

**FORM OF
DONATION AND RELEASE AGREEMENT**

THIS DONATION AND RELEASE AGREEMENT is entered into as of this 10 day of JANUARY, 2018 (this **"Release Agreement"**), by and between Good Sports, Inc., a non-profit corporation (under Section 501(c)(3) of the Internal Revenue Code of 19 86, as amended) organized under the laws of the Commonwealth of Massachusetts (the **"Good Sports"**), and the City of Fort Lauderdale, a municipality within the State of Florida (the **"Releasing Party"**).

WHEREAS, Good Sports is a participant in the nationwide "Let's Play" initiative (the **"Program"**) sponsored by Dr Pepper Snapple Group, Inc. (**"DPS"**); and

WHEREAS, the Releasing Party has requested that Good Sports make available to it, and Good Sports has agreed to make available to the Releasing Party, the Equipment (as defined below) through the Program; and

WHEREAS, the Equipment was donated to Good Sports outside the ordinary stream of commerce for charitable purposes and/or purchased by Good Sports using funds made available through the Program (**"Grant Funds"**) specifically for the benefit of the Releasing Party as part of the Program, and Releasing Party and its beneficiaries will deliver significant benefit from the Equipment; and

WHEREAS, the parties wish to memorialize the terms of the Equipment donation as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Good Sports and the Releasing Party agree:

1. Equipment; Condition of Equipment

Upon execution of this Release Agreement, Good Sports will provide (the **"Donation"**) a mutually agreeable list of new equipment hereto (the **"Equipment"**) to the Releasing Party without cost to the Releasing Party (not including any fees for any administrative services provided by Good Sports, as applicable) as consideration for the execution of this Release Agreement. The Releasing Party acknowledges and agrees that it is taking the Equipment on an "as is" basis, with no representations, express or implied, as to the merchantability, fitness for a particular purpose or otherwise regarding the condition of the Equipment. The Releasing Party further acknowledges and agrees that it undertakes the activities supported by the Grant Funds and Donation on its own behalf and not on behalf of Good Sports or DPS, and neither the Grant Funds nor Donation shall in any way be construed as creating the relationship of principal and agent, of partnership or of joint venture as between Good Sports or DPS and the Releasing Party or any other person involved in the project. By accepting the Donation, the Releasing Party

acknowledges that neither Good Sports nor DPS nor their respective subsidiaries and affiliates, and their officers, directors, employees or agents shall be liable for any acts, omissions, errors, injuries or damages, whether direct, indirect, incidental or consequential, associated with the use of the Grant Funds, the Donation, the Equipment or the Donation-sponsored activities.

2. Release by the Releasing Party

For and in consideration of Good Sports making the Donation, the Releasing Party and his, her or its successors, assigns, heirs and beneficiaries hereby fully and finally release, acquit and forever discharge Good Sports, DPS and each of their present, former and future officers, directors, shareholders, representatives, employees, partners (including program partners and their affiliates), principals, agents, affiliates, subsidiaries, predecessors, successors, assigns, beneficiaries, heirs, executors, insurers and attorneys (collectively, the "***Released Parties***") from any and all actions, debts, claims, counterclaims, demands, liabilities, damages, causes of action, costs, expenses, and compensation of every kind and nature whatsoever, past, present, or future, in law or in equity, whether known or unknown, which the Releasing Party had, has, or may have had from the beginning of the world to the date of this Release Agreement against the Released Parties, or any of them, including but not limited to, any claims which relate to or arise out of the Donation and/or the use or disposition of the Equipment by the Releasing Party ("***Claims***").

The Releasing Party hereby represents to the Released Parties that (i) it has not assigned any Claim or possible Claim against any Released Party, (ii) it fully intends to release, and by executing this Release Agreement it is releasing, all Claims against the Released Parties including, without limitation, unknown and contingent Claims, and (iii) it has been advised by and has had the opportunity to consult with counsel with respect to the execution and delivery of this Release Agreement and the consequences hereof.

