
**OPERATIONS AND MAINTENANCE
AGREEMENT
BETWEEN
ALACHUA COUNTY, FL
AND
CP EVENT CENTER OPERATIONS, LLC**

Alachua County Multi-Purpose Sports Center

OPERATIONS AND MAINTENANCE AGREEMENT

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Exhibit “A” = Sports Center Site & Legal Description

Exhibit “B” = Notice Addresses

Exhibit “C” = Pro Forma

Exhibit “D” = Asset Management Services

Exhibit “E” – Maintenance Standards

Exhibit “F” – Parking Master Declaration

Exhibit “G” Key Performance Indicators

Exhibit “H” Performance Scorecard

THIS OPERATIONS AND MAINTENANCE AGREEMENT (this “Agreement”) is entered into by and between ALACHUA COUNTY, FLORIDA, a political subdivision of the State of Florida (“County”) and CP EVENT CENTER OPERATIONS, LLC, a Florida limited liability company (the “Operator”), with reference to the following recited facts:

RECITALS

WHEREAS, the County desires to, among other things, develop and construct a self-supporting multi-purpose indoor sports facility of approximately 151,000 sq. ft. focusing primarily on basketball, volleyball, track, dance, and cheer, with the potential to support other team sports (the “Sports Center”); and

WHEREAS, the County received an unsolicited proposal from Viking Companies, LLC (“Viking”) to develop, design, build, equip, operate and maintain the Sports Center to be located within the Celebration Pointe Development (the “Shopping Center”) on land currently owned by SDPS Real Estate Investment VI, LLC, an affiliate of Viking; and

WHEREAS, the Sports Center will be operated and managed by Operator which is an affiliate of Viking;

WHEREAS, the Operator intends to enter into a management agreement with RADDSports, LLC (“RADDSports”) which has experience in the operation and management of similar sports facilities; and

WHEREAS, the Operator, acknowledges and represents that it, with the assistance of RaddSports, possesses the financial resources and knowledge and experience in the hospitality and sports industries to operate, manage and market the Sports Center in a manner which will enhance opportunities for the County to host both daily and overnight sport activities with the goal of increasing overall tourist related activities within the meaning of Section 125.0104, Florida statutes, throughout Alachua County, as well as, provide additional recreational resources for Alachua County residents; and

WHEREAS, the County and the Operator (hereinafter collectively the “Parties”) desire to enter into this Agreement to set forth their rights and obligations to each other relating to the Operator’s operation and maintenance of the Sports Center for the County following construction and installation of the Sports Center;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES OF THE COUNTY AND THE OPERATOR SET FORTH IN THIS AGREEMENT, THE COUNTY AND THE OPERATOR AGREE, AS FOLLOWS:

ARTICLE I DEFINITIONS

The following definitions apply in this Agreement:

1.1 **“Affiliate”** means with respect to any Person, (i) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Operator, or (ii) any general partner, officer or director of such Person or of any other Person described in clause (i). As used in the previous sentence, “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. “Affiliated” shall have the correlative meaning.

1.2 **“Annual Gross Revenues and Expense Statement”** means a financial statement, prepared on a modified cash basis as agreed to by the Parties, setting forth all Sports Center Gross Revenues and Sports Center Expenses (P&L) with a balance sheet for the Operating Year just concluded.

1.3 **“Application”** means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any activity at the Sports Center that this Agreement allows, including any application for any building permit, certificate of occupancy, utility service or connection, easement, covenant, condition, restriction, subdivision plat, or such other instrument as the Operator may from time to time reasonably request in performing services under this Agreement; (b) to enable the Operator from time to time to seek any Approval or to use or operate the Sports Center in accordance with this Agreement; or (c) otherwise reasonably necessary and appropriate to permit the Operator to perform its services under this Agreement.

1.4 **“Approvals”** means any and all licenses, permits, approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any use, maintenance, repair or operation of the Sports Center.

1.5 **“Asset Management Services”** shall mean the asset management services outlined in Exhibit D hereto performed by the Operator.

1.6 **“Automobile Liability Insurance”** shall have the meaning as set forth in Section 16.1 hereof.

1.7 **“Bankruptcy Law”** means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.8 **“Bankruptcy Proceeding”** means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.9 **“Bond Trustee”** means U.S. Bank National Association and its successor and assigns.

1.10 **“Building Equipment”** means all fixtures incorporated into the Sports Center, whether acquired by the County or the Operator and used, useful, or necessary to operate the Sports Center as such (including, but not limited to, boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; irrigation systems; machinery; and pipes) as opposed to that mobile or removable equipment used for operating any business in the Sports Center.

1.11 **“Business Day”** means any weekday (Monday through Friday) on which the County is open to conduct regular County business with County personnel.

1.12 **“Capital Expense Advances”** means amounts advanced by the Operator either initially to construct the Sports Center or during the Term to pay for capital expenditures and improvements for the Sports Center.

1.13 “**Casualty**” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any part of the Sports Center Improvements, whether or not insured or insurable.

1.14 “**Casualty Termination**” means a termination of this Agreement because of a Substantial Casualty, when and as this Agreement expressly allows such a termination pursuant to Section 17.2.

1.15 “**CDD**” shall have the meaning set forth in Section 6.3.4.

1.16 “**Certificate Of Completion**” shall mean the certificate issued by the County when the Sports Center is substantially complete.

1.17 “**Commencement Date**” means the date on which the following event occurs that will automatically trigger the Operator’s obligations to operate and maintain the Sports Center as further defined in this Agreement: the date the County issues a Certificate of Completion to the designated contractor(s) responsible for the installation of the Sports Center.

1.18 “**Concession Area**” shall mean, collectively, all concession stands or facilities within the Sports Center at which food, beverages and merchandise shall be offered for sale, together with related areas, such as condiment stands, and all staging areas which are used to prepare food and beverages for sale within the Sports Center; provided, however, the Concession Area shall specifically exclude any area adjacent to the Sports Center and not owned by the County.

1.19 “**Concession Sale**” shall mean each sale of any item of food, beverage or merchandise within the Sports Center. This term as used in this Agreement is not intended to include those Concessions sold during Public Events by governmental or not for profit entities.

1.20 “**Concessionaire Contract**” shall mean any contracts with any concessionaire(s) to provide food, beverage and/or merchandise concessions within the Sports Center.

1.21 “**Condemnation**” means: (a) any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Sports Center by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any property, but creating a right to compensation.

1.22 “**Condemnation Award**” means any award(s) paid or payable (whether or not in a separate award) to either Party after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

1.23 “**Condemnation Effective Date**” means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any part of the Sports Center subject to the Condemnation.

1.24 “**Control**” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

1.25 “**County**” means the County of Alachua County, Florida, a political subdivision of the State of Florida.

1.26 “**County Manager**” means the County Manager of the County or the County Manager’s designee.

1.27 “**County Representative**” means an employee, employees or agent of the County designated in writing by the County Manager for the purpose of facilitating the review of the Sports Center Plans and Specifications and for post-Commencement Date coordination including scheduling of Public Events with the Operator.

1.28 “**CPI**” means the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for Urban Wage Earners and Clerical Workers (CPI-W) published for South-Urban B/C. If the CPI ceases to be published, with no successor index, then the Parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

1.29 “**CPI Adjustment Factor**” means, as of any date, the CPI for such date divided by the CPI for the Effective Date not to exceed a cap of four percent (4%).

1.30 “**Default**” means any Monetary Default or Non-Monetary Default.

1.31 “**Effective Date**” means and refers to the date on which all of the following have occurred: (1) the County has received three (3) counterpart originals of this Agreement executed by the authorized representative(s) of the Operator, (2) this Agreement has been approved by the Board of County Commissioners and, (3) this Agreement has been executed by the authorized representative(s) of the County.

1.32 “**Environmental Law**” means any Law regarding any of the following at, in, under, above, or upon the Sports Center Site: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, use of, or liability or standards of conduct concerning, Hazardous Substances.

1.33 “**Equity Interest**” means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity, nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in the Operator.

1.34 “**Expiration Date**” means the date when this Agreement terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by the County’s exercise of remedies for an Event of Default, or otherwise.

1.35 “**Fee Estate**” means the County’s fee estate in the Sports Center Site, which fee estate cannot be liened or used as collateral by the Operator or any Affiliate or Person for purpose of securing labor, materials or services or financing of any kind, including mortgages, or other equity investments. Notwithstanding anything to the contrary in the foregoing, the parties acknowledge and accept the lien from certain special assessments heretofore and hereafter levied by the CDD on the Sports Center Site.

1.36 “**FF&E**” means all movable furniture, furnishings, equipment, and personal property (excluding Building Equipment) that may be removed without material damage to the Sports Center and without adversely affecting: (a) the structural integrity of the Sports Center

Improvements; (b) any electrical, plumbing, mechanical, or other system of the Sports Center; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Sports Center. FF&E includes, but is not limited to, items such as furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

1.37 **“Government”** means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Sports Center Site (or any activity this Agreement requires or allows), including the United States government, the State and County governments and their subdivisions and municipalities, including the City, and all other applicable governmental agencies, authorities, commissions, boards, department and subdivisions thereof.

1.38 **“Hazardous Substance”** includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (iii) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iv) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called “superfund” or “superlien” law; (v) defined as a “pollutant” or “contaminant” under 42 U.S.C.A. § 9601(33); (vi) defined as “hazardous waste” under 40 C.F.R. Part 260; (vii) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (viii) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, et seq.]; any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; any matter, waste or substance regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; and those substances defined as “hazardous waste” or, as a “hazardous substance” under Florida Statutes or the Florida Administrative Code ; (ix) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (x) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products.

1.39 **“Hazardous Substance Discharge”** means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at or from the Sports Center, or into the Sports Center, or that arises at any time from the use or operation of the Sports Center or any

activities conducted at the Sports Center or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Sports Center, whether or not caused by a Party to this Agreement and whether occurring before or after the Commencement Date.

1.40 “**Immaterial Loss**” means a Casualty or Condemnation resulting in a loss of ten thousand dollars (\$10,000) or less.

1.41 “**Indemnify**” means, where this Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular matter, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the particular matter; or (b) in enforcing the Indemnitor’s indemnity.

1.42 “**Indemnitee**” means any Party entitled to be Indemnified under this Agreement and its agents, directors, employees, mortgagees, officers and elected officials.

1.43 “**Indemnitor**” means the Party that agrees to Indemnify the other Party to this Agreement.

1.44 “**Insubstantial Condemnation**” means any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

1.45 “**Law**” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government (such as the State of Florida) affecting the Sports Center or this Agreement in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Sports Center, or relating to any Taxes, or otherwise relating to this Agreement or any Party’s rights or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force at the Effective Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.46 “**Legal Costs**” of any Party means all reasonable costs and expenses such Party incurs in any legal proceeding (or other matter for which such Party is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs and expenses.

1.47 “**Liability Insurance**” shall have the meaning as set forth in Section 16.1 hereof.

1.48 “**Loss**” means any Casualty or Condemnation.

1.49 “**Loss Proceeds**” means any Condemnation Award(s) and/or Property Insurance Proceeds.

1.50 “**Maintenance and Repair Services**” means all routine and ordinary maintenance and repairs to the Sports Center required to preserve the Sports Center in first-class condition during the Term, in accordance with the Sports Center Maintenance Standards and including any required Renovation.

1.51 “**Management Staff**” means the employees of the Operator.

1.52 “**Manager**” means [RADDsports] and its successors and assigns.

1.53 “**Modification**” means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

1.54 “**Modify**” means agree to, cause, make, or permit any Modification.

1.55 “**Monetary Default**” means the Operator’s failure to pay or deposit any money (including insurance premiums or insurance or condemnation proceeds).

1.56 “**Month**” means each full calendar month occurring during the Term.

1.57 “**Monthly Gross Revenues and Expense Statement**” means a financial statement, prepared on a modified cash basis as agreed to by the Parties, setting forth all Sports Center Gross Revenues and Sports Center Expenses (P&L) with a Balance Sheet for the Operating Month just concluded.

1.58 “**Naming Rights**” shall mean the right associated with the name through the use of sponsor logo(s), trade name(s), trademark(s), or service mark(s), to all or any component of the Sports Center as provided in Section 6.9.

1.59 “**Non-Monetary Default**” means the Operator’s: (a) failure to comply with any affirmative or negative covenant or obligation in this Agreement, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

1.60 “**Non-Sporting Activities**” shall mean events other than Sporting Events such as and including conferences, graduations, and concerts.

1.61 “**Notice**” means any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default.

1.62 “**Notify**” means give a Notice.

1.63 “**Notice of Default**” means any Notice claiming or giving Notice of a Default or alleged Default.

1.64 “**Operating Expense Advances**” shall mean advances by the Operator to pay costs and expenses related to the Sports Center other than Capital Expense Advances.

1.65 “**Operating Inventory**” means consumable items used or held in storage for use in the operation of the Sports Center, including retail merchandise, food and beverage inventory, kitchen supplies, paper and plasticware, bathroom supplies, paper towels, cleaning materials, supplies and other similar items.

1.66 “**Operating Year**” means that (a) partial year from the Commencement Date of the Agreement through December 31, 2023; and (b) every subsequent period of twelve calendar months beginning on January 1st thereafter during the Term. In this Agreement, Operating Years are referred to in consecutive numerical order starting with the Operating Year commencing on the first day of the first full calendar month after the Commencement Date being referred to as “Operating Year 1” and followed by “Operating Year 2,” “Operating Year 3,” etc.

