

## DEVELOPMENT AND FUNDING AGREEMENT

THIS DEVELOPMENT AND FUNDING AGREEMENT (this “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2013, by and between **CLAY COUNTY DEVELOPMENT AUTHORITY**, an independent special district of the State of Florida (the “**CCDA**”), whose mailing address for purpose of notice is \_\_\_\_\_, and **CLAY COUNTY**, a political subdivision of the State of Florida by and through its Board of County Commissioners (the “**County**”), whose address for purpose of notice is 477 Houston Street (delivery) and Post Office Box 1366 (mail), Green Cove Springs, FL 32043. *All capitalized terms used but not immediately thereafter defined shall have the meanings ascribed thereto elsewhere in this Agreement.*

### BACKGROUND FACTS

A. CCDA has requested the County to advance money to aid CCDA in the construction of a sports park consisting of 3 replica baseball fields, 2 full size baseball fields, covered sports pavilion, 8 batting cages, concessions facility, restaurant, maintenance/administration building, playground and related facilities (collectively, the “**Sports Park**”), upon land to be owned by CCDA. Simultaneously with the execution of this Agreement and as a part of the same transaction, CCDA has executed and delivered to County the Funding Documents, which are intended to evidence and secure the Funding.

B. To aid in the design of the Sports Park, CCDA has entered into that certain License Agreement dated December 14, 2011 (as same may be amended or modified hereafter, the “**License Agreement**”) with Big League Dreams USA, LLC, a California limited liability company (together with its affiliates, “**BLD**”), pursuant to which BLD has granted to CCDA a non-exclusive license to use BLD’s intellectual property rights in order to develop the Sports Park in the look, design, style, shape, color, scheme and architecture of BLD’s “**Big League Dreams Sports Parks**,” which incorporate architectural design features developed by BLD and are inspired by professional baseball stadiums, including, without limitation, the following design elements: (a) the foul pole to foul pole look of the field from the batter's perspective, including depictions of crowd scenes, facades, historically relevant scoreboards, outfield walls, bullpens, grandstands, skylines and landscaping; (b) the design of the food and beverage concession facilities; and (c) the overall design and layout of the Sports Park. CCDA intends to develop and construct or cause to be constructed the Sports Park as a “**Big League Dreams Sports Park**” pursuant to the license granted by BLD.

C. CCDA intends to obtain approximately 35 acres of real property located in the general vicinity northeast of the intersection of Branan Field Road and Old Jennings Road in Clay County, Florida (as more particularly described on Exhibit D attached hereto, the “**Land**”) for construction of the Sports Park, Entrance Road and Utilities through a donation (the “**Donation**”) from BFC Partnership, Ltd., a Florida limited partnership (“**Donor**”). The donation of the Land from Donor to CCDA will be pursuant to a donation agreement (the “**Donation Agreement**”) in form reasonably acceptable to the County, which Donation Agreement shall contain terms and conditions similar to those contained in a typical commercial real estate purchase agreement, including, but not limited to, customary due diligence provisions for the inspection of the Land, title and survey review, soils and environmental testing and delivery of a

special warranty deed and other standard closing documents. Upon acquisition of the Land, CCDA intends to construct or cause to be constructed the Sports Park, Entrance Road and Utilities on the Land pursuant to the terms and conditions of this Agreement.

D. The Donor owns approximately 741 acres of real property adjacent to the Land (the “**Donor’s Surrounding Land**”) which Donor intends to develop in a manner compatible with the Sports Park. To evidence this goal, Donor intends to develop a conceptual master plan (the “**Master Plan**”) and impose a declaration of covenants, conditions, easements and restrictions (the “**CC&Rs**”) to provide, among other things, for (i) a master plan of development for the Donor’s Surrounding Land, (ii) an architectural review process for the Donor’s Surrounding Land, (iii) use restrictions on the Donor’s Surrounding Land, and (iv) such other terms and conditions as deemed appropriate by the Donor, CCDA and the County. The Master Plan and the CC&Rs with respect to the Donor’s Surrounding Land shall be in form and content reasonably acceptable to the County.

E. In connection with the construction of the Sports Park, CCDA shall construct or cause to be constructed a \_\_\_-lane paved road, together with curbing, landscaping and lighting and sufficient right-of-way for the underground installation of the Utilities (the “**Entrance Road**”) upon a portion of the Land (the “**Entrance Road Land**”) to provide access to the Sports Park from Branam Field Road [**or from the eastside Service Road**]. The Entrance Road shall be constructed pursuant to plans and specifications approved by the County and in conformity with the Master Plan.

F. In addition to the Entrance Road, Donor, at Donor’s sole cost and expense, shall construct and install or cause to be constructed and installed all utilities and infrastructure for the Sports Park necessary for the proper operation of the Sports Park, including but not limited to, a master stormwater and sewer drainage system that provides master retention and any required master outfall for storm water drainage from the Entrance Road, the Land and Donor’s Surrounding Land (the “**Master Stormwater System**”) and underground utilities, including but not limited to, public water and sewer, reclaimed water, electric, gas, cable, fiber optic, and telephone (collectively, the “**Utilities**”). The Master Stormwater System and the Utilities shall be constructed pursuant to plans and specifications approved by the County and in conformity with the Master Plan. Clay County Utility Authority (“**CCUA**”) has indicated a preliminary concept that, provided the same design Engineer is used for the Entrance Road and the Utilities, CCUA will consider advancing a portion of the costs for extending water, reclaimed water and sewer to the Sports Park subject to Donor’s or BLD’s paying its share of the extension costs and connection charges. CCUA proposed to be repaid the balance of any funds advanced by CCUA, together with appropriate conveying charge, through connection fees and charges as future development occurs on Donor’s Surrounding Land.

