



MULTI-PURPOSE SPORTS CENTER DEVELOPMENT AGREEMENT

CELEBRATION POINTE

GAINESVILLE, FLORIDA

_____, 2021

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EXHIBIT A-1	Legal Description of Land
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EXHIBIT B	Development Budget
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MULTI-USE SPORT CENTER DEVELOPMENT AGREEMENT

This Multi-Purpose Sports Center Development Agreement ("Agreement"), made effective the last date signed below by and between Alachua County, a charter county and political subdivision of the State of Florida ("County"), and Viking Companies LLC, a Florida limited liability company ("Developer"), each a "Party" and collectively the "Parties," sets forth the mutual understanding and agreement of the Parties concerning the final development and construction of the multi-purpose sports center at Celebration Pointe in Gainesville, Florida.

RECITALS

WHEREAS, on June 17, 2020, the Developer tendered an unsolicited proposal (the "Developer's Proposal") to collaborate with the County to design, develop, construct, equip, manage, and maintain a multi-purpose sports center (the "Sports Center") at Celebration Pointe on land currently owned by SDPS Real Estate Investment VI, LLC ("Landowner"), an affiliate of the Developer, which is more particularly described on the attached **Exhibit A**; and

WHEREAS, the Board of County Commissioners (the "BOCC") deemed the Developer's Proposal a qualifying project under section 255.065, Florida Statutes, deserving of further consideration as a potential public-private partnership; and

WHEREAS, the County intends the Sports Center to enhance opportunities to host both daily and overnight sport activities for the purpose of promoting and increasing tourism within the meaning of section 125.0104, Florida Statutes, throughout Alachua County, as well as creating the ancillary benefit of providing additional recreational resources for Alachua County residents; and

WHEREAS, the County determined that it is in the public's best interest to facilitate the development of the Sports Center and to consider entering into a comprehensive agreement with the Developer, or an affiliate, related to the design, construction, equipping, operations, maintenance and management of the Sports Center on the basis of the Developer's Proposal; and

WHEREAS, on January 26, 2021, the BOCC approved preliminary development terms outlined by the Parties; and

WHEREAS, effective March 23, 2021, the Parties entered into an interim pre-development agreement further specifying terms and outlining activities to establish a mutually acceptable financial model for development activities; and

WHEREAS, on State of Florida 2021 General Appropriations Act (chapter 2021-42, Laws of Florida), includes specific appropriation 2236A, which allocates \$2,320,000 to development of the Sports Center (identified as the North Central Florida Regional Sport Complex) via contract with the Florida Department of Economic Opportunity; and

WHEREAS, the Developer's pre-development activities included site due diligence, planning and design work, the outcome of which includes 90% construction plans and specifications for the Sports Center dated [REDACTED], 2021, which the County has reviewed and approved (the "Construction Plans and Specifications"); and

WHEREAS, based on the Construction Plans and Specifications, the Developer has developed a budget for construction of the Sports Center (the "Construction Budget"), attached hereto as Exhibit B; and

WHEREAS, the Developer is willing and able to undertake final development and construction of the Sports Center within the limits of the Construction Budget (the "Project"), in exchange for the County's contribution of no more than \$30 million and commitment to entering into the other agreements described herein concerning the operation and maintenance of the Sports Center; and

WHEREAS, the Developer is experienced in commercial real estate development, project management, and construction, and is highly incentivized to perform the Project in a professional and high quality manner, given its existing significant financial investment in Celebration Pointe and its future role in operation of the Sports Center.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is mutually agreed by and between the County and the Developer as follows:

ARTICLE I. DEFINITIONS AND INTERPRETATION

Section 101. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this **Error! Reference source not found.**01 or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

"Agreement"—This written instrument, executed by the County and the Developer, that identifies the parties, describes the Project, grants the concession, establishes obligations, sets forth various general terms and conditions, and designates the specific items that are Contract Documents.

"Access"—The rights that the County grants to the Developer in this Agreement, and related obligations; all as more specifically defined in Article III.

"Access Term"—The period of time in which the Access granted in this Agreement is in effect (see Article III).

"BOCC"—The County's Board of County Commissioners.

"Constituent of Concern"—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

"Contract"—The entire and integrated written contract between the County and the Developer concerning the Project.

"Contract Documents"—Those items so designated in this Agreement, and which together comprise the Contract.

"Construction Budget"—The Project budget based on the Construction Plans and Specifications (attached hereto as Exhibit B).

"Construction Plans and Specifications"—The approved plans and specifications for the Project dated , 2021.

"Constructor"—Any person or entity performing or supporting construction activities relating to the Project, including but not limited to the Developer and its contractors, subcontractors, suppliers, utility companies, Developers, testing firms, equipment rental companies, shippers, and truckers, and the employees, agents, and representatives of any or all of them.

"County"—Alachua County, Florida.

"County Funds"—The County's financial contribution to the Project, which shall not exceed the Funding Limitation.

"County's Licensed Professional"—The licensed professional performing review on behalf of the County in accordance with Section 255.065(3)(a)5., Florida Statutes.

"Day"—Calendar day, unless otherwise indicated as a business day, in which case the term means any day the County is open for business.

"Design and Construction"—The entire design and construction, or the various separately identifiable parts thereof, required to be provided by the Developer under the Contract. Design and Construction includes and is the result of performing or providing all professional services needed to produce the design; for the labor, services (including but not limited to professional services), and documentation necessary to produce the construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

"Designated Representative"—The individuals designated to act as the Parties' representatives with respect to the responsibilities under the Contract as described in Article XX.

"Developer"—Viking Companies LLC.

"Developer Funds"— The Developer's financial contribution to the Project, which shall be in the amount equal to the Project Budget minus the aggregate of the County Funds and the DEO Funds.

"DEO"—The State of Florida, Department of Economic Opportunity.

"DEO Funds"—The State of Florida's financial contribution to the Project in the amount of \$2,320,000, reflected in specific appropriation 2236A of 2021 General Appropriations Act, chapter 2021-42, Laws of Florida.

"Effective Date"—The effective date of this Agreement, which is the last date signed below.

"Final Completion"— The stage of the Project at which all Work has been fully performed in accordance with the Contract Documents, all other conditions precedent to final payment have been satisfied, the Developer and its Constructors have provided releases, and the Developer is entitled to final payment for its Work, subject to the Funding Limit.

"Financial Terms"—Those terms set forth in this Agreement (see Article IX) or elsewhere in the Contract concerning revenue, payments, financing, taxes, and similar matters.

"Funding Limitation"—The maximum amount of money that the County will contribute toward the Work under the Contract, which shall not exceed \$30 million.

"Landowner"—SDPS Real Estate Investment VI, LLC, the owner of the Site of the Project Facilities at the time the Developer submitted its Developer's Proposal.

"Laws and Regulations; Laws or Regulations"—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, permits, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, and any applicable consent decrees,

including the Florida Building Code (and incorporated codes), as amended or replaced, and including the terms of DEO funding.

"Management Agreement"—The agreement between the Operator and the Manager dated [REDACTED], 2021, governing management of the Sports Center following its construction by the Developer.

"Manager"—RaddSports, LLC.

"Milestone"—A principal event in the performance and progress of this Contract, which the Contract requires one of the parties to achieve, or which must occur or will occur, by a specific intermediate date, as expressly indicated in this Contract or subsequently determined by mutual agreement of the parties. A Milestone may be expressed by a calendar date or by a number of days from the Effective Date of the Contract or from some other specific time.

"Notice to Proceed"—The County's written notice to the Developer to proceed with construction of the Project Facilities in as provided in Section 503(b).

"Operating Agreement"—The agreement between the County and the Operator dated [REDACTED], 2021, governing operation of the Sports Center following its construction by the Developer.

"Operator"—CP Event Center Operations, LLC, an affiliate of the Developer.

"Pre-Development Agreement"—The agreement between the County and the Developer effective March 23, 2021, relative to the Sports Center, as amended.

"Project"—The various tasks and responsibilities that the Developer agrees to undertake under this Agreement in order to complete the Design and Construction of the Sports Center within the limits of the Construction Budget.

"Project Facilities"—The infrastructure and structures comprising the Sports Center as specified in the Construction Plans and Specifications.

