

**TERM SHEET  
FOR  
CELEBRATION POINTE SPORTS EVENTS CENTER PROJECT  
BY AND BETWEEN  
ALACHUA COUNTY, FLORIDA  
AND  
VIKING COMPANIES, LLC  
Dated: \_\_\_\_\_, 2021**

Alachua County, Florida (the "County") desires to develop a multi-use sports event center (the "Center") to be located within Alachua County. The County intends the Center to host both daily and overnight sport activities for the purpose of promoting and increasing tourism within the meaning of Section 125.0104, Florida statutes, throughout Alachua County, as well as, creating the ancillary benefit of providing additional recreational resources for Alachua County residents.

The County desires to collaborate with Viking Companies, LLC ("Viking") to develop, design, construct, equip, manage and maintain the Center to be located within the Celebration Pointe Development on land currently owned by SDPS Real Estate Investment VI, LLC ("Landowner"), an affiliate of Viking. The Center, together with related furniture, fixtures and equipment, and infrastructure (the "Project") will be constructed by Viking pursuant to a Construction Manager at Risk contract (the "Construction Agreement") by and between Viking and [the general contractor]. The Center is to be operated by a newly created affiliate of Viking (the "Operator") pursuant to an operations and management agreement (the "Operating Agreement") by and between the County and the Operator. The Center will be managed by RADDSports, LLC (the "Manager") pursuant to a management agreement (the "Management Agreement") by and between the Operator and the Manager.

The purpose of this Term Sheet is to set forth certain terms and conditions negotiated by the County and Viking relating to the development, design, financing, construction, equipping, management and maintenance of the Project. The parties intend and agree that the terms and conditions set forth below, and others which remain to be negotiated, will be incorporated into the Operating Agreement, Management Agreement, Construction Agreement and/or other agreements relating to the Project. The negotiation, preparation, execution and delivery of the Operating Agreement and other agreements as needed (collectively the "**Project Agreements**") are subject to events and conditions including the approval of the terms and conditions of the Project Agreements by the Board of County Commissioners of Alachua County (the "Board").

**Project Location:**

The Center is to be located on an approximately three (3) acre site within the Celebration Pointe Development on land currently owned by the Landowner as depicted in the site plan attached hereto as Exhibit A. Celebration Pointe Holdings, LLC is the master developer of the Celebration Pointe mixed use development and along with Celebration Pointe Holdings II, LLC, the controlling entity in SDPS Real Estate Investments VI, LLC ("SDPS VI"). SDPS VI currently

owns the subject property in fee simple. The subject property will be conveyed by SDPS VI (or an affiliated special purpose entity) to the County by General Warranty Deed, subject to easements, covenants and restrictions of record at the time of the conveyance except for rights to foreclose the subject property. The County shall pay Landowner \$10 as the purchase price for the land. Landowner shall deliver fee simple title to the land free and clear of all liens except for encumbrances accepted by the County including the current and future special assessment liens levied by the Celebration Point Community Development District No. 1 (the "District"). Pursuant to the Project Agreements, Operator shall be responsible for the payment of all special assessments levied against the land. The County's fee simple interest in the Project site shall not be subject to foreclosure for any reason, including but not limited to non-payment of special assessments.

### **Project Agreements**

Viking agrees to execute the Project Agreements with the County (and potentially third parties) which set forth the terms and conditions of the parties' rights and obligations with respect to the development, financing, construction, management, maintenance and repair of the Project, which may include the following: (i) the Operating Agreement; and (iii) the Management Agreement; and (iv) a Pre-Development Agreement (the "Pre-Development Agreement") to facilitate the conduct of site due diligence activities, design and engineering activities, all preliminary to commencement of construction.