NOW, THEREFORE, in consideration of the execution and simultaneous delivery of the Funding Documents and of the mutual and separate agreements, conditions, covenants and warranties of the parties hereto, the parties agree as follows:

**ARTICLE I  
DEFINITIONS**

**1.1** Definitions. As used in this Development and Funding Agreement, the following terms shall have the following meanings:

ARCHITECT: \_\_\_\_\_ and/or any other architect employed by CCDA and approved by the County providing architectural services with respect to design, construction and development matters pertaining to the Property.

BLD DOCUMENTS: All agreements (i) between CCDA and BLD and/or affiliates of BLD, including, but not limited to, the License Agreement and (ii) any other license agreements, maintenance and operation agreements and/or consulting agreements relating to the design, construction, maintenance and/or operation of the Property.

CCDA'S COST: The reasonable cost of labor and materials actually expended or incurred by CCDA pursuant to the Plans related to, and incorporated in, the Improvements on the Property. At County's option, expressed in writing, CCDA's Cost shall include materials stored on the Property or elsewhere and properly secured and insured, or any one or more of said items. No amounts paid to affiliates of CCDA shall be considered to be CCDA's Cost except to the extent that such amounts are not in excess of those that would be charged for the services or materials acquired in the absence of such relationship. No general overhead or management fees, commissions or similar fees of CCDA or of any such other persons shall be considered part of CCDA's Cost except as specifically approved by the County in the construction budget or otherwise.

COMPLETION DATE: The date of final disbursement of funds as provided in this Agreement, but in no event later than \_\_\_\_\_, \_\_\_\_\_.

CONSTRUCTION DOCUMENTS: All contracts between CCDA and Contractor, Architect, Engineer and all contracts, subcontracts and purchase orders relating to the construction or acquisition of the Improvements and all modifications thereof and supplements thereto.

CONTRACTOR: \_\_\_\_\_ and/or any other contractor employed by CCDA and approved by the County providing general contractor services with respect to design, construction and development matters pertaining to the Property.

COST OF IMPROVEMENTS: All direct and indirect costs required to be expended by CCDA to comply with the requirements of this Agreement relating to construction of the Improvements.

DEFAULT; EVENT OF DEFAULT: An “**Event of Default**” shall mean any of the events or circumstances described in Section 8.1 hereof (collectively, “**Events of Default**”), provided that any required notice has been given and/or any required grace period has expired. A “**Default**” shall mean any such events or circumstances, whether or not such notice has been given or such grace period has expired.

ENGINEER: \_\_\_\_\_ and/or any engineer employed by CCDA and approved by the County providing engineering services with respect to design, construction and development matters pertaining to the Property.

FUNDING: The advances made pursuant to this Agreement, up to the Maximum Funding Amount.

FUNDING DOCUMENTS: This Agreement, the Security Instrument and all other documents including, where applicable, estoppel certificates and agreements of architects, engineers and contractors referred to or described in this Agreement and all other instruments now or hereafter evidencing or securing the Funding, together with any existing and future amendments thereof.

HAZARDOUS MATERIALS: Asbestos and any hazardous or toxic material or substance the handling, storage, manufacture, transportation or use of which is or becomes subject to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), Public Law No. 96-510, 94 Stat. 2767, 42 USC § 9601 *et seq.*, and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613, the Resource Conservation and Recovery Act of 1976, or any other applicable federal, state or local laws or ordinances relating to the environment.

IMPROVEMENTS: The improvements to be constructed on the Sports Park Land including the Sports Park as to be more particularly described in the applicable Plans and such other improvements as are approved in writing by the County.

MAXIMUM FUNDING AMOUNT: \$19,000,000.00

- PERMITTED ENCUMBRANCES: Nondelinquent ad valorem taxes for the current year, the matters set forth on Exhibit C, if any, and such other matters as may be approved in writing by County in its sole discretion.
- PLANS: The final plans, drawings, specifications, construction budget, schedule of values, trade and materials breakdown and other cost allocations for construction of the Improvements, as the case may be, each as now or hereafter prepared and certified by CCDA and/or the Architect or Engineer, as applicable, and approved in writing by the County and all amendments and modifications thereto made with the written approval of the County.
- PROPERTY: The Land and the Improvements.
- RETAINAGE: The amounts and percentages to be held back by CCDA from Contractor and each subcontractor and supplier engaged in the construction of the Improvements pursuant to the terms of the applicable Construction Document. In no event shall the Retainage be less than ten percent (10%) of any advance hereunder.
- SECURITY INSTRUMENT: That certain Mortgage and Security Agreement encumbering the Property and securing CCDA's obligations hereunder.
- SPORTS PARK LAND: That portion of the Land on which the Sports Park is to be constructed.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE CCDA**

### **2.1 Representations and Warranties.** CCDA represents and warrants that:

(a) Title to the Property. Upon completion of the Donation, (i) CCDA will be indefeasibly seized of marketable title to the Land (in fee simple absolute) and the Land will be free and clear of all liens, encumbrances, easements and charges, except Permitted Encumbrances and (ii) all necessary perpetual non-exclusive easements benefiting the Land shall be recorded in the public records of Clay County for the construction, installation, use and maintenance of the Entrance Road, Utilities and Master Stormwater System. There are no covenants, restrictions, conditions, liens or charges upon the title to the Land which would prevent the construction or use of the Improvements.

(b) Absence of Liens for Labor or Materials. There are no unpaid bills for labor, materials, supplies or services furnished upon or in connection with the Land.