"Project Requirements"—The detailed requirements that the Project must meet, as set forth in Article II.

"Relief Event"—An event or occurrence that takes place during the Access Term, and is the basis for an equitable adjustment in one or more Milestones; in the Access Term; in the Financial Terms; or in some combination of such provisions. In addition to the specific Relief Events identified as such in this Agreement, any event or occurrence that is beyond the contemplation or control of a party to this Contract, and fundamentally alters the Financial Terms, is a Relief Event.

"*Site*"—The lands or areas where construction of the Project Facilities is to be performed, including rights-of-way and easements, and such other lands as are designated for the use of the Developer (as described in more detail on Exhibit A attached hereto).

"*Sports Center*"—The multi-purpose sports center at Celebration Pointe, which comprise the Project Facilities.

"*Substantial Completion*"—The stage of the Project at which the County can occupy and use the Project Facilities for their intended purposes.

"*Term Sheet*"—The preliminary development terms outlined by the Parties and approved by the BOCC on January 26, 2021.

"*Work*"—The effort and activities of the Developer, including its Constructors and affiliates and other agents, necessary to complete the Design and Construction.

Section 102. Interpretation.

(a) This Agreement is part of the Contract that was initiated by Developer's Proposal. The Contract, and not only this Agreement, is intended to constitute a "comprehensive agreement" for purposes of Section 255.065, Florida Statutes. For purposes of this Agreement, the Project is limited to the final development and construction of the Sports Center. For purposes of the Contract, however, the Parties intend to address comprehensively the arrangement outlined in the Developer's Proposal, whereby the Developer will design, develop, construct, equip, manage, and maintain the Sports Center. Interpretation and application of this Agreement and of the Contract shall consider the Contract holistically and *in pari materia*, including this Agreement, the Operating Agreement, and the Management Agreement, striving to give reasonable meaning to each term and to avoid rendering any term a nullity. While not Contract Documents, the Term Sheet and the Pre-Development Agreement may also be considered as indicative of the Parties' intentions and purposes.

(b) It is the intent of the Contract Documents to describe a functionally complete project to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for in the Contract Documents. If the Contract Documents include words or terms that have a generally accepted technical or industry meaning, then such words or terms shall be interpreted to have such standard meaning unless otherwise expressly noted in the Contract Documents. Reference to standard specifications, manuals or codes of any technical society, organization or association or to the laws or regulations of any governmental authority having jurisdiction over the Project, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, law or regulation in affect at the time the Work is performed, except as may be otherwise specifically stated herein. Provided, however, in the event the standard specification, manual, code, law or regulation is changed after the Effective Date, the Parties will in good faith mutually determine whether the change constitutes a Relief Event.

(c) Unless the context shall otherwise require, the words "hereto," "herein," "hereof" and other words of similar import refer to this Agreement as a whole.

(d) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa.

(e) Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require.

(f) The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

(g) Whenever the Developer's knowledge is implicated in this Agreement or the phrase "to the Developer's knowledge" or a similar phrase is used in this Agreement, the Developer's knowledge or such phrase(s) shall be interpreted to mean to the best of the Developer's knowledge, and Developer affiliates' and contractors' knowledge, after reasonable and diligent inquiry.

(h) Unless the context shall otherwise require, references to any Person shall be deemed to include such Person's successors and permitted assigns.

(i) Unless the context shall otherwise require, references to the preamble, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the preamble to, or the applicable recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of, this Agreement.

(j) The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement.

(k) The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions.

(l) Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof.

(m) The preparation and negotiation of the Contract has been a joint effort of the Parties, and they have carefully reviewed the Contract and have been advised by counsel of their choosing. The Parties understand the Contract's contents and agree that it shall not be construed more strongly against any Party, regardless of who is responsible for its preparation.

ARTICLE II. PROJECT REQUIREMENTS

Section 201. Statement of Project Requirements.

(a) The Developer shall ensure that the Work is performed in such a manner that the Project Facilities shall: be properly designed, structurally sound, safe for human occupancy and use, and free from all hazards; comply in all material respects with the Construction Plans and Specifications; be completed within the Project Budget; and comply in all material respects with the Contract Documents.

(b) The Developer shall ensure that the Work is completed in a good and workmanlike manner.

(c) The Developer recognizes and acknowledges that the Design and Construction of the Project Facilities are of critical concern to the County by reason of its interest in maintaining a high-quality community for use and enjoyment by its residents and visitors. The Developer agrees to Design and Construct the Project Facilities in good order, condition, and appearance and in a high-quality, first-class manner consistent with comparable high-quality properties of similar use in the southeastern United States and in compliance with all Laws and Regulations.

(d) The Developer shall ensure that the Work complies in all material respect with Laws and Regulations, including the Florida Building Code and the American with Disabilities Act.

(e) The Developer shall have the absolute responsibility and duty to the County to ensure that the Project Facilities comply with the Contract Documents and Laws and Regulations. The fact that the County is a governmental entity that may conduct review and inspections in its governmental capacity for general compliance with Laws and Regulations shall not in any way create a duty of care to the Developer or act as an estoppel to, or a waiver of, the County's sovereign immunity, or the County's right to require construction or reconstruction in accordance with Laws and Regulations (subject to the Developer's right to challenge such enforcement to the extent legally permitted).

(f) The Sports Center shall be Class A institutional quality and commensurate with National Collegiate Athletic Association qualifying sports facilities.

(g) The Sports Center shall include no less than 151,000 square feet, focusing primarily on basketball, volleyball, track, dance, and cheer, with the potential to support other team sports. The Sports Center shall contain an indoor track, 13 basketball courts, 21 volleyball courts, concession areas, restroom facilities, offices, and other related facilities.

Section 202. County's Policies and Procedures.

(a) The Developer shall cooperate with the Alachua County Arts in Public Places Trust (APPT) Committee for the Project and agrees to comply with chapter 29 of the Alachua County Code, which is otherwise known as the Alachua County Public Arts Ordinance.

(b) Project work 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 the Contract. The Developer shall make any potential Constructors providing covered services aware of the requirements. Failure to comply with the provisions of the Wage Ordinance will be deemed a breach of contract and authorize the County to withhold payment of funds in accordance with chapter 218, Florida Statutes. The Developer will include the necessary provisions in Constructor agreements to ensure compliance with the Wage Ordinance. However, the County shall not be deemed a necessary, or indispensable, party in any litigation between the Developer and any Constructor or employee.

(c) In accordance with section 448.095, Florida Statutes, as created by chapter 2020-149, Laws of Florida, the Developer 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 Developer during the term of the Contract. The E-Verify system is located at <https://www.uscis.gov/e-verify>. The Developer shall expressly require any Constructors to utilize the E-Verify system.

ARTICLE III. COUNTY'S GRANT OF ACCESS; ACCESS TERM

Section 301. Grant of Access.

Subject to the provisions of the Contract, and for the sole purpose of meeting the Project Requirements, the County hereby grants to the Developer access to the Site and the exclusive right, and the Developer hereby accepts the obligation: (1) to Design and Construct the Project Facilities; and (2) to finance and bear responsibility for the costs of such Design and Construction, pursuant to the terms of this Contract.

This Contract shall in no way be deemed to constitute a lease of the Site or Project Facilities or any portion thereof, or any assets incorporated into, appurtenant to, or in any way connected with the Project. The Developer has no fee title, leasehold estate, possessory interest, permit, easement or other real property interest of any kind in the Site or Project Facilities by virtue of this Contract or otherwise. The Developer's property interests under this Contract are limited to contract rights constituting intangible personal property (and not real estate interests). The Developer's property interests under this Contract are solely those of an independent contracting party.

Section 302. Access Term.

The Access Term shall begin on the Effective Date and continue until the completion of the Work, subject to the termination of this Agreement pursuant to its terms. Following the Access term, the Parties' rights and responsibilities with regard to the Project Facilities may be set forth in other Contract Documents, including the Operating Agreement or the Management Agreement.

ARTICLE IV. SCHEDULE; DELAY

Section 401. Commencement.

The Developer is authorized to begin performance under this Contract as of the Effective Date. Construction shall not commence until the County issues the Notice to Proceed.

Section 402. Schedule.