### **Pre-Development Agreement:**

Prior to approval of the Project by the County and selection of Viking to develop the Project the County and Viking will enter into a Pre-Development Agreement for the purpose of undertaking the required due diligence, financial feasibility analysis and to design and engineer the Project and determine the total development and operational budget for the Project (the "Pre-Development Activities"). The County and Viking shall develop a budget for the Project not to exceed \$32.5 million dollars; provided, however the County's obligation shall be limited to \$30 million dollars. The County will undertake to solicit from the State legislature a grant for \$2.5 million. The County anticipates funding its \$30 million contribution with proceeds of a County bond issue secured by and payable from tourist development tax revenues with a maturity of 30 years. In addition to the other County approvals set forth in this Term Sheet, the County's obligation to enter into the Operating Agreement will be subject to the County's ability to issue the bonds at market rates sufficient to generate construction funds equal to \$30,000,000 and the funding for the \$2,500,000 has been confirmed.

Viking will, at its cost, commence the Pre-Development Activities upon execution of the Pre-Development Agreement. Viking acknowledges that in the performance of its obligations and covenants under the Pre-Development Agreement it will rely solely and exclusively on the results of such activities and its experience and expertise and not on any statement, projection, estimate, description, information, data or document furnished by the County.

In accordance with the terms of the Pre-Development Agreement, the County and Viking will agree upon a plan and schedule for the preparation, delivery, review, comment, revision and finalization of design and construction documents to verify compliance with the requirements of this Term Sheet, applicable laws and permits and County's requirements for design and construction of the Project. Viking acknowledges that the County's review and comment on design and construction documents will not relieve Viking of any obligation under the Project Agreements. A required deliverable by Viking under the Pre-Development Agreement shall be a 90% construction set of plans and specifications for the Project that have been deemed acceptable by County staff (the "Plans and Specifications"), a construction budget representing the Project can be constructed from the County's \$30 million and the funds made available by the state legislature and Viking (the "Budget"), and a Guaranteed Maximum Price (the "GMP"). County staff shall present the Plans and Specification, Budget, and GMP to the Board of County Commissioner for consideration and approval. Nothing herein shall be deemed to obligate or otherwise require the Board of County Commissioners to approve the Plans and Specification, Budget, or GMP.

In the event Viking delivers the Plans and Specifications, Budget, and GMP to the County, and the County unilaterally decides not to proceed with the Project due to no fault of Viking, within forty-five days following delivery of the Plans and Specifications, Budget, and GMP, the County agrees to reimburse Viking for all actual third party costs and expenses incurred by Viking associated with Pre-Development Activities undertaken by Viking in the preparation of the Plans and Specifications, development of the Budget, and development of the GMP, including related site due diligence, planning and design work, in an amount not to exceed \$1,000,000; provided, however, in the event that Viking fails to meet its obligations of performance hereunder, Viking shall not be eligible for reimbursement as set forth herein.

**Project Description:**

Design. The Center shall be no less than 110,000 square feet focusing on indoor track, volleyball, basketball, dance and cheerleading. The Center shall contain an indoor track, 13 basketball courts, 26 volleyball courts, concession areas, restroom facilities, offices and other related facilities to be described and developed during the Pre-Development Activities. Viking will fully comply with the County's Code and Design requirements throughout the design, and construction of all facilities. Any material changes, replacements or renovations to Project improvements, facilities or major elements, components, systems or equipment during the term of the Pre-Development Agreement will be subject to prior approval by the County, which approval shall not be unreasonably withheld, conditioned or delayed.

Quality. The Project improvements shall be Class A institutional quality and commensurate with National Collegiate Athletic Association qualifying sports facilities.

Methodology. Viking will be responsible for the means, methods and techniques utilized in the construction of the Project. The construction methodology and techniques utilized for the

Project improvements include entering into a construction manager at risk contract with a general contractor to be selected by Viking.

Permitting. Viking will ensure that the planning, design, construction, management, and maintenance of the Project comply with all applicable building codes, regulations, and orders. Viking, in consultation with the County's project manager, will determine the permits and other governmental authorizations and approvals which will be required for the design, construction and operation of the Project. Viking's architect and engineer shall determine the requirements of each permit, authorization and approval, confer with the appropriate officials, and submit all required information necessary to obtain required permits, authorizations and approvals from the agencies having jurisdiction over the Project.

#### **Project Costs:**

The County will contribute \$30,000,000.00 for the development, design, construction, installation and equipment for the Project, including any required infrastructure. All cost overruns are to be paid either by the Contractor or Viking. The County shall be responsible for any and all additional costs incurred due to changes initiated by the County. All Impact Fees, Transportation Mitigation, or other development mitigation fees are to be satisfied as part of the development cost of the Center and are not an additional responsibility of the County.