(c) Permits and Licenses. Prior to commencing or causing to be commenced the construction of the Improvements, CCDA will obtain and provide to the County all required

federal, state and local permits, licenses, approvals and authorizations including those required by the U.S. Army Corps of Engineers, the Federal Environmental Protection Agency, St. Johns River Water Management District, other federal agencies and any state or local authority charged with the enforcement or regulation of environmental and land use matters (collectively, “**Applicable Permits**”). CCDA has fully complied with all building, safety, zoning and other requirements of any state, local or other governmental authority pertaining to the construction of the Improvements capable of being complied with at the date hereof, and there are no legal or other impediments to obtaining all other permits, licenses, approvals and authorizations not now obtainable. CCDA will obtain such other permits, licenses, approvals and authorizations when obtainable and will comply with all such building, safety, zoning and other requirements hereafter. The construction and use of the Property are not subject to laws relating to developments of regional impact. No portion of the Land is jurisdictional wetlands of the Florida Department of Environmental Protection, the U.S. Army Corps of Engineers, St. Johns River Water Management District or any other water management district or other regulatory body.

(d) Plans. Prior to commencing or causing to be commenced construction of the Improvements, CCDA will deliver to the County accurate and complete copies of the Plans and all contract documents including all modifications thereof. The Plans will be approved by the Architect, Engineer and Contractor, and by all local authorities and the beneficiaries of covenants to the extent required by such local authorities or such covenants. CCDA hereby warrants and represents to County that:

(i) Each set of Plans to be delivered to the County will be, when delivered, a complete and accurate set of the Plans.

(ii) Each set of Plans to be delivered to the County will be complete and adequate for the construction of the Improvements, and there have been no modifications thereof except as described therein. Each set of Plans shall not be modified without the prior written consent of the County.

(iii) The County may use each set of Plans for any purposes relating to the Improvements, including but not limited to inspections of construction and the completion of the Improvements.

(iv) County's execution of this Agreement shall not constitute approval of any of the Plans by County. CCDA shall be required to obtain approval of all Plans by all applicable County departments and applicable State agencies, if any.

(v) Each set of Plans to be delivered to County will comply with all applicable building, safety, zoning and other requirements of all state, local or other governmental or regulatory authorities and rating or inspection offices having jurisdiction. The Improvements, Entrance Road and Utilities, will be constructed entirely on the Land and will not encroach on any easements, rights-of-way or land of others or violate any setback lines or applicable restrictions on land use or other restrictions or regulations.

(e) Absence of Pending Actions. There are no suits or proceedings pending or, to the knowledge of CCDA, threatened against or affecting CCDA, BLD, Donor, the Land, Donor's Surrounding Land or involving the validity or enforceability of the Funding Documents, the Donation Agreement, the BLD Documents, the Construction Documents or involving any risk of a judgment or a liability which, if unsatisfied, would have a materially adverse effect on the Land and/or the financial condition, business or properties of CCDA, BLD, or the proposed operation of the Sports Park.

(f) Conflicting Agreements or Decrees. The execution and delivery of this Agreement, the other Funding Documents, the Donation Agreement, the Construction Documents and the BLD Documents, and the consummation of the transactions contemplated thereby do not conflict with or result in the breach of any regulation, order, writ, injunction, judgment or decree of any court or governmental or local authority or in the breach of or default under any agreement or other instrument to which the CCDA is a party or by which it or its property is bound. CCDA has not made or entered into any other contract for improvements to the Land other than the Construction Documents and such other contracts as have been submitted to and approved by County in writing.

(g) Adequate Access; Entrance Road. The Property will have adequate rights of access to public ways (including Branam Field Road **[or eastside Service Road]**), as shown in the Plans for the Entrance Road and/or the survey furnished to County. The Entrance Road has been or will be constructed pursuant to the plans approved by the County and in conformity with the Master Plan for Donor's Surrounding Land and the CC&Rs. Upon completion and acceptance by the County, the Entrance Road and Utilities will be dedicated to the County or applicable utility authority at no cost to the County. In connection with any such dedication, County will release any security interest in that position of Land in which the Entrance Road and Utilities has been constructed.

(h) Utilities and Zoning. All Utilities are or will be physically available at the Property in sufficient quantity for their intended use, and the current zoning classification and all other laws, ordinances, rules and regulations affecting the use of the Property permit the construction and intended use of the Improvements without the necessity of obtaining further approvals, variances, waivers, consents or authorizations. No easements, licenses or other interests in the property of others or any consent of other land owners are required for drainage or other utilities or services relating to the Property.

(i) Parking. Parking sufficient to satisfy legal requirements and for the practical utilization of Sports Park will be available on the Sports Park Land.

(j) Soil Conditions. Prior to obtaining title to the Land, CCDA will cause soil tests to be made and such tests must show the Land and Donor's Surrounding Land to be suitable in all respects for the Improvements, Entrance Road and Utilities. CCDA will deliver copies of such test results to County which test results must be acceptable to the County.

(k) Hazardous Materials. Prior to obtaining title to the Land, CCDA will cause Donor to provide an environmental audit with respect to the Land and Donor's Surrounding Land to be performed which results must be acceptable to the County. The Property

is now and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations relating to Hazardous Materials. As of the date hereof, to CCDA's knowledge there are no Hazardous Materials located on, in or under the Land or used in connection therewith.

(l) Information Provided to County. All information provided to County in connection with this Agreement is and shall be true and correct in all respects.

**2.2** Time of Representations and Warranties. Each of the representations and warranties set forth in this Article shall be deemed to be made as of the date hereof and as of the time of each advance of the Funding proceeds and will be true on the date hereof and on the date of each advance hereunder and the acceptance of any advance hereunder by CCDA shall be deemed to be a reaffirmation of each of said representations and warranties.