1.67 “**Operator**” means and refers to CP Event Center Operations, LLC, and its successor or assigns as approved by the County for purposes of this Agreement.

- 1.68 “**Parties**” means and refers, collectively, to the County and the Operator.
- 1.69 “**Party**” means and refers, individually, to either the County or the Operator, as applicable.
- 1.70 “**Passive Investor(s)**” or “**Passive Equity Interest(s)**” means any owner of an Equity Interest in the Operator but does not have an active role in or control of the management of the Operator.
- 1.71 “**Person**” means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.
- 1.72 “**Premises**” shall mean the Sport Park Site as may be expanded by the County during the Term of the Agreement.
- 1.73 “**Pro Forma**” means and refers to that certain pro forma reflecting a rolling five (5) years of gross revenue and expenses (P&L), five (5) year Capital Plan, five (5) year key performance indicator targets and sports team participation projections (including the number of tournaments, events, etc. commitments have already been received for) for the Sports Center prepared by the Operator based on the facility and its related amenities to be constructed on the Sports Center attached hereto and incorporated herein as Exhibit “C” to this Agreement. The pro forma specified herein will also include footnotes where necessary explaining how expenses and revenues have been derived.
- 1.74 “**Prohibited Lien**” means any mechanic’s, vendor’s, laborer’s, or material supplier’s statutory lien against the Fee Estate and/or the Sports Center or other similar lien arising against the Fee Estate and/or the Sports Center from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to the Operator (or anyone claiming through the Operator).
- 1.75 “**Property Insurance**” shall have the meaning as set forth in Section 16.1 hereof.
- 1.76 “**Property Insurance Proceeds**” means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by the County or the Operator, excluding proceeds of the Operator’s business interruption insurance in excess of the County’s Revenues.
- 1.77 “**Public Events**” shall mean those County sponsored events (such as for employee appreciation, tourism conferences and other similar County related purposes).
- 1.78 “**Public User Fees**” shall have the meaning as set forth in Section 6.17.
- 1.79 “**R&R Fund**” means the repair and replacement fund established pursuant to Section 6.6.5. funded by Operator from Sports Center Gross Revenues into which Operator will deposit and maintain funds in accordance with Section 6.6.5. for the performance of Asset Management Services.
- 1.80 “**Renovation**” means the replacement, major repair, renewal or reconstruction of the Sports Center, including building roofs, slabs, foundations or walls; heating, ventilation, air conditioning, plumbing, sewer, utility, irrigation or drainage systems; lighting; paved areas, including circulation walkways; kitchen equipment; outfield wall and stadium design elements,

landscaping, signage, windows, awnings, patio covers and exterior façade components and coverings.

1.81 “**Requesting Party**” shall mean the Party requesting performance of a term or condition of this Agreement.

1.82 “**Restoration**” means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration and safeguarding of the damaged or remaining Sports Center Improvements, substantially consistent with their condition before the Loss, subject to any changes in Law that would limit any such activities.

1.83 “**Restoration Funds**” means any Loss Proceeds (and amounts on deposit in the R&R Fund) to be applied to Restoration.

1.84 “**Restore**” means accomplish a Restoration.

1.85 “**Scheduled Expiration Date**” means 11:59 p.m. on December 31, 2052.

1.86 “**Signage**” as used herein, shall specifically include any form of media not presently utilized or contemplated by the Parties which may be utilized at any time in the future for the Sports Center and shall mean all signage (permanent or temporary) and the entry signage for the Sports Center and any and all other media used for advertising or marketing purposes within the Sports Center, including, but not limited to, any such signage or other advertising media located in or on the Sports Center, and such signage and other media without limitation, the scoreboard, the video boards, including "JumboTron"-type screens, advertising signs, banners or displays, time clocks, message boards, billboards, public address announcements, and any other media located within the Sports Center and in, on or around the Sports Center through which the Operator, or any party holding rights pursuant to an agreement with the Operator, advertises or markets or may advertise or market products, services, events or any other items within Sports Center.

1.87 “**Sponsor**” shall mean a company, person or other entity which funds or underwrites an exhibition or Sports Center Event to be held at the Sports Center.

1.88 “**Sports Center**” has the meaning as set forth in the Recitals of this Agreement.

1.89 “**Sports Center Events or Sports Center Event**” shall mean Sports Events and any and all other sports contests, training programs, camps, exhibits, tournaments, music concerts, corporate sponsored events or other events of any kind which may be scheduled and exhibited at the Sports Center, except for those Public Events scheduled in coordination with the Operator on days or at times when there are no conflicting Sports Center Event or Sports Center Events.

1.90 “**Sports Center Expenses**” means, for any Operating Year, the aggregate of all costs and expenses of the Sports Center paid or incurred by Operator during that same Operating Year or accrued from prior Operating Years (to the extent not previously paid from Sports Center Gross Revenues), in connection with the ownership, possession, use, leasing, management, operation, maintenance, repair, marketing, promotion and furnishing of the Sports Center, which shall include without limitation (i) the cost and expense of utility service, telephone, internet, cable television or any other service to the Sports Center paid by Operator; (ii) Taxes; (iii) the fees paid to Operator related to Asset Management Services; (iv) all costs and expenses incurred by Operator in connection with the preparation of any tax returns and any audits; and (v) all other costs and expenses of Operator described in this Agreement.

1.91 **“Sports Center Gross Revenues”** means all revenues recognized using generally accepted accounting principles (including any non-monetary consideration, which shall be counted as revenue at its fair market value in dollars) received by the Operator, the Manager or any Affiliate derived from any activities at or related to the Sports Center, including but not limited to any of the following described activities, less any of the Sports Center Gross Revenue Exclusions listed in Section 1.89.

1.91.1 all programmed activities, including games, leagues, tournaments, sports camps, exhibitions and special events;

1.91.2 use of the Sports Center for which a fee is charged;

1.91.3 the sale of food or beverages of any kind (including alcoholic beverages) within the Sports Center. As an illustration, if Company X contracts with the Operator to cater food service for its group business event, the gross revenues received by the Operator for catering such event shall be included in Sports Center Gross Revenues. If Company X uses its own catering company to cater its group business event, only the fees or commissions paid to the Operator by Company X (or its caterer) for the right to bring in an outside caterer shall be included in Sports Center Gross Revenues.;

1.91.4 the sale of merchandise of any kind on or from the Sports Center, whether such order is filled on the Sports Center or elsewhere, including any charges for services, alterations or repairs;

1.91.5 the sale of sponsorships on or within the Sports Center;

1.91.6 commissions, fees or profit shares received from revenues generated from sales by concessionaires at the Sports Center, where the gross revenues from such sales are not received by or payable to the Operator or any Affiliate, including, for example, arcade and video games, vending machine commissions, ATM commissions, etc.;

1.91.7 all finance charges to customers, in case of sales on credit, whether or not payment is actually made at, in, on or from the Sports Center;

1.91.8 revenues from the sale of gift certificates, when such certificates are redeemed; and

1.91.9 the proceeds of business interruption insurance, if applicable, received with respect to the Sports Center.

1.92 **“Sports Center Gross Revenue Exclusions”** means all of the following:

1.92.1 the amount of all sales tax receipts required to be accounted for by the Operator and paid to any government or governmental agency, including Public User Fees, but not the amount of any excise tax (except a consumer excise tax) or other governmental obligation in the nature of a tax on the privilege of doing business;

1.92.2 the amount of any sales initially included in Sports Center Gross Revenues that are subsequently subject to refund or credit;

1.92.3 the amount of any revenues received by any licensee, contractor or concessionaire (unless such licensee, contractor or concessionaire is an Affiliate) operating in or from the Sports Center that are not paid or required to be paid to the Operator, provided that such revenues are not derived from the sale of food or beverages;

1.92.4 revenues received by any outside catering company that is not an Affiliate allowed to cater a group, business or other special event at the Sports Center shall not be included in Sports Center Gross Revenues, except any revenues paid to the Operator for the right to bring in an outside caterer to handle food or beverage sales or any commissions or other type of fees paid to the Operator from revenues received by the outside caterer. As an illustration, if Company X contracts with the Operator to cater food service for its group business event, the gross revenues received by the Operator for catering such event shall be included in Sports Center Gross Revenues. If Company X uses its own catering company to cater its group business event, only the fees or commissions paid to the Operator by Company X (or its caterer) for the right to bring in an outside caterer shall be included in Sports Center Gross Revenues.

1.92.5 the amount of sponsorship or advertising revenues generated that are received by the Operator from sponsors or advertisers, but are paid to advertising agencies or brokers that are not Affiliates, as commissions;

1.92.6 traditional or customary waiter/waitress gratuities paid or given by customers;

1.92.7 proceeds of insurance other than business interruption insurance applicable to the Sports Center, if any, which shall be used and applied pursuant to Section 17.03;

1.92.8 checks or other negotiable instruments returned for insufficient funds;

1.92.9 the amount requested and received by the Operator from the County's Tourist Development Council for marketing purposes;

1.92.10 the amount received from naming rights as identified in Section 6.9 and used to pay Capital Advances; and

1.92.11 revenues paid by gift certificates already included in Section 1.93.8.

1.93 **"Sports Center Improvements"** means all buildings, structures, equipment or other improvements constructed or installed or to be constructed or installed on the Sports center Site by the Operator on behalf of the County, including, without limitation, all buildings, site lighting, stormwater control structures and retention, utilities and other site development improvements, or any alterations, replacements, modifications or additions thereto made by the Operator in accordance with the terms of this Agreement.

1.94 **"Sports Center Maintenance Standards"** means and refers to the standards, specifications, protocols and conditions for maintenance of the Sports Center attached hereto as **Exhibit E** attached hereto, which may be amended from time to time by the Parties.

1.95 **"Sports Center Plans and Specifications"** means the final plans and specifications for the Sports Center including landscaping plans, grading plans and construction drawings as prepared by Viking or Vikings design professional and approved by the County.

1.96 **"Sports Center Site"** means that certain real property specifically described in Exhibit "A" attached to this Agreement.

1.97 **"State"** means the State of Florida.

1.98 **"Substantial Casualty"** means a Casualty that (a) renders 33% (thirty-three percent) or more of the Sports Center not capable of being used or occupied for more than ninety (90) days; (b) requires Restoration whose cost the County reasonably estimates in writing would

exceed Two Hundred Thousand Dollars (\$200,000); or (c) pursuant to Law, prevents the Sports Center from being Restored to the same bulk, and for the same use(s), as before the Casualty.

1.99 “**Substantial Condemnation**” means any Condemnation that (a) takes the entire Sports Center; (b) in the Operator’s reasonable determination renders the remaining Sports Center uneconomic to operate; or (c) occurs less than six (6) months before the end of the Term.

1.100 “**Surplus Fund**” means the Surplus Fund established pursuant to Section 6.6.6. hereof.

1.101 “**Taxes**” means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), possessory interest taxes, federal, state or local taxes, assessments, Public User Fees, water and sewer fees, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect to any of the foregoing, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Sports Center, or any other appurtenances of the Sports Center, FF&E, Building Equipment or other facility used in the operation of any of the foregoing, or the fee or income received from the Sports Center, or any use or occupancy of the Sports Center. If at any time during the Term, the method of taxation prevailing at the Commencement Date is altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Sports Center and imposed upon the County, then all such new taxes, assessments, levies, Taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term “Taxes,” to the extent that such amount would be payable, if the Sports Center were the only property of the County subject to such Taxes .

1.102 “**Temporary Condemnation**” means a Condemnation of the temporary right to use or occupy all or any portion of the Sports Center.

1.103 “**Term**” shall have the meaning as set forth in Article III.

1.104 “**Transfer**” of any property, right or obligation under this Agreement means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation under this Agreement, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance) by an Active Investor or Active Equity Interest; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or to any Person that, as of the Effective Date, holds an Equity Interest and qualifying as an Active Investor in the entity whose Equity Interest is being transferred; (c) any transaction described in clause “b” affecting any Equity Interest(s) or any other interest in such property, right or obligation under this Agreement or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests owned by

an Active Investor, as referred to in clauses “b” through “d,” shall be deemed a Transfer by the Operator even though the Operator is not technically the transferor.

1.105 “**Unavoidable Delay**” means delay in performing any obligation under this Agreement, except payment of money, arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor’s inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws, governmental preemption (excluding the County’s as a Party to this Agreement), war, riots or pandemic events. Unavoidable Delay shall exclude delay caused by the obligor’s financial condition, illiquidity, or insolvency.

1.106 “**Waiver of Subrogation**” means a provision in, or endorsement to, any Property Insurance or Automobile Liability Insurance policy, by which the carrier agrees to waive rights of recovery by way of subrogation against either Party to this Agreement for any loss such policy covers.

1.107 “**Workers Compensation Insurance**” shall have the meaning as set forth in Section 16.1 hereof.

ARTICLE II OPERATION AND MAINTENANCE COVENANT.

2.1 **Continuous Operation Covenant**. The Operator covenants to the County to cause the Sports Center to be continuously operated throughout the Term. Operator covenants to the County to hold a minimum number of thirty-five (35) Sport Park Events per year during the Term of this Agreement.

ARTICLE III TERM

3.1 **Term**. The Term of this Agreement shall commence on the Commencement Date and shall terminate on December 31, 2052 (the “Scheduled Expiration Date”), unless terminated sooner as provided under this Agreement, including Article XXIII and Section 7.4 hereof. The Term of this Agreement may be extended for an additional five (5) period upon terms mutually agreeable by the Parties.