The County and the Developer shall perform their obligations pursuant to the schedule attached as **Exhibit D**. The Developer shall diligently pursue the completion of the Project. The Developer shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, as well as coordination of all portions of the work under the Contract Documents, and the coordination of Constructors.

Section 403. [Reserved]

Section 404. Design and Construction Delays.

(a) If the County, or anyone for whom the County is responsible, delays, disrupts, or interferes with the performance or progress of the Design and Construction, then the Developer shall be entitled to an equitable adjustment in all affected Milestones and Financial Terms, but not to exceed the Funding Limitation. The Developer's entitlement to an adjustment of a Milestone is conditioned on such adjustment being essential to the Developer's ability to perform its obligations in compliance with that Milestone.

(b) The Developer shall not be entitled to any adjustment in Milestones or Financial Terms for delay, disruption, or interference in Design and Construction caused by or within the control of the Developer. Delay, disruption, and interference attributable to and within the control of the Developer, or any of its affiliates or Constructors, shall be deemed to be within the control of the Developer.

(c) If the Developer's Design and Construction performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of the County, the Developer, and those for which they are responsible, then the Developer shall be entitled to an equitable adjustment in affected Milestones. The Developer's entitlement to an adjustment of a Milestone is conditioned on such adjustment being essential to the Developer's ability to comply with the Milestone. Such an adjustment shall be the Developer's sole and

exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Milestones under this paragraph include but are not limited to the following: acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulation, strikes, lockouts, and unusually severe weather conditions by comparison with the ten-year Alachua County average not reasonably anticipatable. The Developer shall submit any proposed amendment seeking an adjustment in the Milestones or Financial Terms under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event. Notification shall identify the cause, the effect on the Project, and the estimated duration of delay anticipated. Failure to give such notice will waive the Developer's rights to pursue an adjustment for such event. Such notice shall be a condition precedent to the Developer's right to pursue an adjustment in the milestones or financial terms based upon such delay.

(d) No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Project from any cause whatever, including those for which the County may be responsible, in whole or in part, shall relieve the Developer of its duty to perform or give rise to any right to damages or additional compensation from the County. The Developer expressly acknowledges and agrees that it shall receive no damages for delay. The Developer's sole remedy, if any, against the County will be the right to seek an extension to the Project schedule; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This paragraph shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Project is delayed due solely to the fault or neglect of the County or solely from anyone for whom the County is liable, and such delays have a cumulative total of more than 25 calendar days, the Developer may make a claim for its actual and direct delay damages accruing after said 25 calendar days. Provided, however, the Developer expressly acknowledges and agrees that its actual and direct delay damages shall not exceed \$1,000 per calendar day, and shall be subject to the Funding Limitation. In no event shall the County be liable to the Developer whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

ARTICLE V. DEVELOPER'S RESPONSIBILITIES

Section 501. Site Acquisition.

The Developer shall cause the Landowner to convey the Site to the County.

Section 502. Submittals.

The Developer shall comply with the requirements of the Contract Documents for preparing and delivering submittals for the County's review and approval, or other appropriate action. Such delivery shall be made according to the submittal schedule or jointly established by

the County and the Developer during the initial stages of the Project. The Developer shall not proceed with actions requiring the County's approval until the County gives such approval in writing.

Section 503. Developer's Design and Construction Responsibilities.

(a) The Developer shall perform or furnish the Design and Construction of the Sports Center, as described in the Project Requirements. Additional terms and conditions applicable to the Developer's Design and Construction responsibilities are set forth in Article IV and Article VII.

(b) The construction of the Project Facilities shall not commence until all pre-construction matters, such as engineering, architectural, entitlements, construction and financing arrangements, have been arranged to the satisfaction of the County. The County and the Developer will cooperate in good faith to satisfy the foregoing requirements. The Developer shall provide customary assistance to the County in connection with the County's attempts to arrange for construction financing for the Project. The County will provide the Developer written notice to proceed with construction of the Project Facilities, at which time the Developer shall proceed to cause the actual construction of the Project Facilities in accordance with the Contract Documents. Notwithstanding the foregoing, the County may at any time authorize the Developer to proceed with certain "predevelopment" site preparation work.

(c) In any instance where the Developer has a direct obligation to perform any Work, whether current, future or past tense, the language shall be construed in all instances to allow the Developer to perform (or have performed) such obligation directly or to cause such obligation to be performed by or through other professionals, entities or individuals in the reasonable discretion of the Developer, excepting only such matters that are non-delegable by law. The Developer's exercise of such discretion shall not relieve the Developer of primary responsibility to the County for performance of every obligation under the Contract.

Section 504. Developer's Financing Responsibilities.

The Developer shall finance the costs of the Design and Construction of the Project Facilities, subject to the revenue and finance terms in Article IX.

**ARTICLE VI.
PERMITS AND GOVERNMENT APPROVALS**

Section 601. [Reserved]

Section 602. Permits and Approvals Furnished by the Developer.

The Developer shall be responsible for obtaining (including, when applicable, performing the work required to obtain) all permits and government approvals necessary for

the Project. The County shall provide reasonable support and assistance to the Developer with respect to data or information needed for inclusion in permit or approval applications.

Section 603. Maintenance of Permits and Approvals.

The Developer shall take all actions necessary to maintain in full force and effect all Project permits and government approvals. The Developer shall also be responsible for securing any needed revisions, modifications, amendments, supplements, renewals, or extensions of all such permits and government approvals.

Section 604. Permit and Approval Costs.

The costs associated with the duties stated in this Article shall be borne by the Party to which the duty is assigned, including application, filing, and renewal fees, and associated legal or consultant costs.

Section 605. [Reserved]

Section 606. No Damages for Denied Development Approvals.

Should the County, acting in its governmental or land development regulatory capacity (including its BOCC, its agencies, its appointed officials, or its employees with jurisdiction), not approve any required application for approval prerequisite to completion of the Project, the Contract shall not be the basis in any respect for a damages claim against the County for breach of the Contract or a basis in any respect for a damages claim against the County acting in its governmental regulatory capacity as a result of such denied approval.

Section 607. No Abrogation of Governmental Authority.

The making of the Contract does not constitute an abrogation of the County's governmental or land development regulatory powers, and the Developer's obligations to comply with applicable Laws and Regulations include the Developer complying with all development approvals required by the County in its capacity as a governmental authority. The Contract shall not prevent the County from enacting or seeking to enforce any Laws or Regulations which may affect the Site or its vicinity, regardless of whether such Law or Regulation is the result of action by the BOCC or by initiative (petition) and referendum, or by any other applicable procedures. Whenever the County seeks to enforce any existing or future Law or Regulation as against the Site or its vicinity, this paragraph shall not waive or affect the Developer's ability (a) to contest the validity or application of such Law or Regulation, (b) to assert whatever defenses or avoidances as may be available for the Developer, or (c) to seek judicial review as may be available. However, the Contract shall not serve as the basis for a damages claim against the County, and the Developer shall not assert a damages claim with respect to such enforcement as to the Site or its vicinity.

ARTICLE VII. DESIGN AND CONSTRUCTION

Section 701. Constructor Qualifications.

The Developer will complete, or cause completion of, the Design and Construction of the Project in accordance with the Contract Documents. The Developer agrees to use, and require each of its development team members and Constructors and other consultants and agents to use, only personnel who are qualified and properly trained and who possess any license, permit, registration, certificate or other approval required by Law or Regulation to enable such personnel to perform their work, services and activities involving any portion of the Design and Construction activities.

Section 702. Constructor Agreements.