### **ARTICLE III CCDA'S COVENANTS**

CCDA covenants and agrees with County as follows:

**3.1** Title Insurance. The CCDA will furnish to the County prior to the disbursement of any funds hereunder a copy of its existing owner's title insurance policy showing CCDA to be vested with valid marketable fee simple title to the Land, free and clear of all exceptions and encumbrances whatsoever except Permitted Encumbrances.

**3.2** Survey. The CCDA shall, prior to the disbursement of any funds hereunder, furnish to County, at CCDA's expense, a signed and sealed print of a boundary survey certified to the County and showing the Land to be free from encroachments and other adverse matters except the Permitted Encumbrances. At the request of County, CCDA will furnish to the County supplemental surveys promptly after pouring of the foundation of any building or structure and promptly after completion of each building or structure, showing all Improvements to be properly located on the Land and not in violation of any law, regulation, covenant or restriction, zoning ordinance, setback line or other restriction affecting the Land. Such surveys shall be made by a civil engineer or surveyor acceptable to County, shall conform to all statutory and professional minimum standards and any additional survey requirements of County, and shall be paid for by CCDA. The survey shall note the flood zone classification of the Land. At County's option, the surveyor shall furnish a separate certificate or such other information as the County may require.

**3.3** Construction of Improvements. CCDA shall promptly construct or cause to be constructed the Improvements, in a true, thorough, workmanlike and substantial manner and in strict accordance with the applicable Plans, building permits and applicable building and zoning codes, covenants and restrictions. CCDA shall provide or cause to be provided, at CCDA's expense, all manner of materials, labor, implements and cartage of every description necessary for the due performance of the work. CCDA shall take all necessary steps to assure that construction and installation of the Improvements shall proceed continuously and diligently, and shall be completed in a timely manner in accordance with the applicable Plans and that construction shall be completed on or before the Completion Date. CCDA shall commence or



cause to be commenced construction of the Improvements on or before \_\_\_\_\_ (the “**Commencement Date**”).

**3.4** Evidence of Payment of Costs. If requested by County, CCDA shall furnish, before each advance herein agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, releases of lien and other documents which may be required by the County or the title insurer, as evidence of full payment of all labor and materials incident to the construction of the Improvements, and will promptly secure the release of the Land from all liens.

**3.5** Inspection. CCDA will permit County and its representatives to enter upon the Land, inspect the Improvements and all materials to be used in the construction thereof, and to examine and make copies of all detailed plans and shop drawings which are or may be kept at the construction site, and all books and records of CCDA, whether or not relating to the Property and will cooperate with the County and County's representatives to enable it to perform its functions hereunder. It is expressly agreed that if the County should inspect the Improvements, County shall have no liability or obligation to CCDA or other person arising out of such inspection. Inspections made by County or its representatives shall be made solely for the protection and benefit of the County, and neither the CCDA, nor any person or party claiming by, through or under the CCDA, shall be entitled to claim any loss, damage or offset either against the County for failure to properly inspect the Property. CCDA agrees to promptly pay the cost of such inspections and the fees and other charges of any inspecting architect, engineer or consultant employed by County.

**3.6** Correction of Deficient Work. If the County determines that any portion of the Improvements is not being constructed in accordance with the applicable Plans in a workmanlike manner, it may require work to be stopped and withhold further disbursements until the deficiencies are corrected. CCDA agrees that it will correct or cause the Contractor to correct, at its own cost any work performed and replace any materials that do not comply with the Plans, applicable laws, regulations or permits, or accepted standards of quality and workmanship. In the event of any dispute between CCDA and County with respect to the interpretation and meaning of the applicable Plans, the same shall be determined at CCDA's cost by an independent architect or engineer selected by the County.

**3.7** Adequate Financing. CCDA will provide or cause to be provided without secondary financing involving any mortgage or other lien against the Land, all amounts necessary to pay all costs of the Improvements, which are in excess of the disbursements required to be made by County hereunder for any budget category, and County shall not be required to make any disbursement hereunder if the undisbursed proceeds of the Funding for any budget category (taking into account any reserves required hereunder) shall be less than the amount, determined in County's reasonable judgment, necessary to pay for all Cost of Improvements required for the completion of the Improvements or category thereof.

**3.8** Further Assurances. To the end that the agreements of the CCDA set forth herein and in the Funding Documents shall be effectively and fully performed and the intent and purpose of this Agreement fulfilled, CCDA agrees to execute all other and further instruments reasonably required by County from time to time in order to carry out the provisions of this

Agreement. CCDA hereby irrevocably appoints County as its attorney-in-fact to take all such action in the event CCDA fails to do so.

**3.9 Use of Funding Proceeds.** All labor and materials contracted for in connection with construction of the Improvements shall be used and employed solely on the Property and in such construction, and only in accordance with the Plans for the Improvements. The monies disbursed to or for the account of the CCDA under this Agreement shall constitute a trust fund in the hands of the CCDA or other payee, and shall be used solely by such payee for the payment of Cost of Improvements and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by County. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Funding or to impose any duty on the County with respect thereto.

**3.10 Payment of Fees, Taxes and Expenses.** In addition to other costs and expenses herein agreed to be borne by CCDA, CCDA agrees to pay for documentary stamp taxes, intangible taxes and other recording, excise or similar taxes (and any penalties and interest for nonpayment thereof), recording and filing fees and taxes in connection with the execution, delivery or recording of the Funding Documents or making of any advances, all appraisal costs, and all costs and expenses incurred by the County in connection with any modification of the Funding or the administration of the Funding (including reasonable inspection charges and fees and charges of any inspecting or consulting architects or engineers) and in the enforcement of County's rights and remedies hereunder or under the other Funding Documents after Default, including reasonable attorneys' fees, whether or not suit be brought and including fees and costs on appeal. The County is irrevocably authorized to disburse such costs and expenses from the Funding proceeds. The obligation of the CCDA hereunder shall survive termination of the Agreement.