3.2 **Termination Without Cause**. The County shall have no right to terminate this Operating Agreement without cause unless the County relieves Operator of its obligations hereunder and the Operator shall at the time of the termination receive full compensation for any documented funding of Operating Expense Advances during the Term and cumulative and outstanding Capital Expense Advances (including accrued and unpaid interest on Capital Expense Advances).

3.3 **County’s Options at End of Term**. As an inducement to the Operator for assuming the risk of backstopping the operating budget and capital budget during the term of this Operating Agreement upon expiration of the Term of the Operating Agreement, including any extensions thereof agreed to by the Parties, the County shall have the option to (i) decide to keep ownership of the Sports 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 Sports Center. If the County opts to provide the Operator the option to purchase and the Operator

fails to notify the County within ninety (90) days following Notice of the election to sell the Sports Center that Operator will exercise the purchase option, the County shall have the right to sell the Sports Center to a third party. In the event the Operator exercises the right to purchase the Sports Center upon the expiration of this Operating Agreement, the purchase price shall be determined and based on the fair market value of the Sports Center establish by appraisal of the Sports Center Site highest and best use. 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, the costs of which shall be shared by the Parties, and the final valuation will be an average of the three appraisals. However, the purchase price shall be adjusted downward in value by the amounts due Operator pursuant to Section 6.5 related to outstanding Capital Expense Advances funded by the Operator during the Term of this Agreement. The Operator shall receive all amounts on deposit in the Operating Reserve Account at the time of purchase. All other amounts on deposit in the R&R Fund and Surplus Fund shall remain with the County.

ARTICLE IV RESERVED

ARTICLE V OPERATOR ACCEPTANCE OF CONDITION OF SPORTS CENTER

The Operator enters the Sports Center on the Commencement Date following completion of construction and agrees to accept the Sports Center in its then existing "as-is" physical condition, subject to any and all physical, legal or other faults. The Operator acknowledges that the Operator will be entering the Sports Center based upon the Operator's own investigations and knowledge of the Sports Center Site and the completed Sports Center and that, except as otherwise specifically stated in this Agreement, neither the County nor any agent of the County, has made any representation or warranty whatsoever, express or implied, with regard to the physical condition of the Sports Center Site or the Sports Center or the suitability of the Sports Center Site or the Sports Center for any particular purpose or use, including, without limitation, any representations or warranties regarding the applicability or non-applicability of any Law, the soil or subsoil, surface or subsurface conditions, topography, possible Hazardous Substance contamination, fill, drainage, access to public roads, availability of utilities, existence of underground storage tanks, applicability of or compliance with any Environmental Laws, environmental impact report requirements or any other matter of any nature whatsoever.

Operator acknowledges and agrees that the County does not and will not guarantee or otherwise support or backstop in any way any obligations incurred by Operator in the performance of Operator's obligations, covenants and agreements under this Agreement or other contract or agreement relating to the Sports Center. The County makes no covenant, representation, warranty or other undertaking with respect to demand for the Sports Center, the financial viability of the Sports Center, the nature, extent and success of efforts to market the Sports Center, the conduct of users or others of the Sports Center, or the cost to design, construct, own, manage, operate and maintain the Sports Center.

ARTICLE VI SPORTS CENTER OPERATION AND MAINTENANCE

6.1 **General.** The Operator shall operate, manage and market the Sports Center subject to the terms and conditions set forth in this Agreement. Such operation and management 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 Sports Center and the promotion of tourism in the County and increasing the number of overnight visitors by attracting, promoting, and contracting for tournaments, other sport related events and Non-Sporting Activities. The primary focus and emphasis of sport's marketing and promotional activities relating to the Sports Center during any Operational Year shall be geared towards the procurement of Sporting Events and especially those that could increase the potential for multi-day tourist stays. The scheduling of Non-Sporting Activities will be secondary to the Operator's obligation to secure Sporting Events for the Sports Center; provided that Non-Sporting Activities are not morally offensive and do not materially affect the ability of the Operator to achieve the primary objective of a profit from the operations of the Sports Center.

Subject to and in accordance with the terms and conditions of this Agreement, the Operator shall furnish or cause to be furnished Maintenance and Repair Services and Asset Management Services to the Sports Center and all, utilities, equipment and supplies required in the performance of such services to keep the Sports Center in first class condition and in good repair throughout the Term, in accordance with all applicable insurance policies, Law and the Sports Center Maintenance Standards. The Operator shall remove trash, water, mud, sand and debris from the Sports Center and the adjoining sidewalks and maintain them in a reasonably clean condition. Any costs incurred with regard to shortfalls in budget, operations, repairs or improvements, or similar items in place on the Commencement Date shall come from amounts on deposit in the Operating Reserve Account, the R&R Fund held by the Operator and the Surplus Fund held by the County designated for such improvements, repairs, or shortfalls.

6.2 **General Operational Responsibilities.** The Operator shall have the following described general responsibilities regarding operation of the Sports Center, which the Operator shall perform in accordance with the terms of this Agreement:

(i) enter into and pay any costs associated with arrangements with concessionaires, vendors licensees, tournament promoters, contractors or other providers of services to or intended users of the Sports Center;

(ii) enter into and pay any costs associated with contracts for the furnishing of ongoing utilities and telecommunications services (other than for initial connections included as part of the initial construction of the County's Sports Center Improvements), maintenance, repair and other services to the Sports Center;

(iii) incur and pay such expenses as shall be reasonably necessary for the proper operation of the Sports Center, including, without limitation, employee salaries and benefits and applicable taxes and withholdings;

(iv) maintain a level of Operating Inventory reasonably appropriate for supplying the needs of the Sports Center and its customers;

(v) apply for, obtain and maintain all licenses and permits required of the Operator in connection with the operation of the Sports Center, including beer and wine licenses and sign permits. The County shall reasonably cooperate with the Operator in the application for, obtaining

and maintenance of such licenses and permits; provided that such cooperation by the County is legally permitted and does not result in any direct or indirect cost to the County;

(vi) use commercially reasonable efforts to do, or cause to be done, all acts in and about the Sports Center as shall be reasonably necessary to comply with any applicable insurance policies or Law; including but not limited to the implementation of an inspection and safety program relating to the use and operations of the equipment on the Sports Center;

(vii) implement a continuous marketing, advertising and promotional plan for the Sports Center regarding recreational sports activities for men, women, boys and girls of various ages and skill levels to encourage use of the Sports Center by County residents as well as by visitors from outside the County. The County shall reasonably cooperate with the Operator in the inclusion of the facility in its websites, print materials and other promotional avenues, as available to a County facility;

(viii) purchase FF&E as necessary to replace worn out, damaged, destroyed, lost or stolen FF&E;

(ix) pay initial activation charges for utilities and services for the Sports Center, after initial construction of the Sports Center Improvements are installed or modified after the Commencement Date;

(x) in accordance, as applicable, with defense and indemnification rights contained in contracts of insurance procured and maintained by the Operator, defend and settle claims, lawsuits and demands relating to the Sports Centers and retain legal counsel (and pay legal fees and costs) who, under the direction of the Operator or the insurance carrier, will defend any claims or actions brought against the Operator or the County relating to the Sports Center and will institute and defend any and all legal actions or proceedings as shall be reasonably necessary to collect charges, fees or other income for the Sports Center, or to cancel or terminate any license, vendor or concession agreement or other contract on the grounds of default. The Operator shall notify the County of any claims or lawsuits relating to the Sports Center on a timely basis. The County shall have the right to approve any legal counsel retained by the Operator to represent or defend the County. Legal counsel to the Operator's insurance carrier that is providing a defense to the County shall be deemed satisfactory to the County, subject to any conflict of interest and other similar matters; and

(xi) offer a reasonable schedule of recreational sports programming including but not limited to basketball, volleyball, track, dance, and cheer, in addition to such other sports activities as approved by the County (which consent shall not be unreasonably withheld), recognizing that demand for some of the sports varies and it may not be commercially reasonable to offer programs for all of the above-listed sports in any or all of the seasons of the year; and

(xii) pay all Taxes prior to the date the Taxes become delinquent; and

(xiii) establish and implement the policies and standards for the operation of the Sports Center and all matters affecting customer relations; and

(xiv) develop and fund pre-opening start up expenses as they come due for the Sports Center; and

(xv) perform asset management and life cycle repairs and replacement; and

(xvi) prepare the annual operating budget and the annual capital budget including establishment of necessary reserves, the five (5) year rolling pro forma and key performance indicator targets; and

(xvii) procure and maintain insurance as required in Article 16 hereof; and

(xviii) payment of all Sports Center Expenses;

(xix) establish accounting and payroll procedures and functions; and

(xx) manage, operate and maintain the Sports Center to the standards to qualify the building as “WELL” certified; provided, the Parties agree to review periodically to determine the costs and benefits of maintaining the WELL certification.

6.3 Additional Operator’s Operations and Maintenance Obligations. As part of the Operator’s obligations hereunder, the Operator shall also perform or cause to be performed such other Maintenance and Repair Services and to operate the Sports Center, including the following as provided in this Agreement:

6.3.1 Engage in the sale of alcoholic beverages from the Concession Area(s) (subject to obtaining and maintaining all required or appropriate licenses or permits from the Florida Bureau of Alcohol, Tobacco and Firearms and compliance with all Laws);

6.3.2 Establish operating hours, subject to Section 6.6.1;

6.3.3 Establish all fees, charges and commissions for the use of the Sports Center, the sale of food, beverage and merchandise from the Sports Center and other services or activities at or from the Sports Center, all without limitation, except as otherwise expressly provided in this Agreement; and

6.3.4 Track overnight stays in the County by requiring promoters, leagues and other athletic associations to register for league or tournament Sports Center Event(s) through the County’s Tourism website or other designated website or a comparable Operator site and by further requiring such promoters, leagues and athletic associations to provide a written form to the Operator identifying the host hotels and the number of nights stayed at each location within fourteen (14) days after a Sports Center Event has been completed; which information shall be compiled by the Operator and provided to the County as a part of the monthly financial report.

6.4 Operational Services. Subject to the terms of this Agreement, the Operator shall have the responsibility to: (a) determine, establish, and implement the policies, standards, prices and schedules for the operation of the Sports Center and all matters affecting customer relations; (b) hire, train, and supervise all employees; (c) supervise and direct advertising, sales and business promotion; and (d) establish accounting and payroll procedures and functions.

6.5 Sports Center Improvements. The Operator will have responsibility for the Sports Center Improvements and facilities relating to use, management, life cycle maintenance, replacement, repairs, rehabilitation, renovations and refitting. 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 Sports Center. 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 Sports Center or the performance of work and services necessary to maintain, repair and replace the Sports Center’s

major elements, systems, components, and equipment, the County will have the right, but not the obligation, to review such third party agreements.

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 Sports Center, the Operator will cause a comprehensive facilities condition assessment report to be performed by an independent engineer agreed upon by the Operator and the County the cost of which shall be considered a Sports Center Expense. 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.

The Operator may make Capital Expense Advances from time to time as provided in this Agreement. The Operator shall be reimbursed for any outstanding and unpaid Capital Expense Advances from Sports Center Gross Revenues as provided in Section 6.6.2. and Capital Expense Advances shall accrue interest at a rate equal to five percent (5%) per annum until repaid.

6.6 Specific Operating Procedures. In addition to the more general responsibilities of the Operator for operation of the Sports Center described in Sections 6.01 through 6.03, the Operator shall operate the Sports Center in accordance with the following operating procedures:

6.6.1 Sports Center Operating Hours. The Operator shall operate the Sports Center on days and at hours consistent with similar recreational sports facilities or parks at other similar locations throughout the U.S., subject to closure due to inclement weather, Substantial Casualty, Substantial Condemnation or Unavoidable Delay.

6.6.2 Fees and Charges. All fees, charges and prices for sports activities or other activities or services at the Sports Center shall be set by the Operator. All Sports Center Gross Revenues collected with respect to use of the Sports Center shall be deposited into an Operating Account established and held by the Operator and applied in the following order and priority:

(i) An amount equal to one twelfth of the annual total of the special assessments levied by the CDD shall be transferred as directed by the CDD in writing to the Bond Trustee;

(ii) An amount equal to the monthly Sports Center Expenses;

(iii) An amount equal to one twelfth of the annual Asset Management Fees to Operator set forth in the Annual Budget;

(iv) Following the payment of the amounts described in subsection (i), (ii) and (iii) for the then current Operating Year, amounts on deposit in the Operating Account shall next be applied to fund the annual deposit set forth in the Annual Budget to the R&R Fund followed by the annual deposit set forth in the Annual Budget to fund the Operating Reserve Account;

(v) Following the payment of amounts described in subsection (i), (ii), (iii) and (iv) for the then current Operating Year, amounts on deposit in the Operating Account shall next be applied to pay any outstanding Capital Expense Advances plus any accrued and unpaid interest on Capital Expense Advances followed by payment to the Operator for any unpaid Operating Expense Advances (unpaid Operating Expense Advances do not accrue interest); and

(vi) All remaining funds on deposit in the Operating Account, if any, shall be considered Surplus Funds and be applied in accordance with Section 6.6.6. hereof.