The Developer shall be responsible for the acts, failures to act, errors and omissions of all Constructors. Except as provided in this Agreement, this Agreement shall not give rise to any contractual or other relationship between the County and any such Constructors. The County disclaims and does not undertake any obligation, duty or responsibility to pay, reimburse, compensate or otherwise be responsible for payment of any fees, charges, rents, licenses, costs, expenses, reimbursements or any other amount to any Constructor. Contracts, agreements, purchase orders and other arrangements between Developer and Constructors for labor, licenses, services, equipment, machinery, materials, supplies and other items utilized in the conduct of the Project shall be consistent with the terms and conditions of this Agreement. All Design and Construction contracts entered into by the Developer shall provide that any review or approval of a contract deliverable by the County or the Developer, or the incorporation of suggested revisions by the County, shall not constitute waiver, release or acceptance of any error or omission in the deliverable, shall in no way waive or release Developer or the Constructors from its respective duty to completely perform its obligations under their contracts, the standard of care applicable to the performance of their work, nor constitute a waiver of any claim or warranty. The Design and Construction contracts shall require, to the extent of Project work to be performed by such Constructor, that the Constructor will be bound to the Developer by terms of the Contract Documents, and to assume toward Developer all the obligations, covenants, duties and responsibilities that the Developer, by this Agreement, assumes toward the County. Each Design and Construction contract shall expressly state the following: that Alachua County is an intended third-party beneficiary of the contract; that the contract has been entered into for direct and substantial benefit of Alachua County; and that the Constructor owes a duty to Alachua County to perform its work and services in conformance with the standard of care applicable to the type of work and services to be performed by the Constructor. The Developer's failure to include these provisions in each Design and Construction contract shall constitute a material breach of this Agreement and shall constitute grounds upon which the County may terminate this Agreement for cause. Developer shall deliver a copy of each Design and Construction contract to the County no later than 10 calendar days prior to the commencement of work or services by each Constructor.

Each Design and Construction contract shall expressly state the County is exempt from sales tax and wishes to generate sales tax savings for the Project and reserves the right to make direct purchases of various construction materials and equipment included in the Work. Additionally, the Design and Construction contract shall reflect that the Constructor represents and warrants that it will use its best efforts to cooperate with the County in implementing this sales tax savings program in order to maximize cost savings for the Project. With respect to all direct purchases by the County, the Constructor shall remain responsible for coordinating, ordering, inspecting, accepting delivery, storing, handling, installing, warranting and quality control for all direct purchases. Notwithstanding anything herein to the contrary, the Constructor shall expressly acknowledge and agree that any materials or equipment directly purchased by County shall be included within and covered to the same extent as all other warranties provided by the Constructor pursuant to the terms of the Contract Documents. The County shall assign to the Constructor Manager any and all warranties and rights the County may have from any manufacturer or supplier of any such direct purchases by the County.

Section 703. Performance and Payment Bonds.

The Developer shall furnish a performance bond and a payment bond each in an amount at least equal to the total price of all construction contracts, as security for the faithful performance and payment of all of the Developer's construction obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment on the construction contracts becomes due, except as provided otherwise by Laws or Regulations, or by specific provisions of the Contract.

All bonds shall be in compliance with, and in the form prescribed by, Section 255.05, Florida Statutes. The bonds shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

The Developer shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.

If the surety on a bond furnished by the Developer is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then the Developer shall promptly notify the County and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.

If the Developer has failed to obtain a required bond, the County may exclude the Developer from the Site and exercise the County's termination rights under this Agreement.

Upon request, the County shall provide a copy of the payment bond to any Constructor or other person or entity claiming to have furnished labor or materials used in the performance of the construction work.

Section 704. Site Facilities.

The Developer shall arrange for all Site facilities as required by the County and necessary to enable the Developer to perform its duties and to accommodate any representatives of the County which the County may choose to have present on the Site. The County will have an on-Site representative.

Section 705. Project Administration.

The Developer's administration of the Project shall include the following:

- (a) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, significant issues, etc.
- (b) Maintain a roster of companies on the Project with names and telephone numbers of key personnel.
- (c) Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
- (d) Provide labor relations management for a harmonious, productive Project.
- (e) Advise the County and design professionals of their requested or required participation in any meeting or inspection giving each at least one week written notice unless such notice is made impossible by conditions beyond the Developer's fault and control, in which case at least 48 hours prior written notice must be given.
- (f) Provide, by the 10th day of each month, a written report describing the status, progress and results of the Project activities through the end of the preceding month. The information provided to the County shall include an explanation of any significant variations from the scope, schedule, sequence, or performance of the Project activities and identify any potential or known developments that may impact the County or the feasibility, cost or schedule for the Project, and any corrective or remedial actions implemented.

Section 706. Project Documentation.

The Developer shall provide job site administration functions during construction to assure proper documentation, including but not limited to the following:

(a) Job Meetings: Conduct a preconstruction conference with each Constructor prior to the start of its portion of the Work. Hold weekly progress and coordination meetings, or more frequently if required by Work progress, to provide for the timely completion of the Work. Participants in the Monthly Project Status Meeting will include, at a minimum, the Developer, its principal design professionals, and the County project manager. The Developer shall produce minutes of all meetings to include, at a minimum: attendees and contact info, old and new business, status of outstanding requests for information, clarification or correction, notices, change orders, schedule update, material delivery schedule, safety. The County, at its option, may produce the official minutes of any meeting attended by the County. The Developer shall use the job site meetings as a tool for the preplanning of Work and enforcing schedules, and for establishing procedures, responsibilities, and identification of authority for the Parties and Constructors parties to clearly understand. During these meetings, the Developer shall identify the party or parties responsible for following up on any problems, delay items or questions, and Developer shall note the action to be taken by such party or parties. The Developer shall revisit each pending item at each subsequent meeting until resolution is achieved. The Developer shall attempt to obtain from all present any problems or delaying event known to them for appropriate attention and resolution.

(b) Shop Drawing Submittals/Approvals: Provide staff to review and approve shop drawings and other submittals and to implement procedures for transmittal to the Design Professional of such submittals for action, and closely monitor their review process.

(c) Material and Equipment Expediting: Provide staff to closely monitor material and equipment deliveries, check and follow-up on supplier commitments for all subcontractors and maintain a material and equipment expediting log.

(d) Payments to Constructors: Develop and implement a procedure for the review, processing and payment of applications by Constructors for progress and final payments.

(e) Document Interpretation: Refer all questions for interpretation of the Contract Documents to the principal design professionals in writing.

(f) Reports and Project Site Documents: Record the progress of the Work. Submit written progress reports monthly to the County and the Design Professional, including information on subcontractors' Work, and the percentage of completion. Keep a daily log available to the County and any permitting authority inspectors.

(g) Constructor Progress: Prepare periodic punch lists for Constructors' work including unsatisfactory or incomplete items and schedules for their completion.

(h) Substantial Completion: Ascertain when the Work or designated portions thereof are ready for substantial completion inspections. From the punch lists of incomplete or unsatisfactory items prepared by Developer and reviewed and supplemented by the principal design professional, prepare a schedule for their completion indicating completion dates for the

County's review. Provide this notice to the County 14 days prior to the substantial completion inspection.

(i) Final Completion: Monitor Constructors' performance on the completion of the Work and provide notice to the County and principal design professional when the Work is ready for final inspection. Coordinate this inspection with all parties 14 days prior to the final inspection. Secure, review and certify compliance with the Contract Documents, then transmit to the County all required guarantees, warranties, affidavits, releases, bonds, waivers, manuals, technical standards, permits, testing results, record drawings, and maintenance books. As a minimum, unless waived by County, the Developer shall provide documentation on the following items along with notice of that the work is ready for final completion (no documentation is required if the materials and equipment is not included in the design):

- Subcontracts and Purchase Orders
- Subcontractor Licenses
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- All warranties and guarantees, as a minimum:
- Cost Accounting Records
- Labor Costs
- Certificate of Substantial Completion
- Certificate of Sign-Off by Architect, Mechanical & Electrical Engineers; Includes final inspection report from the MEP and Structural Engineer.
- Final Property Survey
- Maintenance Bond (if applicable)
- Final Lien Waivers from Subcontractors
- Material Costs
- Equipment Costs
- Cost Proposal Request
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Permits & Inspections, Certificate of Occupancy (CO) and Use of Occupancy (UO)
- Material Purchase Delivery Logs
- Technical Standards, Manuals, Operating Manuals
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instruction
- Start Up Reports

- Boilers
- Generators (Full Load 4 Hour Tests)
- Chillers
- Air Handlers (AHU)
- Make-Up Air Units (MUAU's)
- Water Treatment
- Balance Reports for Air & Water
- Firemen Test Results
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- PMIS Schedule and Updates
- Suspense Files of Outstanding Requirements
- Policy and Procedure Manual
- Roofing and flashing warranties
- Joint Sealant warranties
- Doors and hardware warranties
- Flooring – Carpet, vinyl composition tile, sheet, ceramic, epoxy
- Windows – aluminum, wood, vinyl, steel
- Curtain wall and storefront work including anti chalking of aluminum, color retention of members, air/water infiltration
- Waste compactor and trash chute
- Window covering
- Toilet accessories
- Transmittal of trades, generally provided in three ring binders
- Plumbing and mechanical
- Fire Protection
- Hardware
- Sealants
- Masonry material – brick, concrete masonry unit (CMU)
- Fire Protection – sprinklers heads, fire extinguishers
- Electrical parts- wiring devices, fixtures lenses, lamps
- Electrical
- Elevator
- Data/Communication
- Data and Telephone Communication
- Data and Telephone cabling test results

(j) Start-Up: With the County's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the subcontractors.