**3.11 Transfer of Property.** CCDA will not convey, or encumber, lease or otherwise dispose (including dispositions by merger or operation of law) of all or any part of CCDA's interest in the Property or the Improvements without the prior written consent of the County, nor shall CCDA assign or transfer any rights under this Agreement or any part of any advance to be made hereunder. CCDA shall not subdivide the Property, submit the Property, or any portion thereof, to condominium or other multiple form of ownership, or dedicate any portion of the Property to public ownership (other than ownership by CCDA) without the prior written consent of County.

**3.12 Insurance.** CCDA shall furnish and pay the premiums or cause premiums to be paid for replacement value insurance on all insurable Improvements and other improvements on the Property, wherever located, against all hazards and risks required by County, including, but not limited to, builder's risks (non-reporting form), fire, extended coverage, collapse, loss of rental, and flood, in a company or companies and in form and amount acceptable to County. CCDA shall furnish to County a certificate of insurance naming County as additional loss payee, with respect to such insurance and such insurance shall not be cancelable without at least thirty (30) days' written notice by the insurer to County. Notice of cancellation to County shall be addressed as provided for herein for notices to County. CCDA shall also furnish at no expense to County evidence of such workmen's compensation insurance as is required by law and such

liability insurance as is required by County, with such policies naming County as additional insured party.

**3.13 Financial Statements.** The CCDA shall maintain or cause to be maintained books and records relating to the operation of the Improvements and the ownership of the Property in accordance with generally accepted accounting principles, consistently applied. CCDA shall cause to be delivered to County such financial statements and other information relating to the Improvements and the project being constructed with the proceeds of the Funding as the County may reasonably require from time to time.

**3.14 Construction Documents.** The identity of Contractor, Engineer and Architect and all Plans, project budgets, construction contracts and major subcontracts and subcontractors shall be approved in writing by the County. No changes shall be made in any approved Plans, budgets, Construction Documents, other contracts or subcontracts except with the written consent of the County, except as permitted by Section 2.1(d)(ii). All bonds and errors and omissions insurance required by the County shall be maintained in force as approved.

**3.15 No Waivers.** Without the written consent of the County, the CCDA shall not release, modify or waive any material rights that it may now have or hereafter obtain relating to the Property, including rights under the Construction Documents, the BLD Documents, leases, easements, licenses, permits, covenants, restrictions and ingress, egress and parking rights.

**3.16 Adverse Liens.** Neither the CCDA nor any contractor or subcontractor shall execute any security agreement covering any materials, fixtures or articles to be or intended to be incorporated in the Improvements or covering articles of personal property placed in the Improvements, nor file a financing statement relating thereto nor purchase any such materials, fixtures or articles in such a manner so that ownership thereof does not vest unconditionally in the CCDA, free from encumbrances, and CCDA shall produce to the County upon demand the contracts, bills of sale, statements, vouchers or agreements or any of them, under which CCDA claims title to such materials, fixtures or articles.

**3.17 Hazardous Materials.** No material used in constructing the Improvements shall contain any asbestos or other Hazardous Material nor shall the Land be used for the purpose of handling, storing, manufacturing, transporting or disposing of any Hazardous Materials whatsoever, whether or not such use complies with applicable laws and regulations; provided, however, that the incidental use or storage of Hazardous Materials in connection with the operation of businesses on the Property is permitted so long as such use or storage complies with all applicable laws and regulations. CCDA shall promptly notify County of any change in the nature or extent of any Hazardous Materials maintained on, in or under its property or used in connection therewith, and will transmit to County copies of any citations, orders, notices or other material governmental or other communication received with respect to any Hazardous Materials affecting its property.

CCDA shall indemnify and hold County harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys' consultants' and experts' fees and expenses) of every kind and nature suffered by or asserted against County as a direct or indirect result of any

warranty or representation made by CCDA in Paragraph 2.1(k) being false or untrue in any material respect, any breach of any covenant in the preceding paragraph, or any requirement under any law, regulation or ordinance, local, state or federal, which requires the elimination or removal of any Hazardous Materials, substances, wastes or other environmentally regulated substances by County, CCDA or any transferee of CCDA or County.

If County has cause to believe in its reasonable judgment that there has been a release of Hazardous Materials on the Land or that CCDA or the Land is in violation of any environmental law or regulation, County, at County's sole option, may obtain, at CCDA's expense, a report from a reputable environmental consultant of County's choice as to whether the Land has been or is presently being used for the handling, storage, transportation, or disposal of Hazardous Materials. If the report indicates such past or present use, handling, storage, transportation, or disposal, County may require that all Hazardous Material be removed and/or that violations of law with respect to Hazardous Materials be promptly corrected and/or that CCDA promptly obtain all necessary environmental permits and no further disbursements hereunder shall be required to be made until such violations are cured and/or permits obtained.

**3.18 Notice of Default.** CCDA will deliver immediate written notice to County of any: (i) default or alleged default by any party under any of the Funding Documents, Donation Agreement, Construction Documents or BLD Documents; (ii) default or alleged default under any agreement to which CCDA is a party; (iii) any event which has caused or may cause representations, warranties or other information delivered to County by CCDA or by BLD to CCDA in connection with the Funding or Sports Park to be or become untrue; and (iv) any material adverse change in BLD's business or financial condition.

**3.19 Compliance with Laws.** CCDA will observe, confirm and comply in every material respect with all laws, decisions, judgments, rules, regulations and orders of all governmental authorities relative to the construction and operation of the Improvements and the conduct of its business.

