board 11/13/18

ATTEST:



Scott Ellis, Clerk