(k) Record Drawings: Monitor the progress of Constructors' forces on marked up field prints which shall be developed by Developer into the final record drawings.

(l) Project Files and Records. Maintain at the Project site, originals or copies of, on a current basis, all Project files and records, including the following administrative records:

- Constructor Agreements and Purchase Orders
- Constructor Licenses
- Shop Drawing Submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Addenda
- Warranties and Guarantees
- Cost Accounting Records
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Request
- Payment Request Records
- Meeting Minutes
- Cost-Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Permits
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- "As-Built" Marked Prints
- Operating & Maintenance Instruction
- Daily Progress Reports
- Monthly Progress Reports
- Correspondence Files
- Transmittal Records
- Inspection and Safety Reports
- Bid/Award Information
- Bid Analysis and Negotiations
- Punch Lists
- Project Schedule and Updates
- Suspense (Tickler) Files of Outstanding Requirements

- Comprehensive Project Plan

The Project files and records shall be available at all times to the County or its designees for reference, review or copying.

(m) Record Contract Documents. Maintain in a safe place at the Site one record copy and one permit set of the Contract Documents, including, but not limited to, all drawings, specifications, addenda, amendments, change orders, construction change directive and field orders, as well as all written interpretations and clarifications issued by design professionals, in good order and annotated to show all changes made during construction. Continuously update the record Contract Documents throughout the prosecution of the Work to accurately reflect all field changes that are made. Certify the accuracy of the updated record Contract Documents. As a condition precedent to the County's obligation to pay the Developer, the Developer shall provide evidence, satisfactory to the County, that the Developer is fulfilling its obligation to continuously update the record Contract Documents. All buried and concealed items, both inside and outside the Site, shall be accurately located on the record Contract Documents as to depth and in relationship to not less than two permanent features (e.g. interior or exterior wall faces). The record Contract Documents shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in red. The record Contract Documents, together with all approved samples and a counterpart of all approved shop drawings shall be available to the County and design professionals for reference. Upon completion of the Work and as a condition precedent to the Developer's entitlement to final payment, the record Contract Documents, samples and shop drawings shall be delivered by the Developer to the County.

Section 707. Project Occupancy.

The Developer shall provide the following services, to facilitate the smooth, successful and timely occupancy of the Project by County:

(a) Provide consultation and Project management to facilitate the County's occupancy of the Project Facilities and provide transitional services to place the Project Facilities "on line" in such conditions as will satisfy County's operations requirements. The services include the Developer's coordination of the delivery of County supplied furniture, fixtures and equipment for the Project.

(b) Catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey these to the County in such a manner as to promote their usability.

(c) Secure required guarantees and warranties, and shall assemble and deliver same to the County in the manner required by the County.

**ARTICLE VIII.
SAFETY AND SECURITY RESPONSIBILITIES**

Section 801. Responsibility for Safety of the Public.

Pursuant to applicable standards and Laws and Regulations, as of the Effective Date of the Contract and throughout the Access Term the Developer shall have full responsibility for the safety of the public with respect to the Project, including but not limited to visitors and invitees to the Project Facilities, with respect to the public's use of the Project Facilities, the condition of the Project Facilities, and for services or products provided or furnished by the Developer.

Section 802. Responsibility for Safety of Employees and Contractors.

Pursuant to applicable standards and Laws and Regulations, and as between the Developer and the County, throughout the Access Term the Developer shall have full responsibility for the safety of the Developer's employees and Constructors, and the protection of Project-related property, including the Project Facilities and adjacent properties.

Section 803. Safety Programs.

The Developer shall develop appropriate safety programs for all phases of the Project, and implement and enforce such programs.

Section 804. Responsibility for Security.

Throughout the Access Term, the Developer shall be responsible for the security of the Project Facilities and operations against theft, vandalism, and intentional damage or attacks, and for compliance with all applicable governmental security requirements.

Section 805. Compliance with Safety and Security Programs.

The County shall comply with the Developer's safety and security programs while at the Project Facilities.

Section 806. Limitations on Authority and Responsibility.

The County shall not at any time supervise, direct, control, or have authority over the Project, nor shall the County have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by the Developer or any Constructor, or the safety precautions and programs incident to the Project, or for security or safety at the Project Facilities while such are under the Developer's care and control.

**ARTICLE IX.
REVENUE, FINANCING, AND TAXES**

Section 901. County's Funding Limitation.

As full compensation for the Developer's performance of the Work, the County will pay no more than \$30 million. The County's Funding Limitation does not include the \$2.32 million of funding in specific appropriation 2236A of the General Appropriations Act (SB 2500). Beyond this collective amount of \$32.32 million, the Developer is absolutely responsible for the cost of the Work.

Section 902. Project Fund.

There is hereby created and established a Project Fund to be held by the County into which shall be deposited the County Funds, the DEO Funds, and the Developer Funds. Deposit of the County Funds and the Developer Funds is a condition precedent to the County's issuance of the Notice to Proceed. Project payments shall be made from the Project Fund.

Section 903. Progress Payments and Retainage.

(a) Attached as **Exhibit []** is a schedule of values that will govern the County's progress payments to the Developer. The schedule of values may be revised by amendment of this Agreement, but the County's financial obligation will never exceed the Funding Limitation. The Developer shall submit monthly applications for payment in a form acceptable to the County. If payment is requested on the basis of materials and equipment not incorporated into the Project, but delivered and suitably stored off-Site, the application for payment shall be accompanied by a bill of sale, invoice or other documentation warranting that the County has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances, together with evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect County's interest therein, all of which shall be subject to County's satisfaction. The County has the discretion whether or not to pay for such unincorporated materials. The Developer shall submit to [_____] four [notarized original copies of its monthly application for payment before the 7th day of each month for Work performed during the previous month. Each application for payment shall be accompanied by a release and affidavit of payment, and releases in accordance with Section 255.05, Florida Statutes, from all Constructors showing that all materials, labor, equipment and other bills associated with that portion of the Work payment is being requested on have been

paid in full through the period of time covered by the application for payment, unless the Developer's surety provides the County with written consent for all progress payments under the Contract. The County shall not be required to make payment until and unless these affidavits are furnished by the Developer. Further, if the Developer is withholding any portion of a payment to any subcontractor for any labor, services, or materials for which the County has paid the Developer, the Developer agrees to refund such money to the County. Monthly payments to the Developer shall in no way imply approval or acceptance of the Developer's work, including but not limited to any defective or deficient work, regardless of whether patent or latent.

(b) The County shall retain 10% of the gross amount of each monthly payment request, until the Project has reached 50% completion. Upon 50% completion, the Developer may request that the County pay up to one half of the retainage then held by the County for properly conducted Work. If the County does not dispute the proper delivery of services, then the County shall make such payment. Once 50% completion is reached, the County shall only retain up to 5% of each progress payment. Such sum shall be accumulated and not released to the Developer until final payment is due. The County reserves the right to reduce such retainage after Substantial Completion.