**3.20 Payment of Indebtedness, Taxes, Etc.** CCDA will (i) pay all of its material obligations promptly and in accordance with normal terms; and (ii) pay and discharge or cause to be paid and discharged promptly all taxes, assessments and governmental charges or levies imposed upon CCDA or upon the Land, or upon any of CCDA's other property, real, personal or mixed, or upon any part thereof, before the same shall become in default.

**3.21 Notices of Litigation or Regulatory Action.** CCDA will deliver immediate written notice to the County of any of the following:

(a) Any claims or litigation against CCDA, BLD and/or the Land if such litigation or claim involves the possibility of liability in excess of \$10,000.00 or more or would otherwise have a material adverse impact on the condition, financial or otherwise, of the CCDA, BLD, the Property, the Entrance Road, the Utilities and/or the Master Storm Water System, which notice shall include a description of the claim or litigation and the basis therefor;

(b) Any material citation, order, decree, ruling or decision issued by, or any denial of any application or petition to, or any proceedings (or material change in the status of

proceedings) before any governmental commission, bureau or other administrative agency or public regulatory body against or affecting CCDA, BLD or the Land;

(c) The lapse or other termination or suspension of any of CCDA's material licenses, patents, trademarks or permits;

(d) Any lapse, suspension or other termination or any modification of any certification, license, consent or other authorization of any governmental commission, bureau or other administrative agency or public regulatory body, or any refusal of any thereof to grant any application therefor, in connection with the operation of the Improvements if such event might have a material adverse effect on the condition, financial or otherwise, of the CCDA, BLD or the Land.

**3.22 Additional Affirmative Covenants.** CCDA agrees that from the date hereof, unless County shall otherwise consent in writing, CCDA will:

(a) Access to Books and Records. Allow County, or its agents, during normal business hours, access to the books, records and such other documents of CCDA with respect to the Land as County shall reasonably require, and allow County, at County's expense, to inspect, audit and examine the same and to make extracts therefrom and to make copies thereof.

(b) Certificate of Full Compliance From Accountant. Deliver to County, with the financial statements required herein, a certification by CCDA that CCDA is in full compliance with the Funding Documents.

(c) Compliance with Other Agreements. Comply with all terms and conditions contained in this Agreement, any other Funding Documents, the Construction Documents and the BLD Documents.

(d) Insurance. Maintain or cause to be maintained adequate insurance coverage with respect to its properties and business against loss or damage of the kinds and in the amounts customarily insured against by companies of established reputation engaged in the same or similar businesses including, without limitation, commercial general liability insurance, and workers compensation insurance, all acquired in such amounts and from such companies as County may reasonably require.

(e) Maintain Properties. Maintain, preserve and keep its property in good repair, working order and condition, making all replacements, additions and improvements thereto necessary for the proper conduct of its business, unless prohibited by the Funding Documents.

(f) Notice of Default and Other Notices.

(i) Notice of Default. Furnish to County promptly upon becoming aware of the existence of any condition or event which constitutes a Default or any event which, upon the giving of notice or lapse of time or both, may become a Default, written notice

specifying the nature and period of existence thereof and the action which CCDA is taking or proposes to take with respect thereto.

(ii) Other Notices. Promptly notify County in writing of (i) any material adverse change in its financial condition or its business; (ii) any default under any BLD document, any material agreement, contract or other instrument to which it is a party or by which any of its properties are bound, or any acceleration of the maturity of any indebtedness owing by CCDA; (iii) any material adverse claim against or affecting CCDA, BLD or the Land; (iv) the commencement of, and any material determination in, any litigation with any third party or any proceeding before any governmental agency or unit affecting CCDA; and (v) at least 30 days prior thereto, any change in CCDA's name or address as shown above, and/or any change in CCDA's structure.

(g) Other Financial Information. Deliver promptly such other information regarding the operation, business affairs, and financial condition of the Property or BLD which County may reasonably request.

(h) Payment of Debts. Pay and discharge when due, and before subject to penalty or further charge, and otherwise satisfy before maturity or delinquency, all obligations, debts, taxes, and liabilities of whatever nature or amount, except those which CCDA in good faith disputes.

**3.23** Financial and Other Information. CCDA shall deliver to County such information as County may reasonably request from time to time, including without limitation, financial statements and information pertaining to CCDA's financial condition. Such information shall be true, complete, and accurate in all material respects.

#### **ARTICLE IV NEGATIVE COVENANTS**

CCDA agrees that unless County shall otherwise consent in writing, CCDA will not:

**4.1** Encumbrances. Create, assume, or permit to exist any mortgage, security deed, deed of trust, pledge, lien, charge or other encumbrance on any portion of the Land, other than: (i) security interests required by the Funding Documents or (ii) liens for taxes contested in good faith.

**4.2** Default on Other Contracts or Obligations. Default on any material contract with or obligation when due to a third party.

**4.3** Modification of the Plans, BLD Documents, Construction Documents, Donation Agreement or CC&Rs. Amend, modify or consent to the amendment or modification of the Plans, BLD Documents, Construction Documents, Donation Agreement or CC&Rs.

## ARTICLE V ADVANCES DURING CONSTRUCTION

**5.1** Disbursement Schedule. Subject to the terms and conditions contained herein, County will disburse and CCDA will accept the proceeds of the Funding in the manner and at the time set forth in the Schedule attached as Exhibit B and by this reference made a part hereof.