6.6.3 Operating Account. There is hereby created and established an Operating Account to be held by the Operator into which all Sports Center Gross Revenues shall be deposited upon receipt and disbursed in accordance with Section 6.6.2 of this Agreement. In the event there are insufficient Sports Center Gross Revenues to fund the amounts required by Section 6.6.2 (iv) the Operator shall make an Operating Expense Advance with respect to such Operating Year no later than February 15th of the following Operating Year to fund any shortfall.

6.6.4 Operating Reserve Account. There is hereby created and established an Operating Reserve Account to be held by the Operator. The Operator shall establish each year in the Annual Budget an amount to be deposited into the Operating Reserve Account. At such time as there is on deposit in the Operating Reserve Account an amount equal to \$500,000 (the "Operating Reserve Requirement") no further deposits need to be made to the Operating Reserve Account. Amounts on deposit in the Operating Reserve Account may be used by the Operator to pay deficiencies in deposits as set forth in Section 6.6.2 (i), (ii), and (iii). Amounts withdrawn from the Operating Reserve Account shall be replenished from available Sports Center Gross Revenues as set forth in this Agreement in the following Operating Year.

6.6.5 R&R Fund. There is hereby established a R&R Fund to be held by the Operator. Deposits into the R&R Fund will be in amounts described in Section 7.2 hereof and may be adjusted in the Annual Budget to an amount adequate to assure the availability of funds for the performance of the Asset Management Services in accordance with this Agreement and Good Industry Practice and based on factors including the selected construction method, materials, equipment, and systems incorporated into the Sports Center and the life-cycle repair and replacement program developed, implemented and updated pursuant to an agreed methodology related to the life cycle periods for asset classes.

6.6.6 Surplus Fund. There is hereby established a Surplus Fund to be held by the County. Following the payment of the amounts due pursuant to Section 6.6.2 (i) through (v) all remaining Sports Center Gross Revenues shall be considered Surplus Funds pursuant to Section 6.6.2 (vi) and shall be applied first to pay the amounts due under Section 7.3 (1) and (2). The remaining Surplus Funds shall be held by the County and may be allocated by the County in any Operating Year to pay any deficiencies in the deposits required by Section 6.6.2 hereof. The County may also apply amounts on deposit in the Surplus Fund to repay Capital Expense Advances incurred by Operator in any Operating Year or for any lawful purpose.

6.6.7 Smoke Free Facility. The Operator shall comply with the County's policy on smoke-free buildings.

6.6.8 Minimum Wage Ordinance. Performance of services under this Agreement may be considered covered services under chapter 22, article III, of the County Code of Ordinances ("Wage Ordinance"), which establishes a government minimum wage for certain contractors and subcontractors providing selected services to County government. "Covered Employees," as defined in section 22.45 of the Wage Ordinance, are those employees directly involved in providing covered services pursuant to this Agreement. The Operator shall make any potential subcontractors providing covered services aware of the requirements. Failure to comply with the provisions of the Wage Ordinance will be deemed a material breach of contract.

6.6.9 In accordance with section 448.095, Florida Statutes, as created by chapter 2020-149, Laws of Florida, the Operator shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Operator during the Term of this Agreement. The E-Verify system is located at <https://www.uscis.gov/e-verify>. The Operator shall expressly require any subcontractors to utilize the E-Verify system.

6.7 **Security.** The Operator shall, at all times during the Term, provide such security for the operation of the Sports Center as shall reasonably be planned by the Operator to be prudent to protect the customers, employees, guests, contractors and other invitees of the Sports Center, and the owners and occupants of neighboring properties, from the customers, employees, guests, contractors and other invitees of the Sports Center.

6.8 **Signage.**

6.8.1 Operator shall have the right to place signs, banners, billboards or other notifications or advertising at any place on or in the exterior of the Sports Center, and shall have authority over matters such as size, design, color, location, content, method of illumination, composition or material, and mobility. Operator maintains the authorization to offer temporary signage (that is, for a term not to extend beyond the Expiration Date) to rental tenants within the Shopping Center, on the interior and exterior of the Sports Center. Said agreements, and the terms therein, shall be executed between the Operator and Shopping Center tenant. All such signage must comply with the County's Land Use Code and Code of Ordinances.

6.8.2 All signs on or in the Sports Center will be maintained by the Operator in good condition during the Term.

6.8.3 The Operator will remove all signs containing the Operator's name or logo installed in or on the Sports Center by the Operator on or before the Expiration Date, except as otherwise agreed between the Operator and the County, and will repair and restore any damage caused by installation or removal of such signs.

6.8.4 The Operator shall not cause or allow the display of any advertising of tobacco products or adult entertainment on, in or about the Sports Center.

6.9 **Naming Rights.**

6.9.1 General. The County grants to the Operator the sole and exclusive right to market and to sell the Naming Rights during the Term of this Agreement to any Person that the County has reasonably and in good faith determined to have a professional reputation acceptable to the County. The Operator shall provide County Administrator ten Business Days prior to entering into an agreement to sell Naming Rights to approve the counter party to such agreement. The Operator shall first apply monies received from the sale of Naming Rights to pay any outstanding Capital Expense Advances, if any and any remaining monies shall be deposited into the Operating Fund as Sports Center Gross Revenues. No agreements entered into by the Operator with any third party or parties or to any of the Operator's Affiliates relating to the Naming Rights specified herein shall extend beyond the Term of this Agreement.

6.9.2 Sports Center Name. The County agrees that upon the determination of a name(s) for the Sports Center as a result of the sale or exercise of the Naming Rights by the Operator, the County shall use such descriptive name(s) on or as part of any promotional activity of the County with respect to the Sports Center. Subject to availability of funding, the County also agrees to install standard directional signs complying with the Manual of Uniform Traffic Control Devices (MUTCD)

and the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways (Florida Greenbook); latest editions on major County roads leading to the Sports Center. Any costs incurred with regard to modifying or replacing existing road signs, maps, promotional materials, or similar items (that were in place on the Commencement Date) shall be funded by amounts on deposit in the Unrestricted Account of the Surplus Fund.

6.10 Sports Center Advertising.

6.10.1 Advertising. As part of the rights granted to the Operator under this Agreement, the County hereby also grants to the Operator the sole and exclusive right to undertake any and all advertising or marketing of any kind of the Sports Center including but not limited to any advertisements or marketing distributed through signage and any related media, whether printed, transmitted on a video screen or message board transmitted verbally, or otherwise, whether presently available or made available in the future, for Sports Center Events, and at all other times during the Term hereof, and to contract with third parties and grant to such third parties the right to exercise such advertising rights for Sports Center Events, and at all other times during the Term hereof. The Operator shall also agree to allow for placement of reasonable signage within the Sports Center agreeable to the County identifying the name of the County and contact information and/or other material for the County's Tourism Development Council or Office of Tourism Development. The Operator also has the option to request funding for marketing purposes from the County's Tourist Development Council by participating in the Council's annual grant process.

6.10.2 Revenue. The Operator shall deposit all monies or other compensation received by the Operator as part of the Operator's exercise of the Sports Center advertising rights (other than the sale of Naming Rights pursuant to Section 6.9.) granted to the Operator into the Operating Account and such funds shall constitute Sports Center Gross Revenues.

6.10.3 Expense. The Operator agrees to provide at its expense sufficient inventories and operating supplies and to maintain all working capital required for the uninterrupted and efficient maintenance of the Sports Center, it being the intention of the parties that any expenses incurred in the marketing, fulfillment and activation of Sports Center advertising shall be included in Sports Center Expenses.

6.10.4 Quality and Control. The Operator shall be responsible for the distribution, posting, exhibition and removal of all signs, advertisements, show bills, lithographs, posters or cards of any description at, in or about the Sports Center (except for County promotional material) in a manner that will allow the Sports Center to be maintained on a daily basis during hours of operation in a manner that is neat and clean and otherwise free of debris or trash.

6.10.5 Marketing Plan. The Operator shall prepare an annual marketing plan for the "Promotion" of the Sports Center to "Tourists" and provide the County examples of marketing and advertising collateral and marketing efforts. "Promotion" means marketing or advertising designed to increase tourist-related business activities and "Tourist" means a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations.

6.11 **Event Programs And Merchandising.** The County grants to the Operator the sole and exclusive right to sell, lease, or contract for the sale or lease of event programs, yearbooks, novelties, pendants, hats, clothing, sporting equipment, cameras, film, binoculars, headsets, or any other items, goods, or equipment which the Operator, in its sole discretion, may desire to offer for

sale or lease at the Sports Center or elsewhere, except for those hats and other types of clothing sold by those not-for-profit organizations utilizing the Sports Center during Public Events . The County shall also grant to the Operator or its designee the right to set up carts, kiosks, and other similar temporary structures for the sale of such items at locations within the Sports Center selected by the Operator in its reasonable discretion, taking into consideration public safety and access. Subject to applicable taxes, the monies or other consideration received by the Operator from the sale or lease of such programs and other items, or from any agreements entered into by the Operator with regard to the sale or lease of such programs or other items, shall be included in Sports Center Gross Revenues. Further, the Operator shall have the right to grant any of the rights held by the Operator under this Section to a single supplier or to enter into multiple agreements with multiple suppliers. If the Operator shall enter into any such agreements with any such supplier(s), said supplier(s) shall receive the right to provide merchandise on an exclusive basis, then notwithstanding anything contained herein to the contrary, all payments from such supplier(s), including without limitation, all up-front payments, made by such supplier(s) for such exclusive rights to provide merchandise shall be included in Sports Center Gross Revenues. The County hereby agrees that the Operator shall determine the items of merchandise to be offered for sale or lease in such areas and the prices to be charged for such items of merchandise and shall select any suppliers for such merchandise in its sole discretion (provided that the content of any such merchandise may not be morally offensive or objectionable to the County). The County also has the right to offer complimentary materials at the Sports Center during the Sports Center Events solely for the purpose of promoting tourism or economic development within the County.

6.12 Concessions.

6.12.1 Right To Sell. The County hereby grants to the Operator the sole and exclusive right to sell or contract others, including without limitation the Operator's Affiliates, to sell, all food, beverages, and other concessions within the Sports Center, except as otherwise stated in the definition of Concessions Sales. Subject to applicable taxes, all monies or other consideration received by the Operator from the operation of the food and beverage concessions at the Sports Center at all times shall be included in the Sport Center Gross Revenue. The rights granted to the Operator with regard to concessions pursuant to this Agreement shall also include the right (without limitation) to grant to third party(s) any and all so-called "pouring rights" or similar beverage designations with regard to the use of the Sports Center at all times. If the Operator shall enter into any such agreements with any concessionaire(s) whereby said concessionaire(s) shall receive the right to provide certain food products or beverages for all Sports Center Events on an exclusive basis, or to provide all of the food and beverage concessions for all Sports Center Events (specifically including, but not limited to, any grant of "pouring rights"), then notwithstanding anything contained herein to the contrary, all up-front payments made by any such concessionaire or concessionaires for such exclusive rights to provide food and/or beverages for such Events shall be included in the Sports Center Gross Revenues.

6.12.2 Food and Beverage. Any concessionaire contracted by the Operator shall be entitled to bring a reasonably sufficient number of workers into the Sports Center, free of charge, in order to operate the concessions, pursuant to this Agreement. The Operator shall have the sole right to determine items of food or beverage offered for sale, the prices to be charged for such items of food or beverage, or the concessionaire or concessionaires selected to provide such food and beverage concessions. Except for Public Events, the County shall have no right to offer any food or beverage items for sale at any Sports Center Events without the consent of the Operator, it being the purpose of this Section to vest all such rights in the Operator. The Operator shall have the right to determine

the location of concession stands for the sale of food and beverage concessions and staging areas for the storage and preparation of food and beverages prior to sale, both within the Sports Center and elsewhere on the Sports Center, in its reasonable discretion, subject to considerations for public safety and access.

6.12.3 **Access To Facility.** The Operator shall establish all policies relating to access to the Sports Center including, but not limited to, entry to Sports Center with consumables, parking rates, and signs and banners subject to applicable Law. The County shall entrust the Operator with the operation of the Sports Center, and the Operator shall at no time be denied access to the Sports Center by the County unless (i) the Operator is in default of this Agreement and such default has not been cured after the appropriate notice has been provided as required hereunder and the period for curing of the default has run and such default has not been cured after the running of the cure period or (ii) this Agreement has been terminated as provided in Article XXIII herein. The County shall have the right to enter the Sports Center and all parts thereof at all times and may coordinate with Operator to make inspections of the Sports Center and all parts thereof, within reasonable hours and with reasonable notice.

6.13 **Parking.** The Operator shall manage and control the parking for the Sports Center for all Sports Center Events. The Operator or its designee may charge patrons of Sports Center Events a fee which revenue shall be included as part of Sports Center Gross Revenues. The Operator is further authorized to grant, within its reasonable commercial discretion, to any Promoter of Sports Center Events the right to collect and keep for its own account any and all parking fees.

Viking or the Operator or an Affiliate shall provide five hundred (500) non-exclusive parking spaces, whether onsite or offsite of the Shopping Center, for an initial annual fee of \$564,000.00, subject to adjustment as provided in Section 7.1 hereof (the "Parking Fee"), pursuant to a license agreement, as well as other methods of transportation to bring participants and visitors to the Sports Center and in order to perform under the obligations as stated in this Agreement and the Management Agreement. The Parking Fee shall be included in the Annual Budget and subject to the approval of the County. Any special assessments heretofore or hereafter levied by the CDD against the Sports Center Site related to parking improvements shall be payable from the Parking Fee and not in addition to. Viking shall not charge a parking fee for general access to surface parking availability for the Sports Center. Operator or Manager, as Operator's designee, shall be permitted to charge attendees of Sports Center Events an event parking fee. All parking fee revenues collected by the Operator or Manager shall be considered Sports Center Gross Revenues and be available to the Operator for the payment of Sports Center 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, a copy of which is attached hereto as **Exhibit "F"**.