(c) Within 30 days of Substantial Completion, the County will develop a punch list of items required to render complete, satisfactory and acceptable the services required herein. The County will provide a first draft of the punch list within 20 days of notice of Substantial Completion. The Developer will notify the County of acceptance or of any changes requested within 14 days of receipt. The punch list does not relieve the Developer of the responsibility for corrective work or for pending items not yet completed for the Project and any items that are identified after development of the punch list that are required to correct or complete the Project remain the responsibility of the Developer. If the County fails to develop the punch list in the time specified, the Developer may request payment for all retainage held by the County. If the Developer fails to cooperate with the County in developing the punch list, or obligations under the punch list, the County is not obligated to pay the retainage. The County shall not be obligated to make payment for amounts that are the subject of a good faith dispute or a claim brought pursuant to Section 255.05, Florida Statutes. Once all items on the punch list have been completed, the Developer may request the remaining retainage from the County. In cases of a dispute as to completion of an item on the punch list, the County may withhold an amount not to exceed 150% of the total cost to complete disputed items.

Section 904. Final Payment.

(a) The County shall make final payment to the Developer within 45 days after the Work is finally accepted by County, provided that the Developer first, and as an explicit condition precedent to the accrual of the Developer's right to final payment, shall have furnished the County with a properly executed and notarized final payment affidavit (conditioned only upon receipt of final payment) and releases from all Constructors, or a duly

executed copy of the surety's consent to final payment and such other documentation that may be required by the Contract Documents or the County.

(b) The Developer's acceptance of final payment shall constitute a full waiver of any and all claims by the Developer against the County arising out of this Contract or otherwise relating to the Project, except those identified in writing by Developer as unsettled in the final application for payment. Neither the acceptance of the Work nor payment by the County shall be deemed to be a waiver of the County's right to enforce any obligations of the Developer hereunder or to the recovery of damages for defective Work not discovered by the County at the time of final inspection. The County retains the right to recover damages for the recovery of defective or deficient Work not discovered by County at the time of final inspection. After final payment has been made by the County to the Developer, if the County identifies an obligation under the Contract Documents that the Developer has not performed, then the Developer shall perform the obligation. The County shall reimburse the Developer for the cost of performing the post final payment obligation only if: (i) the County has not previously reimbursed or otherwise paid the Developer for performing that obligation, and (ii) the cost of reimbursing the Developer is within the Funding Limit.

Section 905. Owner Direct Purchase.

The County may elect to buy Project goods and services directly from providers to realize sales tax savings in accordance with section 212.08(6), Florida Statutes, and rule 12A-1.094, Florida Administrative Code. The Developer shall fully cooperate with the County in this regard by, for example, providing information for the preparation of purchase orders, monitoring deliveries, and approving invoices. The Developer shall also flow down the contract terms to its Constructors outlined in Article VII. The Project Budget shall be adjusted to account for any such direct expenditures by the County and credited to reflect the amount of tax savings. Before final payment, a final reconciliation of the County's direct purchases against the Project Budget will be performed, and the Developer will prepare any related deductive change orders for the County's review and execution.

ARTICLE X. COUNTY'S RIGHTS AND RESPONSIBILITIES

Section 1001. General.

(a) The County shall give prompt written notice to the Developer whenever the County observes or otherwise becomes aware of (1) any development that affects the scope or time of performance of the Developer's obligations, (2) any defect or nonconformance in the Developer's Design and Construction work, or in the performance of any Constructor, or (3) the presence at the Site of any Constituent of Concern.

(b) The County shall grant the Developer access and control over the Site throughout the Access Term.

(c) The County shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Developer's performance of its obligations under this Contract.

Section 1002. Review and Oversight of Project.

(a) All submittals that the Developer must prepare and deliver to the County, for the County's review and approval, shall comply with any submittal requirements made a part of this Agreement. The County shall conduct such review promptly, and in writing shall either (1) approve the submittal, (2) approve the submittal subject to reasonable conditions, or (3) reject the submittal. The County shall approve submittals without conditions unless it can identify with specificity why the submittal is contrary to the Project Requirements or the material terms of the Agreement. Approval of a submittal by the County does not change the Project Requirements or any Contract requirements; all changes must be processed in accordance with Article XVII below.

(b) The County shall not be responsible for discovering deficiencies in the technical accuracy of the Developer's services. The Developer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in County-furnished information.

**ARTICLE XI.
OPERATIONS AND MAINTENANCE**

Operations and maintenance of the Sports Center is governed by the Operations Agreement.

**ARTICLE XII.
FACILITIES MANAGEMENT**

Management of the Sports Center is governed by the Management Agreement.

**ARTICLE XIII.
REPRESENTATIONS AND WARRANTIES**

Section 1301. Developer Warranties, Representations and Additional Covenants.

The Developer hereby warrants, represents and covenants to the County as follows:

(a) The Developer is experienced, competent and qualified to perform the services, duties, obligations and other work contemplated by this Agreement;

(b) The Developer has and shall maintain at all times during the term of this Agreement sufficient expertise and other resources to perform its services, duties and obligations under this Agreement;

(c) The Developer holds and shall maintain at all times during the term of this Agreement all certifications as may be necessary to perform its services, duties and obligations under this Agreement.

(d) The Developer will prepare and provide to the County a Project Cost Report (PCR), not less than monthly, to show budgeted costs, committed costs and planned expenses.

(e) The Developer agrees to provide the County with full access to and involvement in the Project. Without in any manner limiting the foregoing, the County and its agents shall have access to the Project for purposes of observing and inspecting the work provided that such observation and inspection shall not unreasonably interfere with the construction of the Project.

(f) If the County notifies the Developer of any work which it believes does not comply with the Plans and Specifications or is otherwise inadequate, the Developer shall promptly investigate and notify the County of any remedial action for such non-compliance that the Developer proposes, which the County may approve or disapprove. If such action is approved by the County, the Developer will promptly take such action and notify the County when the action is completed. No failure to inspect or provide notice by the County shall relieve the Developer from its obligations under this Agreement.

(g) The Developer has examined and carefully studied the Contract Documents, and all data and reference items identified in the Contract Documents.

(h) The Developer has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect the Project.

(i) The Developer is familiar with and is satisfied as to all Laws and Regulations that may affect the Project.

(j) The Developer has considered the available information, its observations, and the Contract Documents with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of Design and Construction; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by the Developer; and (3) the Developer's safety precautions and programs for the Project.

(k) Based on the information and observations referred to in the preceding paragraph, the Developer agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for proceeding with the Project under the Contract terms, pursuant to the Milestones, the Access Term, and the Financial Terms, and in accordance with the other terms and conditions of the Contract.

(l) The Developer has given the County written notice of all conflicts, errors, ambiguities, or discrepancies that the Developer has discovered in the Contract Documents, and the written resolution thereof by the County is acceptable to the Developer.

(m) The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for proceeding with the Project.

(n) The Developer has performed due diligence with respect to revenue opportunities and Project costs; has sufficient financial and management strength for the Project; has or can obtain necessary licenses, or can subcontract tasks to licensed entities; and has the skills and experience necessary for successful performance of its Contract obligations.

ARTICLE XIV. ENVIRONMENTAL CONDITION OF SITE

Section 1401. Encountering a Constituent of Concern.

(a) The Developer has disclosed to the County in writing the presence of all known and suspected Constituents of Concern located at or near the Site, including type, quantity, and location.

(b) The Developer represents to the County that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to the County, exist at the Site.

(c) If the Developer encounters or learns of an undisclosed Constituent of Concern at the Site, then the Developer shall notify (1) the County and (2) appropriate governmental officials if the Developer reasonably concludes that doing so is required by applicable Laws or Regulations.

(d) The Developer shall be responsible for taking appropriate action to remediate, remove, or manage Constituents of Concern that the Developer was aware of or suspected to be at the Site prior to the Effective Date, but failed to disclose to the County, and for all related costs and expenses. The Developer and the County shall work together to minimize the impact on the Project of the Constituents of Concern.

(e) The Developer and the County shall determine the appropriate action to take in response to any Constituents of Concern discovered after the Effective Date, and that the Developer was unaware of and did not suspect to be at the Site. The Developer and the County shall work together to develop a solution that will have a minimal impact upon the Project, with the allocation of costs to be equitably allocated based upon the specific facts and circumstances concerning the presence of the Constituents of Concern, responsibility for acquisition and investigation of the Site, and other relevant factors.

ARTICLE XV. INSURANCE AND INDEMNIFICATION

Section 1501. Insurance.