**5.2** Method of Disbursement. Each request for advance shall be made in writing and shall be delivered to County at County's address stated in this Agreement. County shall not be required to make any such advances until at least five (5) days after receipt of request therefor. Funds shall be disbursed in accordance with this Agreement directly to the CCDA, or, at the option of the County, such funds may be disbursed by checks payable to the CCDA and to any other person, firm or corporation to whom CCDA is indebted for work done or materials delivered, or, at its option, County may make such disbursements directly to the Contractor, or to any subcontractor, subsubcontractor, supplier, laborer or materialman that may have performed work on or furnished material to the Property. The execution of this Agreement by the CCDA shall and hereby does constitute an irrevocable direction and authorization to so disburse the funds.

**5.3** Inspections. County may, at its option, make inspection of the Property upon receipt of a request for an advance of proceeds of the Funding to determine whether the Improvements conform to applicable law and regulations and are in compliance with the Plans. Such inspections if made shall be for the sole and exclusive benefit of the County and shall not be for the direct or indirect benefit of any other person or party.

**5.4** Disbursement Obligation of County. County may, at its option, disburse funds hereunder whether under the terms of this Agreement such disbursement is required or not and whether all conditions to such advance have been met or not. Part or the whole of any advance may be disbursed before or after it becomes due if the County deems it advisable to do so. All such advances shall be deemed to have been made pursuant to this Agreement and not in modification thereof. No further direction or authorization from CCDA shall be necessary to warrant advances and County may make advances even though CCDA has not made a request therefor. After Default, the County is irrevocably authorized, but shall not be required to, advance funds for the account of the CCDA for the purpose of (a) completing any Improvements, (b) protecting and preserving the Property and its operational integrity, including, without limitation, paying for insurance, taxes, repairs and maintenance, and (c) otherwise completing the Property and leasing, selling, operating or using the Property. The power granted herein shall not excuse the CCDA from any funding obligations.

**5.5** Reserves. After a default or Event of Default hereunder or under any of the Funding Documents (and regardless if said default or Event of Default is cured), County shall have the right to require a portion of the Funding to be set aside as reserves for the payment of insurance premiums, payments or escrows required by governmental authorities or otherwise, taxes and for other purposes. County may disburse proceeds as needed for such purposes and all such disbursements shall be treated as if specifically requested by and paid to CCDA.

## ARTICLE VI CONDITIONS TO ADVANCES

**6.1** Conditions to Initial Advance. Prior to the initial advance hereunder, CCDA shall have fulfilled the conditions set forth on Exhibit A hereto (each of which CCDA covenants to fulfill). If any such condition is waived as to the initial or any subsequent advance, it shall continue as a condition to subsequent advances.

**6.2** Conditions to All Advances. All advances will be made subject to the following conditions as to each advance (each of which CCDA covenants to fulfill) and if any condition is waived as to an advance, it shall continue as a condition to subsequent advances:

(a) Compliance with Representations and Warranties, Etc. CCDA shall have fully complied with all of its covenants hereunder; there shall be no breach of CCDA's representations and warranties; each condition to advances shall have been met or waived in writing by the County; there shall exist no Default under this Agreement; all of the terms, provisions and conditions of this Agreement, the Funding Documents, the Construction Documents, Donation Agreement and the BLD Documents shall have been complied with by the CCDA; and the Improvements shall not have suffered any material damage or loss or become subject to any condemnation proceeding.

(b) Conformity of Improvements to Plans. The Improvements shall have been constructed in strict compliance with the applicable Plans and the construction thereof and materials used therein shall be in strict compliance with the applicable Plans and shall be certified to be so by the Architect or Engineer.

(c) Notice to Owner. The County shall have been furnished with an affidavit of the CCDA or CCDA's duly authorized representative, as to whether or not the CCDA has been served with any written notice, as required or permitted by Florida law, that a lien upon the Property may be claimed for any amounts unpaid for materials furnished or labor performed by any person or party. A copy of each such notice, if any, shall be attached to such affidavit.

(d) Receipts for Payment of Costs. The CCDA shall have procured (if required by County) such mechanics' lien waivers, releases, affidavits and accepted bills as may be required by County, showing payment of all parties who have furnished materials or performed labor of any kind entering into the construction or installation of any of the Improvements.

(e) Sufficiency of Remaining Proceeds. The CCDA shall have furnished satisfactory proof to the County that the undisbursed proceeds of this Funding will be sufficient to pay the Cost of Improvements as required by the Funding Documents.

(f) Zoning. The Improvements shall not be in violation of any law, regulation, covenant, restriction, or zoning ordinance affecting the Property. The County may require written evidence of proper zoning and regulatory compliance.



(g) Permits and Licenses. CCDA shall have furnished County a copy of all building and other applicable licenses and permits issued and applicable to any existing or future Improvements on the Property and no violation of any of the provisions thereof shall have occurred.

(h) Architect's or Engineer's Certificate. CCDA shall have furnished to County, at no cost to County, a certificate of the applicable Architect or Engineer, that the Improvements have been constructed according to applicable law, regulations and the applicable Plans and that the advance requested is properly to be made by County hereunder and under Exhibit B hereof; and further stating the opinion of the applicable Architect or Engineer as to the total cost required to complete the Improvements. Such certificate shall contain the information necessary to justify the requested advance in accordance with Exhibit B, shall contain such other matters as County may reasonably require and shall be on standard AIA forms G702 or G703 unless County shall otherwise agree.

(i) Foundation Survey. CCDA shall have provided to County a satisfactory foundation survey promptly upon completion of the foundation of the Improvements.

(j) Inspection. At the County's election, the County's inspector shall have inspected the Property and Improvements and shall have determined that construction is in compliance with the requirements of this Agreement.

(k) Absence of Condemnation. No portion of the Property shall be subject to any condemnation or similar action or the imminent threat of any such action.