#### **Bonds and Insurance:**

Viking will obtain or cause the Contractor to obtain payment and performance bonds to secure payment and performance of all work and services to design, construct and warranty the Project. Viking will ensure that the Board is a co-obligee of such bonds. Viking will procure and maintain and require contractors performing work related to the design, engineering and construction of the Project to procure and maintain policies of insurance which comply with the County's requirements, such policies to include but not be limited to errors and omissions insurance and builder's risk insurance.

#### **Compliance with Permits and Laws:**

All site work, construction and installation of the Project shall be performed in accordance with all applicable permits, including permits obtained through the County Building Code administrators, and all applicable laws.

#### **Operating Agreement:**

Term: 30 years

Scope: During the term of the Pre-Development Activities, the parties shall negotiate the terms of the Operating Agreement. Upon completion of the Pre-Development Activities and approval of

the final Plans and Specifications, Budget and GMP for the Project by the County, the Operating Agreement shall be presented to the Board of County Commissioners for consideration and approval. Nothing herein shall be deemed to obligate or otherwise require the Board of County Commissioners to approve the Operating Agreement. Pursuant to the Operating Agreement, the Operator will assume full operation control of the Center and be obligated to pay operating expenses from the operating and non-operating revenues of the Center. The operation and management of the Center shall be conducted in a manner that will maximize opportunities to achieve and sustain a profit for each operating year from the operations of the Center and the promotion of tourism in Alachua County and increasing the number of overnight visitors by attracting and promoting and contracting for tournaments, other sports related events and non-sporting events.

Responsibilities of Operator: The Operator will be responsible for the operation and management of the Project, including but not limited to:

1. managing the construction and development of the Project by the Contractor. Contractor to be selected by Viking.
2. setting rates fees and charges for use of the Center;
3. develop and fund pre-opening start up budget;
4. leasing, marketing and advertising activities;
5. maintenance and custodial services;
6. equipment maintenance;
7. asset management and life cycle repairs and replacement;
8. preparation of annual operating budget and an annual capital budget including establishment of necessary reserves;
9. procuring and maintaining property and liability insurance; and
10. payment of all operating expenses.

It is expressly understood by the County, that all funds generated by the Operator shall be used to operate and maintain the facility for the duration of the term of the Operating Agreement.

The County shall have no right to terminate the Operating Agreement without cause unless the County relieves Viking of all responsibilities as Operator, AND Viking shall at the time of the termination receive full compensation for any documented funding of deficits in the operating budget during the term of the Operating Agreement.

Project Improvements. During the term of the Operating Agreement, The Operator will have responsibility for the Project improvements and facilities relating to use, management, life cycle maintenance, replacement, repairs, rehabilitation, renovations and refitting, subject to the terms of the Operating Agreement and/or Management Agreement, as applicable. The Operator will have the right at any time to contract with third parties for the performance of the Operator's work and services relating to the management, maintenance and repair of the Project. The Operator will remain responsible for all work and services, whether self-performed or contracted to a third party. If the Operator intends to contract with a third party for the management of the

Project or the performance of work and services necessary to maintain, repair and replace the Project's major elements, systems, components, and equipment, the County will have the right, but not the obligation, to review such third party agreements.

Major Maintenance and Repair. The Operator will be responsible for the performance of all maintenance, repair, rehabilitation and replacement of all structural elements, systems, components, major equipment, fixtures and furniture of the Project. The Operator will develop a capital repair and replacement plan, budget and schedule for consideration by the County which describes all such elements, systems, components, equipment, fixtures and furniture which are the subject of programmed maintenance, repair and replacement, together with a description of the useful life and residual life of such elements and items and the nature, scope, timing and cost of foreseeable future repairs, replacements and capital improvements through the term of the Operating Agreement.