6.14 **Control And Supervision.** The Operator shall have the sole responsibility for, and sole right of control and supervision of its employees and the methods, details and all other aspects of its operation of the Sports Center pursuant to this Agreement, subject, however, to this Agreement and the following additional terms and conditions:

6.14.1 **Crowd Control.** The Operator shall have the right to eject or cause to be ejected from the Sports Center any person whose conduct is unlawful or otherwise objectionable. In addition, the County and the Operator shall each have the right to make announcements at any time

during Park Events and activities in the interest of public safety, proper operation of the Sports Center, crowd control and compliance with applicable laws, ordinances, regulations and rules.

6.14.2 No Waste. The Operator shall not allow any waste, or ultra-hazardous activities at the Sports Center, or engage in, or permit others to engage in, any activity which may cause physical damage to the Sports Center or discredit Alachua County.

6.14.3 Noise. The Operator shall not use or permit the use of the Sports Center in any manner that creates or maintains any noise or sound in violation of the County's noise ordinance, as applicable to the Sports Center Site or to the uses of the Sports Center.

6.14.4 Nuisance. The Operator shall not itself and shall not allow any other Person to use the Sports Center for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Sports Center that would result in a nuisance or a violation of any Law, as the same may now or hereafter be in force and effect.

6.14.5 Permits, Licenses, Etc. The Operator shall, for the full Term, at the Operator's cost and expense, maintain all franchises, permits, contractual arrangements, licenses, and registrations necessary for the Operator to conduct all sales, operations, Maintenance and Repair Services, recreational sports programming and other activities relating to the Sports Center that are contemplated in this Agreement to be undertaken by the Operator.

6.14.6 Abandonment. The Operator shall not abandon or surrender the operation of all or any part of the Sports Center during the Term, except as otherwise expressly provided in Section 16 or Section 17.

6.14.7 Contracts and Agreements. All equipment leases, financing agreements, contracts and agreements relating to the Sports Center (including without limitation contracts for utility services, telecommunications services, Maintenance and Repair Services, pest control, supplies, landscaping services, and agreements for tournaments, banquets and other group functions), entered into during the Term shall be entered into by the Operator as the contracting party. The Operator shall not have any authority to enter into any equipment lease, financing agreement, contract or agreement that extends beyond the Term of this Agreement, that is not terminable on thirty (30) days or less notice, if the Operator defaults under the terms of this Agreement, or that is secured by all or any part of the Sports Center. All contracts entered into by the Operator regarding the Sports Center shall automatically expire on the Expiration Date.

6.14.8 Business Name. During the entire Term, the Operator shall conduct business in or on the Sports Center under the name "CP Event Center Operations, LLC."

6.15 **Non-Discrimination**. There shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the sale, agreement, transfer or use of the Sports Center, or by the Operator with respect to its employment practices in regards to the operating or maintaining the Sports Center and the Operator (or any Person claiming under or through the Operator) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Sports Center.

6.16 **Form of Non-discrimination and Non-segregation Clauses**. The Operator covenants and agrees for itself, its successors, its assigns, that the Operator, such successors and such assigns shall refrain from restricting the use of all or any part of the Sports Center on the basis of gender, race, color, religion, creed, ancestry or national origin of any Person. All agreements

or contracts pertaining to the Sports Center shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

6.16.1 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, gender, national origin, or ancestry, in the sale, agreement, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or agreement, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

6.17 **Acknowledgement of CDD.** The County acknowledges the formation and existence of Celebration Pointe Community Development District No. 1 (the "CDD"). The CDD was formed in accordance with Chapter 190, Florida Statutes, in coordination with the County, to provide financing for certain infrastructure improvements related to the Celebration Pointe project. The CDD has imposed and will impose upon lands located within its boundaries, including the Sports Center Site, certain special assessments to secure the repayment of the CDD's Special Assessment Revenue Bonds, Series 2014 and Special Assessment Revenue Bonds, Series 2017 (the "Outstanding CDD Bonds") and the 2021 Bonds (hereafter defined) the proceeds of which were used will be used to fund and the financing of such infrastructure improvements, including parking improvements. The special assessments related to the Outstanding CDD Bonds and the 2021 Bonds will be paid as a Sports Center Expenses. Other than special assessments to be levied by the CDD to secure the repayment of a proposed series of Special Assessment Revenue Bonds, Series 2021 (the "2021 Bonds") the proceeds of which will be used to finance certain structured parking improvements related to the Sports Center, the parties acknowledge that no other special assessment will be levied on the Sports Center Site.

In addition to the special assessments for the Outstanding CDD Bonds and the 2021 Bonds, the developer of the Celebration Pointe project has imposed public user fees that will be charged to and collected from customers on all sales of goods and services, in the same manner as provided under Florida sales and use tax laws (presently codified in Chapter 212, Florida Statutes, and all regulations promulgated pursuant thereto, as both may be amended from time to time), at a rate not to exceed one percent (1%) of such sales (the "Public User Fees") throughout the Term of this Agreement. Operator agrees to charge the Public User Fees to its customers at the time of each sale and to remit the collected Public User Fees to the developer's collecting agent. The Public User Fees collected by the Operator shall be reported and remitted in the same form and manner and on the same schedule as the Operator is required to use for the payment of sales and use tax as described herein.

ARTICLE VII OPERATOR FISCAL RESPONSIBILITIES; COMPENSATION; SPORTS CENTER REVENUE ALLOCATIONS

7.1 **Annual Budget.** The Operator shall prepare at least annually a separate capital budget and operating budget (together the "Annual Budget") for the current or next Operating Year of operation of the Sports Center, and on or before July 1st of each Operating Year and shall submit

to the County Administrator for approval such Annual Budget for the next succeeding year, such approval not to be unreasonably conditioned or withheld. Each Annual Budget shall include line items for (i) proposed schedule of rates and other projected Sports Center Gross Revenues; (ii) proposed Sports Center Expenses (excluding Capital Expense Advances); (iii) proposed use of amounts on deposit in the R&R Fund, if applicable or the Surplus Fund; (iv) management fees for the Operator and any Manager; (v) any proposed Capital Expense Advances; (vi) any proposed funding of FF&E, (vii) a proposed marketing plan for the Sports Center and the proposed costs of marketing and advertising, and (viii) any proposed changes in the Parking Fees to pay for normal increases for operating or maintenance of the parking improvements. In addition, the Operator shall provide the County an updated rolling five (5) year Pro Forma to be submitted with the Annual Budget. The first year of the updated Pro Forma will match the submitted Annual Budget. The Operator shall provide the County with the data and information utilized in preparing the Annual Budget or any revisions thereto upon request. Once approved by the County Administrator, the Annual Budget may be amended from time to time with the approval of both the Operator and the County Administrator. The Operator agrees to operate the Sports Center in accordance with the Annual Budget. In the event Sports Center Gross Revenues received by the Operator in any Operating Year together with amounts on deposit and available in the R&R Fund and the Operating Reserve Fund are less than Sport Center Expenses, capital expenditures and funding of the deposits to the R&R Fund and the Operating Reserve Fund the Operator shall be obligated to advance such funds and be reimbursed at such time as Sports Center Gross Revenues are sufficient as provided in this Agreement.

7.2 Capital Improvement Plan. The Operator will develop a capital repair and replacement plan, budget and schedule on a rolling five year basis 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. In order to assure funding to perform all capital assets repair and replacement work, the Operator shall on an annual basis deposit funds into the R&R Fund to be utilized solely to fund such work. Funding of the reserve 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 Sports Center 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 Sports Center Gross Revenues (less any parking fee income) into the R&R Fund for the Sports Center. During the term of this Agreement, deposits into the R&R Fund 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.

7.3 Operator Compensation. Subject to the Operator's satisfaction of its obligation to pay all Sports Center Expenses, and to perform all other obligations of the Operator under this Agreement, as part of the compensation for performing such obligations, the Operator may receive and retain for its own benefit the following:

1. 25% of the amount of the Surplus Funds generated from the immediately previous Operating Year between \$0.00 and \$150,000.00, plus

2. 50% of the amount of the Surplus Funds generated from the immediately preceding Operating Year above \$150,000.00; provided, however, if there is on deposit at least \$1,000,000 in the Surplus Fund on the last day of the Operating Year the amount to be transferred to the Operator shall be increased to 75% of amount of the Surplus Funds generated from the immediately preceding Operating Year above \$150,000.00.

The Operator acknowledges and agrees that the rights of the Operator under this Agreement are valid and sufficient consideration to the Operator for the undertaking of the Operator's obligations under this Agreement, whether or not there are sufficient Sport Center Gross Revenues to pay all amounts due under this Agreement.

As compensation for the performance of asset management services described in Exhibit "D" hereto provided by Operator under this Agreement, Operator shall be entitled to receive, and shall be paid out of Sports Center Gross Revenues, an amount equal to two percent (2.0%) of Sports Center Gross Revenues as is available according to the priorities established in Section 6.6.2. Any management incentive or performance bonuses agreed to between the Operator and Manager will be supplied by the Operator, from the Operators compensation generated in 1 and 2 above in this Section 7.3.

7.4 Key Performance Indicators. The performance of the Operator will be evaluated using the metrics described in this Section 7.4. Key performance indicators and measures of the quality of performance of the required services will include levels of Sports Center occupancy, tourist room night generation, and Sports Center physical condition and maintenance.

(a) Sports Center Performance. Key performance indicators ("KPIs") are described in **Exhibit F** attached hereto that have been developed on a rolling five (5) year basis corresponding to the Operating Year submitted with the Annual Budget. The Parties may revise or amend the key performance indicators from time to time without amending this Agreement. Measurement of compliance with the four KPIs set forth in **Exhibit "G"** shall be done on an annual basis. No payment of the performance compensation provided for in Section 7.3 shall be made if the total average score in any Annual Period is below 1.99. If the criteria is met or exceeded a score of 1 shall be assigned.

(b) APPA Facility Condition Score. The County shall from time to time review and approve (a) an independent third party facility condition inspection firm (the "Inspector") to inspect and evaluate the physical condition of the Sports Center following forty eight (48) hours prior written notice to the Operator and on a basis that is no less frequently than semi-annually (the "Periodic Inspection"); (b) the form and content of an inspection form, and accompanying evaluation guidelines, to be used by the Inspector for the Periodic Inspection (each such form, together with any accompanying evaluation guidelines, a "Project Inspection Evaluation Form"); and (c) the particular timing of the Periodic Inspection. The Project Inspection Evaluation Form shall require that each Sports Center's condition be scored according to the APPA Facilities Maintenance Performance Indicators. In the event the Sports Center is found to meet APPA Level 1 standards the Inspector will assign a score of 3, if the Sports Center is found to meet APPA Level 2 standards the Inspector will assign a score of 2, if the Sports Center is found to meet APPA Level 3 standards or below the Inspector will assign a score of 0. The Project Inspection Evaluation Form shall not require the Inspector to assign only whole number scores, but will also allow the Inspector to exercise its discretion, subject in all respects to the guidelines and parameters set forth in the Project Inspection Evaluation Form, to assign scores that fall in between such numbers; for

example, 2.5, 2.75, and so forth. The Operator shall coordinate and facilitate the Periodic Inspection, and representatives of the County and the Operator shall each be entitled to accompany the Inspector on the Periodic Inspection. The scores of the Project Inspection Evaluation Form for the Sports Center, as well as any narrative feedback provided by the Inspector, shall be tallied, averaged and disclosed to the Operator so as to provide the Operator with constructive feedback for the future improvement of its maintenance and repair services. The Operator shall provide the County prior to the next Periodic Inspection a report detailing how the Operator addressed any deficiencies described in the preceding inspection report. The Operator may include any Operator's agent (such as the Manager) in the inspections if the Operator desires.

(c) **Performance Standard.** The County shall track and document the points awarded for the Operator's performance based on the points scoring system described in **Exhibit "H"**. The Parties may revise or amend the point scoring system from time to time without amending this Agreement. In the event the Operator achieves a total point score below 1.99 for two consecutive operating years, then the County shall cause Operator to present to the County a corrective action plan to remediate the deficiencies in Operator's performance. If after two subsequent, consecutive Operating Years Operator performance reviews do not result in a total score of at least 2.25 for each Operating Year then the County may terminate this Agreement; provided, however, no termination of the Operator shall occur without at least one additional meeting between County and Operator to address the performance reviews and corrective action. If this Agreement is terminated pursuant to this Section 7.4 the Operator, Viking and CP Holdings shall be released from all other obligations under all agreements with County and the County shall not be obligated to repay any outstanding Capital Advances or Operating Expenses Advances to the Operator.