3. Covenant Not to Sue

The Releasing Party and its successors, assigns, heirs and beneficiaries further agree not to institute any litigation, lawsuit, claim or action against any Released Party which arises from, or is alleged to arise from, or relates to, or is based on, or is in any way connected with, in whole or in part, the Donation or the Releasing Party's use or disposition of the Equipment.

4. Indemnification

Except as prohibited by the Florida Constitution or by the laws of the State of Florida, only to the extent specified in and subject to the limitations specified in Section 768.28, Florida Statutes (2017), as may be amended or revised, the Releasing Party agrees to indemnify the Released Parties from and against actions at law to recover damages in tort for money damages for injury or loss of property, personal injury, or death caused by the negligent or

wrongful act or omission of any employee of the Releasing Party while acting within the scope of the employee's office or employment under circumstances in which the Releasing Party, if a private person, would be liable to the claimant, in accordance with the general laws of the State of Florida. The foregoing sentence does not serve as a waiver of the Releasing Parties sovereign immunity or of any other legal defense available to the Releasing Party.

5. Acknowledgment

The Releasing Party hereby represents and warrants that it has had adequate opportunity to review this Release Agreement and has adequate information regarding the terms of this Release Agreement, the scope and effect of the releases set forth herein, and all other matters encompassed by this Release Agreement to make an informed and knowledgeable decision with regard to entering into this Release Agreement, and that it has independently and without reliance upon the Released Parties made its own analysis and decision to enter into this Release Agreement. THE RELEASING PARTY HEREBY ACKNOWLEDGES AND AFFIRMS THAT THE RELEASED PARTIES, AND EACH OF THEM, DO NOT HAVE ANY OWNERSHIP INTEREST IN, AND HAVE NOT MADE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT AND HAVE NO DUTY OR OBLIGATION TO THE RELEASING PARTY, WHETHER EXPRESS OR IMPLIED, OF ANY KIND OR CHARACTER. THE RELEASING PARTY HEREBY ACKNOWLEDGES THAT GOOD SPORTS HAS DISCLAIMED ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT.

6. Interpretation

This Agreement shall not be construed against the drafter hereof.

7. Sufficiency of Consideration

The parties acknowledge that the availability of the Grant Funds by DPS and the Donation of the Equipment by Good Sports provides good and sufficient consideration for every promise, duty, release and obligation of the Releasing Party contained in this Release Agreement.

8. Multiple Counterparts

This Release Agreement may be executed in a number of identical counterparts, all of which shall constitute one agreement.

9. Entire Agreement

This Release Agreement contains all of the representations and warranties, express and implied, oral and written, and covenants between the parties hereto, and the entire

understanding and agreement between and among the parties with respect to the subject matter hereof. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party with respect to the subject matter of this Release Agreement. All prior and contemporaneous conversations, negotiations, proposed agreements and agreements, or representations, covenants and warranties with respect to the subject matter hereof are merged herein, waived, superseded and replaced in total by this Release Agreement. This is an integrated agreement and it may not be altered and modified except by a writing signed by both parties in interest at the time of the authorization and modification. Each Released Party is an intended beneficiary of this Release Agreement, entitled to enforcement rights hereunder as if such person was a party hereto.

10. Governing Law

Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division.

[End of text]

IN WITNESS WHEREOF, the parties have caused this Release Agreement to be executed as of the date first above written.

RELEASING PARTY

ATTEST:



JEFFREY A. MODARELLI
City Clerk

CITY OF FORT LAUDERDALE



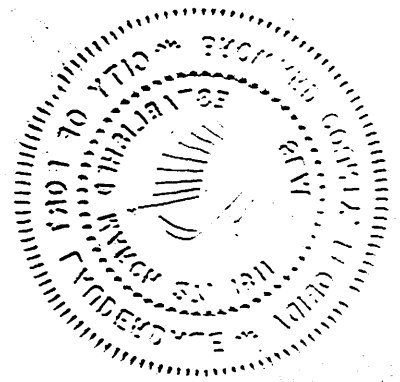
LEE R. FELDMAN, City Manager

Approved as to form:
CYNTHIA A. EVERETT, City Attorney

By:



KIMBERLY CUNNINGHAM MOSLEY
Assistant City Attorney



WITNESSES:

[Signature]
Alyssa Gair
[Witness print/type name]

[Signature]
David McIsaac
[Witness print/type name]

GOOD SPORTS, INC., a Massachusetts non-profit corporation.