Repair and Replacement Fund. In order to assure funding to perform all capital assets repair and replacement work, the Operator shall on an annual basis deposit funds into repair and replacement cost reserves to be utilized solely to fund such work. Funding of the reserves shall be maintained at adequate levels, established pursuant to an agreed methodology related to the life cycle periods for asset classes, to assure the availability of funds to maintain all portions of the Project in a safe, secure, sustainable and first-class manner. The Operator will deposit a minimum annual amount of not less than 1% in year one, 2% in year two, 3% in year three, and 4% in the remaining years of the gross revenues (less any parking fee income) into the repair and replacement cost reserve fund for the facilities. During the term of the Operating Agreement, deposits into the reserve funds will be in amounts adequate for the maintenance and repair of the facilities based on factors including the selected construction method, materials, equipment, systems, life-cycle repair and replacement program, geography and climate.

Budgetary Responsibility. The Operator shall be responsible for all short falls to the operating budget and the capital budget for the term of the Operating Agreement. Amounts advanced by Operator to fund a deficit in the capital budget shall bear interest at an annual rate of interest equal to 5.0 percent. As an inducement to the Operator for assuming the risk of backstopping the operating budget and capital budget during the term of the Operating Agreement upon expiration of the Operating Agreement the County shall have the option to (i) decide to keep ownership of the Center and thereafter and assume the obligation to fund deficits in the operating budget and the capital budget or, (ii) provide the Operator the option to purchase the Project. If the County opts to provide the Operator the option to purchase and the Operator fails to notify the County within ninety (90) days it will exercise the purchase option, the County shall have the right to sell the Project to a third party. In the event the Operator exercises the right to purchase the Project upon the expiration of the Operating Agreement, the purchase price shall be determined and based on the fair market value of the Project establish by appraisal of the lands highest and best use of the property. The County and the Operator shall each obtain an appraisal, at the Operator's expense, and use the average value as the purchase price so long as the difference in the appraised values is less than ten (10) percent. In the event that the difference in the appraised value is more than 10%, the Operator and County will agree to use a third appraiser

that they have mutually agreed upon, and the final valuation will be an average of the three appraisals. However, the purchase price shall be adjusted downward in value by one half of the cumulative deficit in the capital budget funded by the Operator during the term of the Operating Agreement. The Operator shall receive all amounts on deposit in the operating reserve fund at the time of purchase. All other amounts on deposit in the capital reserve fund and Surplus Fund shall remain with the County.

Routine Maintenance. The Operator will be responsible for the performance of routine maintenance of the Project facilities. The Operator has the right to self-perform routine maintenance or contract with third parties for the performance of routine maintenance under the supervision of the Operator. Performance of routine maintenance will be subject to standards, requirements and criteria set forth in the Operating Agreement.

Facilities Condition Report. No less than once each year the County and Operator shall conduct a walk through inspection to review facility conditions in developing annual capital budget. No less frequently than every five (5) years [commencing in the tenth fiscal year following commencement of operations of the Project], the Operator will at its cost cause a comprehensive facilities condition assessment report to be performed by an independent engineer agreed upon by the Operator and the County. The parties will determine the nature and scope of services and deliverables to be provided by the independent engineer and the schedule for the Operator's implementation of remedial action to address any deficiencies identified by the independent engineer to be mutually agreed upon based on the operational needs at that time.

Financial Reporting. The Operator shall provide to the County quarterly and annual financial and operating information, including annual financial statements and quarterly financial statements and a copy of the annual operating and capital budget as set forth in the Operating Agreement. If the County require audited financial statements, the Operator agrees to provide such statements at the request of the County at the County's expense.

Performance Indicators. The Operating Agreement and the Management Agreement will set forth the standards of performance for the conduct of management, maintenance and repair and customer service activities at the Project. Key indicators and measures of the quality of performance of the required services will include levels of Project occupancy, level of marketing or advertising designed to increase tourist related business activities, within the meaning of Section 125.0104, Florida statutes, tourist room night generation, Project financial performance, Project condition and budget compliance. The failure of Operator to achieve certain minimum threshold levels of compliance with the performance indicators, after having been provided notice and an opportunity to cure (as further defined in the Operating Agreement) will be a basis for the appointment of a replacement Operator. The failure of Manager to achieve certain minimum threshold levels of compliance with the applicable performance indicators (such as bookings and number of activity days) will be a basis for the appointment of a replacement Manager. If Operator is replaced, operator, Viking and CP Holdings shall be released from all other obligations under all agreements with County.