Developer shall obtain and require all Design Professionals, other than Manley Design, LLC, performing Pre-Development Activities pursuant to this Agreement to obtain, carry and keep in full force, professional liability insurance covering liability arising out of error, omission, or negligent acts in the performance, or lack thereof, of professional services contemplated under this Agreement in an amount of not less than \$3,000,000 per claim / \$3,000,000 aggregate; provided Developer's subcontractors who are providing professional design services shall be required to maintain such insurance in an amount of not less than \$2,000,000 per claim/\$5,000,000 aggregate. In addition, Developer and each of its contractors, subcontractors, vendors, consultants and agents engaged in performance of Pre-Development Activities shall comply with the insurance provisions contained in Exhibit C.

On or before the Effective Date, and thereafter during the term hereof, Developer shall provide the County with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies. No insurance policy required hereunder may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to the County or, in the event of cancellation for non-payment of premium, ten (10) days prior written notice. Developer shall provide the County with renewal certificates of insurance or binders not less than five (5) business days prior to such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement. The County shall also be given certified copies of Developer's policies of insurance, upon request.

The required policies, and any policies of insurance procured by Developer providing coverage in excess of the required policies, shall provide that the coverage is primary for all purposes and Developer shall not seek any contribution from any insurance or self-insurance maintained by the County. Developer shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

Section 1502. Indemnification.

Developer hereby agrees to indemnify, protect, defend and hold harmless the County, its current and future county commissioners, officers, employees, agents, representatives, successors and assigns (the "County Indemnitees") from and against any and all claims, actions, suits, proceedings, investigations, audits, losses, liabilities, penalties, fines, sanctions, damages, demands, causes of action, costs and expenses including, but not limited to, all reasonable consulting, engineering, reasonable attorneys (in-house and outside counsel) or other professional fees including disbursements (collectively, "Losses"), which County Indemnitees, or any of them, may incur or suffer by reason of the following arising out of relating to or resulting from the following actions in the Developer's conduct of the Work or the activities of Developer or Constructors on the County's Property in connection with the Work or Developer's breach of this Agreement: (i) bodily injury or death of any natural person; (ii) damage to property of any person or entity; (iii) violations of Laws and Regulations; and (iv) misappropriation, infringement or misuse of intellectual property or industrial property rights

of a third party; except to the extent any such Losses were caused primarily by the negligent or willful misconduct or omissions of the County Indemnites, or any of them. Developer's indemnity obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Developer under any statutory program or scheme, including without limitation, any workers compensation, disability benefit or other employee benefit acts.

ARTICLE XVI.

ASSIGNMENT AND TRANSFER; NO THIRD-PARTY BENEFICIARIES

Developer shall not permit this Agreement or any of its obligations or rights hereunder to be delegated or assigned voluntarily, involuntarily or by operation of law, without the express prior written authorization of the County at its sole and absolute discretion; provided, however, that Developer shall be permitted to assign this agreement in whole to an affiliate of Developer, so long as Developer is in control of such affiliate and such assignment does not relieve Developer of its financial obligations under this Agreement. No such written authorization, however, shall be construed as discharging or releasing Developer from the performance of the Pre-Development Activities and the fulfillment of other obligations under this Agreement. This Agreement shall inure to the benefit of and bind the Parties and their permitted successors and permitted assigns.

ARTICLE XVII.

CHANGES

Section 1701. Relief Events.

(a) Subject always to the Funding Limitation, the County or the Developer may seek a change in Milestones or the Access Term, or in the Financial Terms, or seek other relief or remedies, by submitting a proposed Contract amendment to the other Party, indicating the Relief Event that is the basis for such proposed change, and following the administrative terms in Section 1702.

(b) The Parties acknowledge the following specific possible Relief Events:

- Changes in Laws or Regulations
- Third-party claims
- Breach of this Agreement by other Party
- Hazardous Environmental Conditions
- Changes in scope, extent, or character of the Project by the County
- Temporary restraining orders or injunctions imposed on Project by a court
- New Sales or Use Taxes:
- Revenue changes

Section 1702. Administration of Proposed Contract Changes.

(a) When a possible Relief Event occurs, the Party seeking relief shall give the other Party prompt notice of the Relief Event.

(b) Promptly after giving notice the Party seeking relief shall submit to the other Party a Change Proposal that proposes potential modifications of Milestones, the Access Term, the Financial Terms, or other relief, and includes related documentation.

(c) The Parties shall meet and confer regarding the Change Proposal, and attempt to negotiate an agreeable resolution.

(d) If negotiations are not successful, then the Party seeking relief shall present the other Party with a final position in the form of specific proposed modifications to the Contract. The receiving Party shall approve or reject the proposed modifications within 30 days of receipt. If the receiving Party has not approved or rejected the proposed modifications within 30 days after receipt, the proposed modifications shall be deemed rejected.

(e) In the case of a rejection of the proposed modifications, the Party seeking relief shall have the option of exercising its rights under Article XVIII, Final Resolution of Disputes.

ARTICLE XVIII. FINAL RESOLUTION OF DISPUTES

Section 1801. Unresolved Change Proposals.

If the party submitting a Change Proposal under Article XVII does not obtain the relief sought, and the administrative procedures set out in Section 1702 have been followed, the party may proceed to the final resolution of disputes under this Article.

Section 1802. Mediation.

If the Designated Representatives cannot resolve any unsettled Change Proposals, claims, counterclaims, disputes, and other matters in question between them arising out of or relating to the Project, or this Contract or the breach thereof ("Dispute"), then the Designated Representatives will refer the Dispute to the County Attorney Office and the general counsel of Developer, James Stockman, or any other officer duly appointed by the Developer. If the County and Developer cannot resolve the Dispute within 30 days after referral of the Dispute to such officers, then either Party may request mediation of the Dispute by a mutually acceptable mediator. The Parties will participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days of submission to mediation. The Parties will share equally the mediator's fees and related charges.

Section 1803. Final Resolution of Disputes.

If neither Party requests mediation, or if mediation is unsuccessful in resolving a Dispute, then (a) the Parties may mutually agree to a dispute resolution of their choice, or (b) either Party may seek to have the Dispute resolved by litigation. IN THE EVENT LITIGATION IS PROSECUTED BY ANY PARTY, COUNTY AND DEVELOPER AGREE TO THE MAXIMUM EXTENT PERMISSIBLE BY LAW TO WAIVE TRIAL BY JURY. The sole and exclusive venue for resolution of any shall be the state courts in Alachua County, Florida. In no event shall the existence of litigation of any controversy or the settlement thereof in and of itself delay the performance of obligations under this Agreement.

ARTICLE XIX. MISCELLANEOUS

Section 1901. Controlling Law.

This Agreement is governed by and will be interpreted and enforced under the laws of the State of Florida. Nothing contained herein shall be construed as a waiver of any immunity or limitation of liability the County may be entitled to under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

Section 1902. Laws and Regulations.

The County and the Developer shall comply with applicable Laws and Regulations. The Developer specifically agrees that in the performance of the Project, , it shall at all times comply with and cause each of its development team members and other contractors, subcontractors, vendors, consultants and agents to fully comply with all applicable laws, including environmental laws, permits, requirements of governmental authorities, and good industry practice. The Developer shall possess, and take commercially reasonable measures to assure that the Developer's team members and contractors and subcontractors possess, and maintain in effect all licenses, permits, registrations, certificates, and authorizations required by any law or by any governmental authority for the Project.

Section 1903. Notices.

Any notice, demand, request, consent, approval or other communication authorized or required hereunder (excluding day-to-day communication in the administration of this Agreement in the ordinary course) shall be in writing, shall be delivered personally or by national recognized overnight courier and shall be deemed to have been duly given and received upon receipt if delivery is made on a business day during regular business hours, or otherwise on the next business day. Confirmation of delivery of notice by an overnight courier shall be conclusive evidence of receipt of such notice. Notices to a party shall be addressed to such party at the addresses provided below, or such other addresses as a party may from time to time designate by written notice to the other party:

If to the County

Tommy Crosby
Assistant County Manager

Alachua County
12 SE 1st Street
Gainesville, FL 32601
Email jharriott@alachuacounty.us

With a copy to: David Forziano
Senior Assistant County Attorney
Alachua County
12 SE 1st St
Gainesville, FL 32601
Email dforziano@alachua.us

If to the Developer Viking Companies, LLC
2579 SW 87th Drive
Gainesville, FL 32608
Attn: Svein Dyrkolbotn
Email svein@vikingcompanies.org

With a copy to: Viking Companies, LLC
2579 SW 87th Drive
Gainesville, FL 32608
Attn: Jim Stockman
Email jim@vikingcompanies.org

Section 1904. Severability.