ARTICLE VIII

SPORTS CENTER EXPENSES

8.1 **Operator to Pay All Sports Center Expenses.** Operator shall pay all Sports Center Expenses, regardless of the amount of Sports Center Gross Revenues or whether or not there are any Sports Center Gross Revenues at all. Except where this Agreement provides otherwise, the Operator shall pay all Sports Center Expenses within thirty (30) days or other reasonable deferral period after receipt of an invoice and, if appropriate, receipt of reasonable backup documentation. The Operator shall pay and discharge, before failure to pay creates a risk of forfeiture or penalty, each and every item of expense, of every kind and nature whatsoever, related to or arising from the Sports Center, or by reason of or in any manner connected with or arising from the operation, management, maintenance, repair, use or any other matter affecting the Sports Center attributable to or incurred during the Term of this Agreement. Amounts advanced by Operator to fund Capital Expense Advances shall bear interest at an annual rate of interest equal to 5.0 percent.

8.2 **Pre-Opening Expenses and Operating Losses.** The Operator acknowledges that it will be responsible for the initial capitalization of the Operator's business operations at the Sports Center and will be responsible for start-up expenses in connection with such business operations, including, without limitation, hiring and training of employees, acquisition of inventory and pre-opening marketing expenses, without any reimbursement or contribution from the County. The Operator further acknowledges and agrees that it will be responsible for operating losses or deficits arising in its operation of the Sports Center and the performance of Asset Management Services and that any such losses or deficits shall not abate any obligations of the Operator under this Agreement.

8.3 **Utilities.** The Operator shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, internet, cable or satellite television and other utility charges, and the expenses of installation (including impact fees and initial hook-up costs after initial construction of the Sports Center in accordance with the Sports Center Plans and Specifications), maintenance, use, and service in connection with the foregoing, for the Sports Center.

8.4 **Taxes.** The Operator shall pay and discharge all other Taxes payable or accruing for all period(s) within the Term. The Operator shall also pay all interest and penalties any Government assesses for late payment of any Taxes.

8.5 **Assessments in Installments.** To the extent the Law allows, the Operator may apply to have any assessment payable in installments. Upon approval of such application, the Operator shall pay and discharge only such installments as are attributable to the Term of this Agreement.

8.6 **Direct Payment by the County.** If any Sports Center Expenses must be paid directly by the County, then: (a) the County appoints the Operator as the County's attorney-in-fact to make such payment; and (b) if the payee nevertheless refuses to accept payment from the Operator, then the Operator shall Notify the County and shall pay such amount to the County in a timely manner with reasonable instructions on remittance of such payment. In such event, the County shall with reasonable promptness comply with the Operator's reasonable instructions.

ARTICLE IX RECORDS, REPORTS AND AUDITS

9.1 **Sales Recording and Records.** The Operator shall record at the time of sale, in the presence of the customer, receipts from sales or other transactions, whether cash or credit, in a cash register or registers, or a point of sale terminal or terminals, or device meeting same objective that accumulates and consecutively numbers all transactions. A receipt or record from any transaction showing the correct amount of purchase shall be made at the time of any transaction, including any cash sale. Transactions not ordinarily recorded in a cash register or point of sale terminal shall be noted on and kept in a ledger format. The Operator shall keep:

9.1.1 full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits and withdrawals of Sports Center Gross Revenues;

9.1.2 develop written policies and controls over receipts to ensure complete and intact deposit of funds and ensure proper accountability of Gross Revenues

9.1.3 all cash register or point of sale terminal records with regard to the Sports Center Gross Revenues, credits, refunds and other pertinent transactions made from or regarding the Sports Center; and

9.1.4 detailed original records of any Sports Center Gross Revenues Exclusions.

9.2 Monthly and Annual Gross Revenues and Expense Statements.

9.2.1 Monthly Gross Revenues and Expense Statement. Within twenty (20) calendar days after the end of each month during the Term, the Operator shall furnish the County with a Monthly Gross Revenues and Expense Statement showing Sports Center Gross Revenues and Expenses and Sports Center Gross Revenues Exclusions for the just concluded month on a modified cash accrual basis that has been agreed by the Parties. Such statements shall present fairly the

financial position(Balance Sheet) and results of the operations (Profit/Loss Statement) of the Sports Center and shall be reasonably detailed, including cash flow statements, cash balances, reserve account balances and statements, operating results, supporting schedules of revenues and expenditures, a balance sheet showing Operator's cash position at the end of such month and a budget reconciliation statement and an explanation of the basis for any material deviation from the Annual Budget and Operator's plan to address such circumstance. These Statements shall be prepared by Operator's Controller, Finance Director, Chief Financial Officer or similar person and signed by an authorized officer of the Operator. The Monthly Statements will include distinctively all flow of funds outlined in Section 6.6.2 (i) through (iii).

9.2.2 Annual Gross Revenues and Expense Statement. Within sixty (60) calendar days after the end of each Operating Year, including the Operating Year ending in the month in which the Term ends, the Operator shall furnish the County with an Annual Gross Revenues and Expense Statement and Balance Sheet for the just concluded Operating Year in the same manner and format as required on the monthly report, except the reports will be expanded to include all items listed in 6.6.2 and 7.3, prepared by Operator's Controller, Finance Director, or Chief Financial Officer and signed by an authorized officer of the Operator.

9.2.3 Accounting and Bookkeeping. The Operator agrees to maintain separate accounting and bookkeeping records for the operations of the Sports Center pursuant to this Agreement and to utilize generally accepted accounting principles and practices in such accounting records. The Operator shall, at reasonable times and upon request, permit the County's auditors to inspect, examine and copy any and all of the Operator's books, papers, reports, correspondence, sales tax returns, federal and state tax returns memoranda, cash register records and other records of the Operator which are pertinent to this Agreement. The Operator shall perform a physical inventory of FF&E items with a value over \$1,000 on an annual basis and shall provide the County a copy of same upon completion.

9.3 **Audit and Examination Rights.** The County shall have the right to cause the Operator to have an audit of the books and records of the Sports Center by a firm of certified public accountants licensed to practice in Florida, which audit shall be certified as to the fairness of the presentation of such financial statements and the notes attached thereto. Said Firm shall be selected by the County. The expense of the audit shall be paid by the County. The Operator shall instruct the firm to respond to any inquiry concerning the financial statements made by the County.

9.4 **Retention of Books and Records.** The Operator and its Affiliates shall, for a period of seven (7) years following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required to be maintained by such Persons regarding the Sports Center pursuant to this Agreement, and shall from time to time, upon request, make these records available to the County, the County's auditor, representative or agent for examination at any reasonable time, on ten (10) Business Days advance written notice. The County shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, licenses and concession agreements. In addition, on request of the County or the County's representative, the Operator shall furnish copies of the Operator's State and local sales and use tax returns and federal and state income tax return.

ARTICLE X COMPLIANCE

10.1 **Generally.** The Operator shall during the Term, at the Operator's sole expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

10.2 **Copies of Notices.** The County shall promptly give the Operator a copy of any notice of any kind regarding the Sports Center or any Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that the County receives from any Government, utility company, insurance carrier or insurance rating bureau.

ARTICLE XI NO ALTERATIONS TO SPORTS CENTER.

11.1 **Alterations, Renovations and Additions.** The Operator shall not make or allow any alteration, Renovation, demolition or addition to or of the Sports Center, except interior, non-structural alterations costing less than One Hundred Thousand Dollars (\$100,000) in any one instance or as specifically required by this Agreement regarding Restoration or Maintenance and Repair Services.

11.2 **Removal of Property from Premises.** The Operator shall not, without the advance written approval of the County, remove from the Sports Center, or permit the removal of, any equipment, furnishings and other property of the County. If at any time the County supplies the Operator with labels, plates, or other markings identifying equipment, furnishings and other property of the County, the Operator shall affix and keep the same in a prominent place on such equipment, furnishings and other property. The Operator shall not install, alter or remove any fixtures, partitions, equipment, furnishings or other property where to do so will deface, injure or damage the floors, walls, ceilings, sidewalks, court surfaces, or roadways of the Sports Center, and shall not cause any structural alteration or addition or other substantial physical change in the Sports Center, without in each case having obtained the advance written approval of the County.

ARTICLE XII PROHIBITED LIENS

12.1 **Operator's Covenant.** If a Prohibited Lien is filed, then the Operator shall, within fifteen (15) Business Days after receiving Notice of such filing, cause such Prohibited Lien to be released. If the County receives notice of any such filing, then the County shall promptly Notify the Operator. Failure to secure the release of the Prohibited Lien shall constitute an Event of Default as provided under Section 23 of this Agreement.

12.2 **Protection of the County.** NOTICE IS HEREBY GIVEN THAT THE COUNTY SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE OPERATOR UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE OR THE SPORTS CENTER. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE THE COUNTY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT, NOR AS GIVING THE OPERATOR ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT THAT WOULD

GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE AND/OR THE SPORTS CENTER. THE OPERATOR SHALL INDEMNIFY THE COUNTY AGAINST ANY ACTION UNDERTAKEN BY THE OPERATOR OR ANYONE CLAIMING THROUGH THE OPERATOR, AND AGAINST ALL PROHIBITED LIENS, PURSUANT TO SECTIONS 21, 22 AND 23.

12.3 **Property Not Subject to Mechanic's Liens.** The Fee Estate and the County's Sports Center are owned by the County, which is a public entity, and as a result, no mechanic's liens for Operator's Sports Center can be legally imposed on the Fee Estate and/or the Sports Center. The Operator agrees to notify, in writing, each provider of labor, material or services on or to the Sports Center of such fact and that neither the County nor the Fee Estate and/or the Sports Center shall be responsible for payment of any lien claims by any such providers of labor, material or services. The County shall have the right at all reasonable times to post and keep posted on the Sports Center any notices that the County may deem necessary for the protection of the County or the Sports Center from mechanic's liens or other claims against the Fee Estate and/or the Sports Center. The Operator shall give the County, at least, ten (10) Business Days prior written notice of the commencement of any work on the Sports Center with a reasonably anticipated cost exceeding Ten Thousand Dollars (\$10,000) and that could otherwise give rise to a mechanic's lien or other similar claim or lien, but for the County's ownership of the Fee Estate, to enable the County to post any notices that the County may deem necessary.

ARTICLE XIII HAZARDOUS SUBSTANCES

13.1 **Restrictions.** The Operator shall not cause or permit to occur on, under or at the Sports Center during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Sports Center of any Hazardous Substance, unless both: (i) reasonably necessary and customary to operate and maintain the Sports Center for uses this Agreement permits and (ii) in compliance with all Environmental Law.

13.2 **Compliance; Clean-Up.** The Operator shall, at the Operator's sole expense: (a) comply with all Environmental Laws applicable to the Sports Center and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Law; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans; and (e) Indemnify the County against any Hazardous Substances Discharge or violation of Environmental Law, in accordance with Section 10. The Operator's obligations under this Section 13.02 shall not limit the Operator's rights against third Persons (exclusive of the County).

ARTICLE XIV COUNTY'S SPECIAL RIGHTS AND DUTIES

14.1 **Promotion By the County.** The Operator shall provide marketing information and material to the Alachua County Office of Tourism and the Gainesville Sports Commission, or such successor offices during the Term of the Agreement and the Operator acknowledges and agrees that the County may also include such information and material on its website and in such other

promotional material it prepares for the purpose of encouraging local tourism and other economic benefits for the County. The County shall promote the Sports Center and all related events through all means reasonably available including, but not limited to, its Internet site, the Gainesville Sports Commission, community mailings, pamphlets and brochures and standard directional signage. Nothing in this Section shall relieve the Operator from being primarily responsible for promoting and marketing the Sports Center Facility and from its obligation to secure revenue generating Sports Center Events. County agrees to use the entire name of Sports Center, in its title.

14.2 Public Events. The County shall have the right to use the Sports Center for County initiated Public Events that are scheduled with the prior approval of the Operator, in the Operator's reasonable discretion (each of which shall be considered a "Public Event"). The Sports Center shall be available for Public Events free of any facility rental or admission charge. The contractor operating the Concession Areas shall not charge more than its regular food and beverage prices than in effect, during any non-Public Event should the County request such food and beverage services. The County will be responsible for only those specific costs (such as the Operator's labor, trash removal, per diem utility costs, etc.) identified and agreed upon in advance. Prior to and immediately following each Public Event, County and Operator may at mutual agreement conduct a walk-through inspection. Any costs necessary to return Sports Center back to its pre-Public-Event state, including the repair or replacement of any damage to the facilities, FF&E, advertising, signage, etc. caused by the negligent action or omission of the County's officers, employees, agents, its invitees, or assigns during the use of the Sports Center for a Public Event will be paid by County to the extent caused by such negligent acts or omissions. The County will not be responsible for the costs of routine maintenance operations related to the County's use of the Sports Center for a Public Event. Public Events can be held at the Sports Center for up to five (5) total days that may or may not be contiguous, during the Sports Center's Operating Year; which events will be scheduled in coordination with the Operator and the County's Parks and Recreation Department (or such other person or County department designated in writing by the County Manager) for dates and/or times that do not conflict with a then scheduled revenue generating Sports Center Event. The Operator may request the County reschedule its Public Event at least six months prior to the date of the Public Event in the event the Operator has an opportunity to schedule a revenue generating Sports Event at the same time. Additional Public Events may also be scheduled upon the mutual agreement of the Parties.