Parking and Transportation Viking or the Operator shall provide five hundred (500) non-exclusive parking spots, whether onsite or offsite, for an initial annual fee of \$564,000.00, to be increased by three percent (3.00%) per annum (the "Parking Fee"), pursuant to a license agreement, as well as other methods of transportation to bring participants and visitors to the Project and in order to perform under the obligations as stated in the Operating Agreement and Management Agreement. The Parking Fee shall be included in the operating budget and is based on equitable prorata share of the operating cost and debt service of structured parking facilities made available to the Project. Viking shall not charge a parking fee for general access to surface parking availability for the Project. Operator or Manager shall be permitted to charge attendees an event parking fee. All parking fee revenues collected by the Operator or Manager shall be considered operating revenues of the Project and be available to the Operator or Manager for the payment of operating expenses. In the event Operator is terminated under any of the agreements, County will continue to be granted parking rights pursuant to the Master Declaration for Celebration Pointe as any other tenant.

### **Annual Bonus Structure for Operator and Manager**

As long as Operator and Manager meet or exceed the performance requirements in the Operating Agreement and the Management Agreement each year, the operating reserve and capital reserves are fully funded in accordance with the annual budget, the Operator and Manager can distribute a performance bonus to the Operator and Manager in the following amounts:

1. 25% of available yearly net operating income between \$0.00 and \$150,000.00, and
2. 50% of available yearly net operating income above \$150,000.00.

Net operating income remaining following payment of all obligations, including annual operating bonuses to the Operator and the Manager shall be deposited in the Surplus Fund. At the end of any fiscal year, any amount in excess of \$1,000,000 shall be shared equally between the County and the Operator.

Flow of Funds. All operating and non-operating revenues, fees and charges collected with respect to use of the Center shall be deposited into an Operating Account established and held by the Operator and applied in the following order:

1. Payment of commissions, refunds, sales taxes, cost of goods sold and other customary exclusions from revenues;
2. Monthly operating expenses of the Project;
3. Payment of master property association and CDD fees;
4. Payment of monthly management fees to Manager;
5. Payment of monthly asset management fees to Operator;
6. Repayment of Construction Capital Repayment per pro forma and funded operating or capital shortfalls
7. Deposit to Capital Repair and Replacement Reserve Fund;



8. Deposit to Operating Reserve Fund;
9. Pay Performance Bonus to Operator and Manager; and
10. All remaining funds to be transferred to the Surplus Fund.

All amounts in the Surplus Fund are available to the Operator to fund deficiencies that may exist from time to time in the funds described above.

**Assignment and Transfer:**

Neither Viking nor the Operator will have the right to assign or transfer their respective interest in a Project Agreements, the Project or any element or component thereof or permit the use of the Project by any person or entity other than Viking, the Operator, the Manager whether by agreement, change of control in such entities or operation of law, without the prior written approval of the County in its sole discretion.

**No Guarantees:**

Viking acknowledges that it has conducted due diligence with respect to the costs, risks and uncertainties of developing, constructing, operating and maintaining the Project and evaluated the demand for, and the financial prospects of the Project utilizing its personnel, advisors, contractors, resources, experience and expertise and without reliance on any statement description or analysis made or information, document or data furnished by the County or its consultants and advisors. Except as expressly set forth otherwise in this Term Sheet, Viking acknowledges and agrees that the County does not and will not guarantee or otherwise support or backstop in any way any obligations incurred by Viking in the performance of its obligations, covenants and agreements under the Project Agreements or other contract or agreement relating to the Project. The County makes no covenant, representation, warranty or other undertaking with respect to demand for the Project, the financial viability of the Project, the nature, extent and success of efforts to market the Project, the conduct of users or others of the Project, or the cost to design, construct, own, manage, operate and maintain the Project.

**Other Provisions:**

The Project Agreements will contain additional terms, conditions, representations and warranties and other provisions customary for public-private-partnership agreements and consistent with the terms of this Term Sheet as negotiated by the parties.

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Exhibit A

Site Plan



