

ALACHUA COUNTY  
BOARD OF COUNTY COMMISSIONERS

**RESOLUTION NO. 22-\_\_**

**A RESOLUTION AUTHORIZING THE AMENDMENT TO  
CERTAIN CELEBRATION POINTE SPORTS CENTER  
AGREEMENTS TO PROVIDE FOR OPERATIONS UPON A  
TEMPORARY OPENING; PROVIDING FOR AN  
EFFECTIVE DATE**

WHEREAS, on January 17, 2020, Viking Companies, LLC (“Developer”) tendered an unsolicited proposal to collaborate with Alachua County, a charter county and political subdivision of the State of Florida (“County”) to develop, design, construct, manage, and maintain a multi-purpose sports center (“Sports Center”); and

WHEREAS, on July 23, 2021, the Alachua County Board of County Commissioners (the “Board”) and Developer entered into a Multi-Purpose Sports Center Development Agreement (the “Development Agreement”) outlining how the Sports Center is to be developed, designed, and constructed; and

WHEREAS, on July 23, 2021, the Board and Developer’s subsidiary, CP Event Center Operations, LLC (“Operator”) entered into an Operations and Maintenance Agreement (the “Operations Agreement”, and collectively with the Development Agreement are referred to herein as the “Agreements”) outlining how the Sports Center will be operated and maintained once development is complete and the Development Agreement expired; and

WHEREAS, due to supply chain issues, the delivery, and thus the installation of the event center flooring, has been delayed which will delay final completion of the Sports Center beyond the scheduled date of December 26, 2022; however, the Developer and Operator believe an opportunity exists to attract certain track events prior to final completion; and

WHEREAS, the Developer and the Operator have requested authorization to apply to the County for a temporary certificate of occupancy and temporarily open the Sports Center for a partial track season beginning in January of 2023 and ending approximately March 31, 2023 (“Temporary Opening”); and

WHEREAS, the Development Agreement and the Operations Agreement need to be amended to accommodate the request to commence operations prior to completion of the Sports Center to provide for the operations of the Sports Center during the Temporary Opening prior to the final completion of the Sports Center by the Developer; and

WHEREAS, it is anticipated that upon the conclusion of the Temporary Opening, the Sports Center shall close again for completion of development in accordance with the Development Agreement and shall re-open upon the issuance of a certificate of occupancy by the County and in accordance with the Development Agreement and Operations Agreement; and

WHEREAS, the parties agree to negotiate the terms of an omnibus amendment agreement to effectuate the changes necessary to accommodate the Temporary Opening of the Sports Center; provided, however, any amendment agreement shall be specifically limited to matters directly related to the Temporary Opening and shall not modify any substantive or material provisions of the Development Agreement or Operations Agreement, except as specifically set forth herein.

NOW, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:

RESOLVED, The Board hereby delegates to the Chair the authority to execute and deliver an omnibus amendment agreement (the "Amendment") between the County, the Developer and the Operator, which shall amend the Development Agreement and the Operations Agreement as follows:

- A. The Developer shall be authorized to apply for a temporary certificate of occupancy in order for the Sports Center to open temporarily in January 2023 until March 31, 2023, to host events, which is prior to final completion of the Sports Center under the Development Agreement. This authority does not constitute an abrogation of the County's governmental or land development regulatory powers, or the Developer's or Operator's obligations to comply with applicable Laws and Regulations.
- B. Issuance of the temporary certificate of occupancy shall constitute commencement of the Operations Agreement. However, the following Sections of the Operating Agreement shall either be suspended or modified by the provisions of the Amendment until a full certificate of occupancy is issued for the Sports Center:
  - a. Section 2.1 – Continuous Operation Covenant;
  - b. Section 6.2(iv),(xi),(xv), and (xvi) – General Operational Responsibilities;
  - c. Section 6.6.2 – Fees and Charges;
  - d. Section 6.6.4 – Operating Reserve Account;
  - e. Section 6.6.5 – R&R Fund;
  - f. Section 6.6.6 – Surplus Fund; and
  - g. Section 7.4 – Key Performance Indicators.
- C. During the Temporary Opening and until the Sports Center is closed to the general public in order to complete development of the Sports Center, the Operator will operate and maintain the Sports Center in accordance with the Operations Agreement and the Developer will continue to complete the development of the Sports Center in accordance with the terms of the Development Agreement, except as set forth in this Resolution.
- D. During the Temporary Opening, the Operator will be granted access to the Sport Center for the purpose of temporarily operating the Sports Center in accordance with the Operations Agreement, while Developer controls the Sports Center under the terms of the Development Agreement.
- E. The Developer and the Operator shall have the duty to coordinate with each other their simultaneous performance of their respective contracts in a manner that will not interfere with the other's ability to perform under its respective contract.

- F. The Developer and Operator shall waive, release and hold the County harmless for any interference by the Developer or Operator with the other's ability to perform under its respective contract.
- G. Extend the Project Schedule for Developer to install the flooring, achieve Substantial Completion, and Final Completion for reasonable time periods commensurate with the delay attributable to the delivery of the flooring materials and the Temporary Opening.
- H. The Developer and Operator shall agree that this amendment, and the fact and circumstances giving rise to this amendment, do not constitute a Relief Event or otherwise constitute the basis for a claim by neither the Developer or the Operator for damages, additional funds, or adjustments to their Financial Terms.

The Amendment shall be in a form approved by the County Manager and the County Attorney. Execution by the Chair, or in the Chair's absence, the Chair's designee shall provide evidence of the approval by the County.

All Sports Center Gross Revenues and all Sport Center Expenses incurred during the Temporary Opening shall be maintained, applied to, and tracked through the proforma operating budget as provided for in the Operations Agreement, subject to Paragraph B above, with all Sports Center Gross Revenues being deposited into the Operating Account. All monthly Sports Center Expenses shall be paid out of the Operating Account and any surplus shall remain and be held in the Operating Account until the issuance of the final certificate of occupancy, at which time all remaining rights and obligations under the Operations Agreement shall be fully in force as set forth therein, including Section 6.6.2 and the application of Sports Center Gross Revenues and Sports Center Expenses, respectively. All capitalized terms not otherwise defined in this Resolution shall have the meaning as set forth in the Operations Agreement.

This Resolution shall take effect immediately upon its adoption.

DULY ADOPTED in regular session this \_\_\_\_\_ day of December, 2022.

**BOARD OF COUNTY COMMISSIONERS  
OF ALACHUA COUNTY, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Anna Prizzia, Chair

\_\_\_\_\_  
J.K. "Jess" Irby, Esq., Clerk

(SEAL)

APPROVED AS TO FORM

By: \_\_\_\_\_  
Alachua County Attorney