ARTICLE XV INDEMNIFICATION; LIMIT ON LIABILITY OF COUNTY

15.1 Obligations. The Operator shall Indemnify the County against the following during the Term of the Agreement and so long as the Operator continues to operate or has personnel or personal property located at the Sports Center from and against any suits, actions, proceedings, investigations, damages, claims, liability, costs and expense, including reasonable attorneys' fees and costs, which may be threatened or asserted against, imposed upon or incurred by the County: (1) any Application made at the Operator's request; (2) use, occupancy, management or operation of the Sports Center; (3) any agreements that the Operator (or anyone claiming through the Operator) makes regarding the Sports Center; (4) the condition of the Sports Center; (5) any accident, injury or damage whatsoever caused to any Person in or on the Sports Center; (6) wrongful act, wrongful omission, or negligence of the Operator (and anyone claiming by or through the Operator) or its or their shareholders, directors, officers, partners, attorneys, agents or employees; (7) breach or default by the Operator under this Agreement; or (8) breach of

any representation or warranty the Operator makes in this Agreement. Notwithstanding anything to the contrary in this Agreement, the Operator shall not be required to Indemnify the County to the extent of the County's intentional acts or negligence or any material breach of this Agreement by the County. Nothing in this Article XV shall be construed as a waiver of the County's sovereign immunity or the limits of its liability under Section 768.28, Fla. Stat. (and as it may be amended from time to time).

15.2 Limitation on Liability of the County. During the Term of the Agreement and any Renewal Term hereof: (a) the Operator is and shall be responsible for operation of the Sports Center; and (b) the County shall not be liable for any injury or damage to any property (of the Operator or any other Person) or to any Person occurring on or about the Sports Center, except to the extent caused by the County's intentional or negligent act or omission. Provisions of this Agreement regarding the County's ownership of or access to the Sports Center shall not impose upon the County any liability to third Persons. Nothing in this Agreement shall be construed to exculpate, relieve, or Indemnify the County from or against any liability of the County to third Persons existing at or before the Effective Date; or arising from the County's wrongful intentional act or negligence.

15.3 Strict Liability. The indemnification obligations of the Operator shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees.

15.4 Independent of Insurance Obligations. The Operator's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Operator's insurance or other obligations under this Agreement and is independent of the Operator's insurance and other obligations under this Agreement. The Operator's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Operator's indemnification obligations under this Agreement and are independent of the Operator's indemnification and other obligations under this Agreement.

15.5 Survival of Indemnification and Defense Obligations. The indemnification and defense obligations under this Agreement shall survive the expiration or earlier termination of this Agreement, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, and absolutely and completely barred by the applicable statutes of limitations.

15.6 Independent Duty to Defend. The duty to defend under this Agreement is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnatee may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Indemnitor or the Indemnatee have been determined. The duty to defend applies immediately, regardless of whether the Indemnatee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnatee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnatee at any stage of any claim or suit within the scope of the Indemnitor's indemnity obligations under this Agreement.

ARTICLE XVI INSURANCE

16.1 Operator to Insure. Within ten (10) Business Days of the County's issuance of a Certificate of Occupancy for all or part of the Sports Center Improvements and before any beneficial use by the Operator occurs, unless specified earlier herein, the Operator shall, at its sole expense, during the Term, maintain the following insurance (or its then reasonably available equivalent):

Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage and a \$3,000,000 aggregate.

Liquor Liability insurance with a per occurrence limit of no less than \$1,000,000

Workers' Compensation insurance as required by the State of Florida, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

Professional Liability (Errors and Omissions) Insurance appropriate to the consultant's profession (e.g. engineers and architects), with limits no less than \$3,000,000 per occurrence or claim, \$3,000,000 aggregate.

Pollution Liability: Pollution insurance appropriate to the consultant's profession, with a limit no less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate.

Excess/Umbrella Liability attaching to General Liability, Automobile Liability, Employers Liability & Liquor Liability with a limit no less than \$5,000,000 per occurrence

If the Operator or its consultant's maintain broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Operator or its consultants or subcontractors. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

16.2 Policy Requirements and Endorsements. All insurance policies this Agreement requires shall contain (by endorsement or otherwise) the following provisions:

16.2.1 Additional Insured Status. The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Operator including materials, parts, or equipment furnished in connection with such work or operations. The CGL coverage can be provided in the form of an endorsement to the Operator's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

16.2.2 Primary Coverage. For any claims related to this Agreement, the Operator's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance

maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

16.2.3 **Contractual Liability.** Liability Insurance policies shall contain contractual liability coverage, for the Operator's indemnity obligations under this Agreement. The Operator's obtaining or failure to obtain such contractual liability coverage shall not relieve the Operator from nor satisfy any indemnity obligation of the Operator under this Agreement.

16.2.4 **Notice to the County.** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County. Each insurance carrier shall give the County no less than thirty (30) calendar days' advance written notice of any cancellation, non-renewal, material change in coverage or available limits of liability under any insurance policy required by this Agreement.

16.3 **Deliveries to the County.** Within ten (10) Business Days of the County's issuance of a Certificate of Occupancy for all or part of the Operator's Sports Center Improvements and before any beneficial use by the Operator occurs, unless specified earlier herein, and no later than twenty (20) Business Days before any Liability Insurance, Automobile Liability Insurance or Property Insurance expires, is cancelled or its liability limits are reduced or exhausted, the Operator shall deliver to the County certificates of insurance evidencing the Operator's maintenance of all Liability Insurance, Automobile Liability Insurance and Property Insurance this Agreement requires, in each case providing coverage for, at least, one (1) year from the date delivered. The County also reserves the right to request a copy of the policies required hereunder at any time during the Term of the Agreement.

16.4 **Waiver of Certain Claims.** Operator hereby grants to County a Waiver of Subrogation which any insurer of the Operator may acquire against the County by virtue of the payment of any loss under such insurance. The Operator agrees to obtain any endorsement that may be necessary to affect this Waiver of Subrogation, but this provision applies regardless of whether or not the County has received a Waiver of Subrogation endorsement from the insurer.

16.5 **No Representation.** Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

16.6 **Self-Insured Retentions.** Self-insured retentions must be declared to and approved by the County. The County may require the Operator to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County.

16.7 **Acceptability of Insurers.** Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the County.

16.8 **Claims Made Policies.** If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

16.9 Verification of Coverage.

The Operator shall furnish the County with original certificates of insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the declarations and endorsement page of the CGL policy listing all policy endorsements to the County before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Operator’s obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

16.10 Property Insurance.

The County will provide coverage for the Sports Center, all of the Sports Center Improvements, and all Building Equipment, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in Alachua County (except earthquake or war risk) from time to time during the Term, in an amount equal to 100% of the replacement value (without deduction for depreciation) of all of the Sports Center Improvements and all Building Equipment (excluding excavations and foundations) and in any event sufficient to avoid co-insurance, with “ordinance or law” coverage. Such insurance may contain a deductible clause not exceeding \$25,000 multiplied by the CPI Adjustment Factor. To the extent customary for like properties in the County at the time, such insurance shall include coverage for hurricane with a Named Storm Deductible of no more than 2%; equipment breakdown; flood coverage of at least a minimum of \$5,000,000; and coverage for terrorism. Property Insurance shall also include business interruption/extra expense insurance in an amount at least equal to one (1) year of the annual operating costs of the Sports Center and providing for a 12-month extended period of indemnity. The County shall provide the annual premium to the Operator for inclusion in the Annual Budget. The Operator shall treat the premium or premiums for the insurance provided by the County as Sport Center Expenses. The County shall provide Operator an invoice at least once a year to pay the premium as it becomes due.

ARTICLE XVII LOSSES AND LOSS PROCEEDS

17.1 **Notice.** If either Party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such Party shall promptly Notify the other.

17.2 **Effect of Casualty.** If any Casualty occurs, then: (a) the Operator’s obligation to make any payments under this Agreement shall not abate; (b) this Agreement shall not terminate or be impaired; and (c) the Operator shall Restore with reasonable promptness regardless of cost. If, however, the Casualty is a Substantial Casualty, then the Operator may, by Notice to the County, given within thirty (30) days after the occurrence of the Casualty, terminate this Agreement effective ninety (90) days after such Notice, provided that the Operator assigns to the County all

of the Operator's right, title and interest in and to any Property Insurance Proceeds (and rights thereto) arising from the Casualty.

17.3 **Obligation to Restore.** If the Operator does not timely elect to terminate this Agreement or is required to Restore the Sports Center pursuant to this Agreement, the Operator shall immediately deposit with the County either an amount equal to the deficiency in insurance proceeds actually available for Restoration and the cost of Restoration, or security reasonably satisfactory to the County for such deficiency and shall, as soon as is reasonable under the circumstances, commence and continue thereafter diligently and without interruption, at the Operator's sole cost and expense (but the Operator may use any available insurance proceeds), Restore and repair the Sports Center Improvements as nearly as possible to the condition they were in immediately prior to such damage or destruction, or with such changes or alterations as may be made in conformity with the provisions of this Agreement relating to changes or alterations of the Sports Center.

17.4 **Substantial Condemnation.** If a Substantial Condemnation occurs, then this Agreement (except as it relates to allocation of the Condemnation Award and other matters surviving termination of this Agreement) shall terminate on the Condemnation Effective Date. The Condemnation Award shall be the sole and exclusive property of the County, except the portion of any such award applicable to personal property of the Operator, if any.

17.5 **Insubstantial Condemnation.** If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to the County to be applied first for Restoration in the same manner as Property Insurance Proceeds. The Operator shall Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be applied in the same manner as a Condemnation Award from an Immaterial Loss.

17.6 **Temporary Condemnation.** If a Temporary Condemnation relates to a period longer than ninety (90) days and more than forty percent (40%) of the Sports Center, then the Operator may, by Notice within sixty (60) days after notice of such Temporary Condemnation, terminate this Agreement effective on the Condemnation Effective Date. If the Temporary Condemnation relates to a shorter period, or if the Operator does not terminate this Agreement, then the Operator shall receive any Condemnation Award (to the extent compensating for periods within the Term) for use for Restoration, without affecting the Operator's obligations under this Agreement in any way.

17.7 **Immaterial Loss.** If an Immaterial Loss occurs, then the Operator shall receive any Condemnation Award in trust to be applied first to Restoration. The Operator shall Restore in accordance with this Agreement. After Restoration, the remaining proceeds will go to the Party who financed the Sports Center Improvement restored.

17.8 **Voluntary Conveyance Under Threat of Condemnation.** A voluntary conveyance by the County of title to all or a part of the Sports Center to a public or quasi-public agency or entity in lieu of and under threat by that agency or entity to take such property by eminent domain proceedings shall be considered a Condemnation of the subject part of the Sports Center, for the purposes of this Agreement.

17.9 **Rights and Obligations Governed by Agreement.** If during the Term there is any taking of all or any part of the Sports Center or any interest in this Agreement by

Condemnation, the rights and obligations of the Parties shall be determined pursuant to this Section.

ARTICLE XVIII OPERATOR'S REPRESENTATIONS AND WARRANTIES.

The Operator represents and warrants to the County that the following facts and conditions exist and are true as of the Effective Date.

18.1 **No Litigation.** There is no existing or, to the Operator's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the Operator, any holder of an Equity Interest in the Operator or any Affiliate that would, if adversely determined, materially adversely affect the Operator, this Agreement or the Operator's ability to perform its obligations under this Agreement.

18.2 **Ownership of Equity Interests in the Operator.** On or before the Commencement Date, the Operator must identify to the County one hundred (100) percent of the Equity Interests in the Operator which are owned and held, beneficially and of record, by name and percentage held.

ARTICLE XIX COUNTY TRANSFERS

19.1 **County's Right to Convey.** The County may Transfer the Fee Estate from time to time, but only if the County promptly Notifies the Operator of such Transfer.

19.2 **Release of the County.** Upon any Transfer of the entire Fee Estate in compliance with this Agreement, the County shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by the County after the Transfer, provided that the successor to the County assumes the County's future obligations and remains liable under all of the terms and conditions of this Agreement, subject to the provisions of Article XV.

ARTICLE XX RESERVED

ARTICLE XXI RESERVED

ARTICLE XXII NO PROPERTY ESTATE OR INTEREST CONVEYED.

Notwithstanding any provision of this Agreement, the Parties do not intend to convey any interest or estate in real or personal property between them and nothing in this Agreement shall be construed or interpreted as a grant of any interest or estate in any property before the Expiration Date.

ARTICLE XXIII EVENTS OF DEFAULT; REMEDIES

23.1 **Definition of "Event of Default"**. An "Event of Default" means the occurrence of any one or more of the following:

23.1.1 Monetary Default. If a Monetary Default occurs and continues for thirty (30) days after Notice from the County, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

23.1.2 Prohibited Liens. If the Operator fails to cause any Prohibited Lien to be released within thirty (30) days after Notice from the County of such lien.

23.1.3 Financial Statements. If the Operator fails to deliver any Annual Gross Revenues and Expense Statement or Quarterly Gross Revenues and Expense Statement as and when required in Section 9.02 after thirty (30) calendar day's Notice of such failure.

23.1.4 Bankruptcy or Insolvency. If the Operator ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Operator's assets or the Operator's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within sixty (60) calendar days).

23.1.5 Non-Monetary Default. If any Non-Monetary Default, other than a failure to meet the requirements of Section 7.4, occurs and the Operator does not cure such Non-Monetary Default within thirty (30) calendar days after Notice from the County describing the Default in reasonable detail, or, in the case of a Non-Monetary Default that cannot with reasonable due diligence be cured within thirty (30) calendar days from such Notice, if the Operator shall not vacate the Sports Center within thirty (30) calendar days after the County's Notice.