If any of the provisions of the Agreement shall contravene, or be invalid under the laws of the State of Florida, such contravention or invalidity shall not invalidate the entire Agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid, and the rights and obligations of the Parties shall be construed and enforced accordingly.

Section 1905. No Waiver.

No waiver of provisions of the Agreement or any amendment thereto shall be effective unless they are in writing and signed by the Party against which enforcement is to be had.

Section 1906. Mutual Waiver.

In no event shall either Party have any liability to the other or its affiliates, contractors or subcontractors on account of any consequential, incidental, indirect, special, punitive or exemplary damages, whether in contract, tort (including negligence and strict liability) or under any other legal or equitable principles whatsoever, or for any loss of profits, opportunity, reputation, financing or revenue.

Section 1907. Reserved.

Section 1908. Independent Contractor.

While Section 255.065, Florida Statutes, refers to public-private partnerships, that reference is to a means of project delivery, and not a description of a legal entity or relationship. The Contract does not create any principal-agent or employer-employee relationship, partnership, or joint-venture between the Parties.

Section 1909. Contractors and Consultants.

The Developer may retain such contractors and consultants as the Developer deems necessary to assist in the performance or furnishing of the Developer's responsibilities, subject to reasonable, timely, and substantive objections by the County. [Reference to exhibit of approved Constructors?]

Section 1910. Electronic Transmittals.

(a) The County and the Developer may transmit, and shall accept, Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

(b) The County and the Developer shall jointly develop protocols for electronic or digital transmittals.

Section 1911. Use of Documents.

The Developer shall provide the County with final record drawings for all Project Facilities. The County may retain copies of all such drawings for information and reference in connection with the Project Facilities. Upon final payment by the County of the compensation due to the Developer under this Agreement, all rights and interests, including the copyright, in the design, including any Drawings and Specifications, shall pass to the County, subject to the following limitations:

(a) The County acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by the Developer, or for use

or reuse by the County or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by the Developer or a duly licensed design professional;

(b) Any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by the Developer, as appropriate for the specific purpose intended, will be at the County's sole risk and without liability or legal exposure to the Developer or to its officers, directors, members, partners, agents, employees, and consultants.

Section 1912. Designated Representatives.

The Parties designate the following individuals to act as their representatives with respect to the responsibilities under the Contract.

County

Tommy Crosby

Developer

Svein Dyrkolbotn

Each individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective Party whom the individual represents. Either Party may change its Designated Representative by proving written notice of the change to the other Party in accordance with the Notices section of this Agreement.

To facilitate efficient communication and information exchange relating to the Project, all official communication about material issues related to the Project shall flow through the Designated Representatives. Each Designated Representative is responsible for the further dissemination of information to other members of their respective teams. Each Designated Representative will actively involve and make available other team members to participate in regularly scheduled Project planning and progress meetings.

Section 1913. Counterparts.

This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all of which when taken together shall constitute one and the same instrument. The Parties agree that an electronic version of this Agreement shall have the same legal effect and enforceability as a paper version. The Parties further agree that this Agreement, regardless of whether in electronic or paper form, may be executed by use of electronic signatures. Electronic signatures shall have the same legal effect and enforceability as manually written signatures. The County shall determine the means and methods by which electronic signatures may be used to execute this Agreement and shall provide the Developer with instructions on how to use said method. Delivery of this Agreement or any other document contemplated hereby bearing an manually written or electronic signature by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to

preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

Section 1914. Public Records.

(a) Any document submitted to the County may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per Section 119.011(12), Florida Statutes. Any public record is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.

(b) In accordance with Section 119.0701, Florida Statutes, the Developer, when acting on behalf of the County, as provided under Section 119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, the Developer shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) The Developer shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements, including materials exempt from disclosure pursuant to Section 119.071(3)(b)(1), Florida Statutes, are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the Developer does not transfer the records to the County. Upon the completion of the Agreement, the Developer shall transfer, at no cost, to the County all public records in the possession of the Developer and shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology system of the County.

(d) **IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY REPRESENTATIVE AT E-MAIL: publicrecordsrequest@alachuacounty.us; PHONE NUMBER: (352) 384-9132; ADDRESS: 12 SE 1st Street, Gainesville, FL 32601**

(e) Subject to any statutory requirements, the Developer shall maintain the confidentiality of all financial and other operational information relating to the Project, except to

the extent that (i) disclosure is required by law, (ii) disclosure is required for any filing or application in connection with a permit, certificate of occupancy, license or franchise, or (iii) such confidential information needs to be provided to any other consultant or professional being engaged by or on behalf of the County.

Section 1915. Warranty of Authority; Binding Agreement.

The Parties represent and warrant that the signatories below are duly authorized by the Party each represents to enter into this Agreement, and by their signatures do bind the Parties to the terms of this Agreement.

Section 1916. Amendments.

This Agreement may be amended or modified only in writing, executed by each Party. A waiver of enforcement of any obligation or waiver of covenant or the exercise of any right or remedy shall be in writing and signed by the Party to be bound thereby in order to be effective. The provisions of this Agreement are severable and the invalidity of one or more of the other provisions hereof shall not affect the validity or enforceability of any of the provisions hereof. This Agreement is the product of negotiation and neither Party shall be burdened by any presumption on the basis of its involvement in the drafting and preparation of this Agreement.

Section 1917. Agreement Copyright.

The form of this Agreement is a modified version of EJCDC® P3-508, Copyright © 2014 by the National Society of Professional Engineers, American Society of Civil Engineers, and American Council of Engineering Companies, or is based in part on excerpts from EJCDC documents. Those portions of the text that originated in published EJCDC documents remain subject to the copyright.

**ARTICLE XX.
SUSPENSION AND TERMINATION**

Section 2001. Suspension.

The County may suspend the Project for up to 90 days upon seven days written notice to the Developer. The County shall be responsible for direct, reasonable, and documented costs resulting from the suspension, including all demobilization, remobilization, lost fees, revenue, impact on financing costs and reasonable Site overhead costs resulting from any suspension.

Section 2002. Termination.

(a) If the Developer shall materially breach, violate or fail or refuse to timely perform in accordance with the requirements hereof any of the terms, conditions, covenants or agreements made by the Developer herein (a "Developer Default"), the County shall have the right to give written notice of such Developer Default to the Developer, and if, within 10

business days after receipt of such notice, the Developer has not promptly commenced or proposed for County consent its recommended course of action to cure such default (and thereafter diligently pursues such cure to completion within the period for the performance and completion of the Project), the rights and remedies of the County shall include the right to terminate this Agreement by giving written notice to the Developer, whereupon this Agreement shall automatically cease and terminate, subject, however, to the rights and remedies of the County to recover damages sustained by the County and other available remedies, and the survival of the Developer's indemnity and insurance obligations hereunder.

(b) If the County shall materially breach, violate or fail or refuse to timely perform in accordance with the requirements hereof any of the terms, conditions, covenants or agreements made by the County herein (a "County Default"), the Developer shall have the right to give written notice of such County Default to the County, and if, within 10 business days after receipt of such notice, County has not promptly commenced or proposed for Developer consent its recommended course of action to cure such default (and thereafter diligently pursues such cure to completion within the period for the performance and completion of the Project), the rights and remedies of the Developer shall include the right to terminate this Agreement by giving written notice to the County, whereupon this Agreement shall automatically cease and terminate.

ARTICLE XXI. CONDITIONS PRECEDENT

Real estate closing with the Landowner

Final judgment in validation lawsuit

Completion of Operating Agreement

Completion of Management Agreement

ARTICLE XXII. CONTRACT DOCUMENTS

[Identify, e.g., Construction Plans and Specifications]

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

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

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

DATE: _____

DEVELOPER: VIKING COMPANIES LLC

WITNESSES:

By: _____
Name: _____
Title: _____

DATE: _____

EXHIBITS