[Signature]
M. Harper
[Print Name, check title]

☒ President ☐ Vice President
☐ Authorized Signatory (Please provide corporate authorization)

ATTEST:

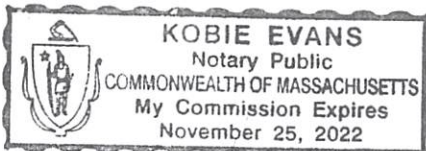
[Signature]
Secretary
Christy Kerwick
[Print Name]

CORPORATE SEAL

STATE OF Massachusetts
COUNTY OF Norfolk:

The foregoing instrument was acknowledged before me this 9th day of January, 2018, by Melissa Harper as President of GOOD SPORTS, INC., a Massachusetts non-profit corporation, who is ☒ personally known to me or ☐ has produced _____ as identification.

(NOTARY SEAL)



[Signature]
Notary Public, State of Massachusetts
(Signature of Notary Taking Acknowledgment)

Kobie Evans
Name of Notary Typed, Printed or Stamped

My Commission Expires: 11/25/2022
Commission Number: N/A



Good Sports Donation Restrictions

By signing and returning this release form, your organization **acknowledges having reviewed the list of equipment being offered**, and agrees that all equipment, apparel, and/or footwear being provided to you is solely for the benefit and growth of your youth sports & fitness program, and that it is not to be used for any other purpose including, but not limited to:

- No items in your donation may be resold in any way after receipt – including, but not limited to, at fundraisers, flea markets, yard sales, or online.
- No items in your donation may be bartered, traded or transferred in exchange for money, property, or services.
- No items in your donation may be given to another nonprofit organization or other entity not directly associated with your program.
- Donated items cannot be used as prizes in any fundraising ventures, including, but not limited to, live auctions, silent auctions, raffles, or any other giveaways.
- Donated equipment cannot be given to your board of directors, officers, directors, employees, volunteers, or any other persons associated with your program for personal use, reimbursement, or as a thank you for their service.
- Your program cannot recommend or require cash 'donations' in direct or indirect exchange for product donations.
- All equipment must stay with your organization and cannot be given to youth to keep.
- Donated items cannot be distributed to youth outside of the United States or Canada.

Good Sports routinely conducts follow up by means of evaluation requests, photo requests, and/or site visits to see how donations are being utilized. If in this process we find that these restrictions have not been followed, your organization will no longer be eligible to receive donations in the future.

Signature:  Date: 1/16/18



COMMISSION AGENDA ITEM
AGREEMENT DOCUMENT ROUTING FORM

AL
1/16/18

Today's Date: 1/10/2018

DOCUMENT TITLE: Form of Donation and Release Agreement – Good Sports, Inc.

COMM. MTG. DATE: 12/19/2017 CAM #: 17-1385 ITEM #: CM-6 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: A. Sperling/5001 Action Summary attached: ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☒ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 1

Is attached Granicus document Final? ☒ YES ☐ NO

Approved as to Form: ☒ YES ☐ NO

Date to CCO: 1-11-18

Kimberly Mosley
Attorney's Name

[Signature]
Initials

2) City Clerk's Office: # of originals: _____ Routed to: Gina Ri/CMO/X5013 Date: _____

3) City Manager's Office: CMO LOG #: Jan-55 Document received from: 1/11/2018

Assigned to: L. FELDMAN ☒ S. HAWTHORNE ☐ C. LAGERBLOOM ☐

☐ APPROVED FOR LEE FELDMAN'S SIGNATURE ☐ N/A FOR L. FELDMAN TO SIGN

PER ACM: S. HAWTHORNE (Initial/Date) C. LAGERBLOOM

(Initial/Date) ☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward 1 originals to ☐ Mayor ☒ CCO Date: 1/11/18

4) City Clerk's Office: Retains 1 original and forwards 1 copy to: Carolyn Bean/Parks and Rec/5348

Original Route form to Astrid Sperling

Rev. 5/6/16