23.2 **Remedies.** If an Event of Default occurs, then the County shall, at the County's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at Law or in equity or under any other terms of this Agreement, including Section 7.4. The County's remedies shall include:

23.2.1 Termination of the Operator's Rights. The County may terminate this Agreement by written Notice of termination of this Agreement to the Operator or by any other lawful means, in which case this Agreement and the Term shall terminate, such Termination Date shall be considered the Expiration Date of the Agreement, and the Operator shall immediately vacate the Sports Center. The County shall be under no obligation to pay any outstanding Capital Expense Advances or Operating Expense Advances upon termination of this Agreement pursuant to Article XXIII.

23.2.2 Suits Before Expiration Date. The County may sue the Operator for damages or to recover monetary amounts due, from time to time, at the County's election, without terminating this Agreement.

23.2.3 Receipt of Moneys. No receipt of money by the County from the Operator after the Expiration Date, or after the giving of any Notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any Notice previously given to the Operator, or waive the County's right to enforce payment of any amount payable or later falling due, or the County's right to enter the Sports Center, except as this Agreement expressly states otherwise, it being agreed that after service of Notice of termination of this Agreement or the commencement of

suit or proceedings, or after final order or judgment, the County may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use of the Sports Center or, at the County's election, on account of the Operator's liability to the County.

23.2.4 **No Waiver.** No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by the Operator, and no Default, shall be Modified, except by a written instrument executed by the County. No waiver of any Default shall Modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

23.2.5 **Damages.** The County may recover from the Operator damages the County incurs by reason of the Operator's Default. The County may recover such damages at any time after the Operator's Default.

23.2.6 **Injunction for Breaches.** Whether or not an Event of Default has occurred, the County may obtain a court order enjoining the Operator from continuing any Default or from committing any threatened Default. The Operator specifically and expressly acknowledges that damages would not constitute an adequate remedy to the County for any Non-Monetary Default.

23.2.7 **Continue Agreement.** The County may, at the County's sole option, allow the Operator to continue operating the Sports Center after an Event of Default. In that case, this Agreement shall continue and the County may continue to enforce it.

23.2.8 **Restoration Funds.** Upon any termination of this Agreement, to the extent that the County then holds any Restoration Funds, they shall be the sole property of the County and may be applied solely as the County directs.

23.3 **County's Right to Cure.** The County, without waiving or releasing the Operator from any obligation or Default and without waiving the County's right to take such action as this Agreement may permit as a result of such Default, may (but need not) make any payment or take any action on behalf of the Operator to cure any Default of the Operator.

23.4 **Survival.** No expiration or termination of this Agreement and no entry into or onto the Sports Center by the County after such expiration or termination shall relieve the Operator of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

ARTICLE XXIV DISPUTE RESOLUTION

24.1 **Mediation.** As a condition precedent to filing any action in law or equity on any claim against the County that may be arise out of this Agreement or the subject thereof, the Operator agrees to provide advance notice to the County of its intent to file a lawsuit or other action against the County. Each of the other parties further agrees to submit the dispute in good faith to non-binding mediation before a single mediator, pending completion of which any lawsuit or other action that may have been filed by or on behalf of, either Party shall be tolled. The costs for such mediation shall be equally split between the Parties.

(a) Venue for Mediation. The mediation shall be conducted in Alachua County, Gainesville, Florida, or at such other convenient location agreed upon by Alachua County and the Operator.

(b) Selection of Mediator. The mediator shall be selected from the official list of certified mediators maintained by the Circuit Court, in and for Alachua County, Florida, unless otherwise mutually agreed upon by the Parties. Said mediator shall possess a minimum of ten (10) years of experience in handling commercial transactions and litigation.

(c) Rules and Administration. Unless otherwise contrary to this Agreement, to any subsequent written expression of mutual intent executed by the parties, or to any provision of the law, the mediation shall be administered by the rules of the American Arbitration Association.

ARTICLE XXV END OF TERM.

25.1 Upon any Expiration or Termination Date. Upon any Expiration or Termination Date, the Operator shall be obligated to perform as follows: (a) the Operator shall vacate the Sports Center (including removal of all of the Operator's personnel and property), and leave it in the condition this Agreement requires, subject to any Loss that this Agreement does not require the Operator to Restore; (b) the Operator shall deliver the Sports Center free and clear of all claims, except claims that the County or any of its agents caused; (c) the Operator shall assign to the County, without recourse, and give the County copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Sports Center; (d) the Parties shall cooperate to achieve an orderly transition of operation of the Sports Center from the Operator to the County or a designee of the County, without interruption, including delivery of such books and records (or copies thereof) as the County reasonably requires; and (e) the Parties shall adjust for all other expenses and income of the Sports Center and shall make such payments as shall be appropriate on account of such adjustment (but any sums otherwise payable to the Operator shall first be applied to cure any Default). This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third Person (excepting permitted successors or assigns of the Operator or the County pursuant to the terms of this Agreement) any right to claim damages or to bring any suit, action or other proceeding against either the County or the Operator because of any breach of this Agreement or to enforce any term, covenant, condition, restriction, reservation, provision or agreement contained in this Agreement.

ARTICLE XXVI NOTICES

All Notices shall be in writing and addressed to the County or the Operator (and their designated copy recipients) as set forth in Exhibit "B". Notices (including any required copies) shall be delivered personally or by Federal Express, United Parcel Service or other nationally recognized overnight (one-night) courier service to the addresses set forth in Exhibit "B", in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Either Party may change its address for delivery of Notices by written Notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Any Party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of their client.

ARTICLE XXVII NO BROKER

Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such Party; and (b) shall Indemnify the other Party against any breach of such representation.

ARTICLE XXVIII NONRECOURSE

Notwithstanding anything to the contrary in this Agreement, the liability under this Agreement of the County for damages or otherwise, shall only be enforceable against, and shall not extend beyond, the County's interest in this Agreement.

ARTICLE XXIX NO INTENDED THIRD PARTY BENEFICIARIES

This Agreement shall bind and benefit the County and the Operator and their successors and assigns, but this Section 29 shall not limit or supersede any Transfer restrictions contained in this Agreement. Nothing in this Agreement is intended to confer on any Person (except the County and the Operator or the Operator's approved successor or assign) any right to insist upon, or to enforce against the County or the Operator, the performance or observance by either Party of its rights or obligations under this Agreement.

ARTICLE XXX MISCELLANEOUS

30.1 **Further Assurances.** Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the Parties' intent in entering into this Agreement.

30.2 **No Waiver by Silence.** Failure of either Party to complain of any act or omission on the part of the other Party shall not be deemed a waiver by the noncomplaining Party of any of its rights under this Agreement. No waiver by either Party at any time, express or implied, of any breach of this Agreement shall waive the same such breach at another time or any other breach.

30.3 **Performance Under Protest.** If a dispute arises about performance of any obligation under this Agreement, the Party against which such obligation is asserted shall have the right to perform such obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to determine the Parties' rights and obligations regarding such performance and, if appropriate, to recover any amount paid or the reasonable cost of otherwise complying with any such obligation.

30.4 **Survival.** All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination.

30.5 **Unavoidable Delay.** Each Party's obligation to perform or observe any nonmonetary obligation under this Agreement shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay. Any Party claiming Unavoidable Delay shall Notify the other Party: (a) within ten (10) Business Days after such Party knows of any such Unavoidable Delay; and (b) within ten (10) Business Days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the

Unavoidable Delay in reasonable detail. Where this Agreement states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

30.6 **County Contract Administration.** The County Manager shall administer this Agreement on behalf of the County. The County Manager may designate in writing any member or members of the County staff to carry out such responsibilities. The County may revoke the authorization provided to the County Manager or his designee in this Section, at any time, by Notice of such revocation to the Operator.

ARTICLE XXXI

INTERPRETATION, EXECUTION, AND APPLICATION OF AGREEMENT

31.1 **Recitals.** The recitals are incorporated herein as true and correct and made part of this Agreement.

31.2 **Captions.** The captions of this Agreement are for convenience and reference only and in no way affect this Agreement.

31.3 **Counterparts.** This Agreement may be executed in counterpart originals, each of which shall constitute an original of this Agreement and that, collectively, shall constitute one and the same agreement.

31.4 **Entire Agreement.** This Agreement contains all of the terms, covenants, conditions and agreements between the Parties regarding the Sports Center. The Parties have no other understandings or agreements, oral or written, about the Sports Center.

31.5 **Modification.** Any modification to this Agreement must be evidenced by a writing agreed upon and executed by both the County and the Operator to be binding on either Party.

31.6 **Governing Law and Venue.** This Agreement, its interpretation and performance, the relationship between the Parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Florida, without regard to principles of conflicts of laws. Venue for any action brought under this Agreement or with respect to any claim arising from the subject matter thereof shall be brought and heard in a State Court of Florida of competent jurisdiction governing Alachua County, Florida. If the claim(s) that form the basis of any such action must be adjudicated in federal court, then venue for that action shall be in the United States District Court for the Northern District of Florida.

31.7 **Partial Invalidity/Severability.** If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Agreement shall be valid and be enforced to the fullest extent Law allows.

31.8 **Principles of Interpretation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles

of English grammar, which also govern all other language in this Agreement. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Each of the following terms shall be interpreted as if followed by the words “(or any part of it),” except where the context clearly requires otherwise: Building Equipment; FF&E; Fee Estate; Sports Center; and any other similar collective noun. Every reference to any document, including this Agreement, refers to such document as Modified from time to time (except, at the County’s option, any Modification that violates this Agreement), and includes all exhibits, schedules, and riders to such document. The word “or” includes the word “and.”

31.9 **Reasonableness.** Wherever this Agreement states that a Party’s approval shall be “reasonable” or “not unreasonably withheld”: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

31.9.1 **Time of Essence.** Time is of the essence with respect to the performance of each term, provision, covenant or agreement contained in this Agreement.

31.9.2 **Independent Contractor/Disclaimer of Partnership.** The relationship of the Parties to this Agreement is that of the owner and third-party contractor, and it is expressly understood and agreed that the County does not, as a result of this Agreement, in any way, nor for any purpose, become a partner of or a joint venturer with the Operator in the conduct of the Operator's business or otherwise. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between the County and the Operator.

31.10 **Condition; Final Approval.** This Agreement is expressly conditioned upon and subject to the approval of the Alachua County Board of County Commissioners and shall not be or become effective or binding on either the County or the Operator, unless and until formally approved by the Alachua County Board of County Commissioners and fully executed by the authorized representative(s) of the County and the Operator who each represent by their signatures they have the required authority to bind their respective Party and satisfaction of the requirements of Section 1.40.

**SIGNATURE PAGE
TO
MAINTENANCE AND OPERATIONS AGREEMENT**

IN WITNESS WHEREOF, the County and the Operator have executed this Agreement as of the Effective Date.

ATTEST:

**COUNTY: ALACHUA COUNTY BOARD OF
COUNTY COMMISSIONERS**

(SEAL)

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DATE: _____

OPERATOR: TBD, LLC

WITNESSES:

By: _____
Name: _____
Title: _____

EXHIBIT “A”
SPORTS CENTER SITE AND LEGAL DESCRIPTION

**EXHIBIT “B”
NOTICE ADDRESSES**

Party:	Notice Address:	With a copy to:
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County		
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Operator		
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**EXHIBIT “C”
PROFORMA**

EXHIBIT “D”
ASSET MANAGEMENT SERVICES

EXHIBIT E
SPORTS CENTER MAINTENANCE STANDARDS

EXHIBIT F
PARKING MASTER DECLARATION

EXHIBIT G

KEY PERFORMANCE INDICATORS

Hotel Room Nights	Score
Operating Year Target met or exceeded	1.00
Room Nights less than target criteria by no more than 25%	0.75
Room Nights less than target criteria by no more than 50%	0.50
Room Nights less than target criteria by more than 50%	0.00
Annual Attendance	Score
Operating Year Target met or exceeded	1.00
Annual Attendance less than target criteria by no more than 25%	0.75
Annual Attendance less than target criteria by no more than 50%	0.50
Annual Attendance less than target criteria by more than 50%	0.00
Weekends Booked	Score
Operating Year Target met or exceeded	1.00
Number of Weekends Booked less than target criteria by no more than 25%	0.75
Number of Weekends Booked less than target criteria by no more than 50%	0.50
Number of Weekends Booked less than target criteria by more than 50%	0.00
Average APPA Facility Condition Score	Score
Less than or equal to 2	1.00
2.01 to 2.50	0.75
2.49 to 3.0	0.50
3.01 or Higher	0.00

EXHIBIT H

PERFORMANCE SCORECARD

Sports Event Center Key Performance Indicators

1. **Hotel rooms booked.** 6 year ramp-up to 117,000 annual room nights tracked and verified by participant surveys collected by the Operator and hotel reporting to the Operator.
 - Year 1 Annual room nights: 64,350 (55%)
 - Year 2 Annual room nights: 76,050 (65%)
 - Year 3 Annual room nights: 87,750 (75%)
 - Year 4 Annual room nights: 99,450 (85%)
 - Year 5 Annual room nights: 111,150 (95%)
 - Years 6-30 Annual room nights: 117,000 (100%)
2. **Annual attendance.** 5 year ramp up to attendance performance of 752,250.
 - Year 1 Attendance: 451,350 (60%)
 - Year 2 Attendance: 526,575 (70%)
 - Year 3 Attendance: 601,800 (80%)
 - Year 4 Attendance: 677,025 (90%)
 - Years 5-30 Annual Attendance: 752,250 (100%)
3. **35 weekends booked annually.**