(l) Other Conditions. CCDA shall have provided to County such other assurances and documentation and satisfied such other conditions as may be normally required by prudent lenders or as may otherwise be reasonably required by County.

**6.3** Conditions to Final Disbursement. The final disbursement shall be subject to the following conditions (each of which the CCDA covenants to fulfill):

(a) Certificate of Occupancy. A Certificate of Occupancy or its equivalent shall have been issued by all governmental authorities having jurisdiction over the Property;

(b) Architect or Engineer Certificate. The County shall have received a certificate of the applicable Architect or Engineer that the Improvements, Entrance Road, Utilities and Master Stormwater System are complete and have been constructed according to applicable law and regulations and their respective plans and specifications;

(c) Survey. The County shall have received an as-built survey satisfactory to County;

(d) Inspection. A final inspection of the Improvements, Entrance Road, Utilities and Master Stormwater System shall have been completed and shall be satisfactory to the County;

(e) Acceptance. The County shall have received a written acceptance of the Improvements by any purchaser or lessee or other person for which any Improvements have been constructed and by any permanent lender, if required by County;

(f) Lien Waivers. The County shall have received final lien waivers, contractor's affidavits, and other documentation required by Florida law governing mechanic's liens sufficient to evidence satisfaction of all existing and inchoate mechanic's and materialmen's liens;

(g) Other Assurances. The County shall have received such other documentation and assurances and satisfied such other conditions as may be customarily required by prudent lenders or as County may reasonably require.

**6.4** Retainage. Notwithstanding anything to the contrary herein, the County shall retain from each advance hereunder an amount equal to the Retainage. Provided that no Event of Default then exists hereunder, the Retainage shall be released by the County to CCDA, at the time of, and subject to the conditions for, the final disbursement, as set forth in Section 6.3 above.

**6.5** [Non-appropriation language to be provided by County]

**6.6** Representation. Each request for advance shall be deemed a representation by CCDA that the conditions to such advance have been met. The making of any advance by County when CCDA is not entitled to such advance will not constitute a waiver of County's right to require compliance as to any further advance.

## ARTICLE VII AGREEMENTS RELATING TO CONTRACTORS

**7.1** County Approval of Contracts. Prior to (i) finalizing or publishing any request for proposal for construction, design, maintenance or operation of the Improvements (each an "RFP") or (ii) entering into any Construction Document or BLD Document (each RFP, Construction Document and BLD Document is referred to herein as an "**Approval Document**"), CCDA shall submit the proposed final draft of such Approval Document to the County for its review and approval. Within thirty (30) days after its receipt of a Approval Document, the County shall give CCDA written notice of its approval or disapproval thereof. If the County objects to the Approval Document, the County shall specify its objections in its notice of disapproval; provided, however, that if the County fails to approve or disapprove of the Approval Document within such thirty (30) day period, the County shall be deemed to have disapproved such Approval Document. CCDA will make changes to the Approval Document as required by the County and shall resubmit the revised Approval Document within ten (10) days following receipt of the County's written objections thereto. Within thirty (30) days after its receipt of the revised Approval Document, the County shall again give CCDA written notice of its approval or disapproval thereof and, if disapproved, CCDA shall again resubmit the revised Approval Document within ten (10) days following receipt of the County's written objections thereto. The approval and resubmittal process shall continue for the Approval Document until it has been

approved by the County. CCDA shall not execute any Approval Document until such document has been approved by the County.

**7.2 Responsibility of CCDA for Payment of Contractors.** County shall not be liable to any such persons or others for goods or services furnished or delivered by them in or upon the Property or employed in the construction of the Improvements. The County shall not be required to advance Funding proceeds to or for the benefit of any person or party other than the CCDA. The Funding proceeds shall not constitute or be a trust fund for the benefit of contractors, subcontractors, laborers, materialmen or any other person or party except as expressly provided in the Funding Documents. A notice of commencement referencing County as the lender for the Improvements and complying with the requirements of the Florida mechanics' lien laws shall be recorded.

**7.3 Assignment of Contracts.** CCDA hereby assigns to County all rights of CCDA under its contracts with the Contractor, Architect, Engineer and BLD, which rights may be exercised upon the occurrence of a Default hereunder. County shall have the option after Default, in addition to all other rights and remedies County may have, to exercise County's rights under this assignment. Nothing herein shall be construed to require County to exercise any rights under this section. At County's request, CCDA shall provide to County separate assignment agreements satisfactory to County.

**7.4 Contractor's, Architect's, Engineer's and BLD's Consent.** CCDA shall cause the Contractor, Architect, Engineer and BLD to execute consents and subordinations, all in form and content satisfactory to County. County shall not be required to make any disbursements in respect to any contract until such consents are furnished to County.

## **ARTICLE VIII DEFAULTS**

**8.1 Events of Default.** The following shall constitute Events of Default:

(a) CCDA fails to pay, as and when due (taking into account any applicable grace period), any amount any payment to County due hereunder or under any other Funding Document;

(b) CCDA neglects or refuses to perform any of CCDA's other covenants, warranties, promises or agreements hereunder other than the payment of money and other than defaults specified in other subsections of this Section 8.1 or CCDA or other party (other than County) breaches any promise, covenant, warranty or agreement made in any other Funding Document, any BLD Document, any Construction Document and/or the Donation Agreement and such default continues beyond any applicable grace period provided therein;

(c) Any representation or warranty herein or made in connection herewith by CCDA shall not be true in all material respects as of the date made;

(d) CCDA causes or permits conditions to arise so that performance by CCDA would be rendered unduly difficult or hazardous for County or CCDA violates any requirement to maintain hazard insurance on the Improvements;

(e) The Improvements are constructed in violation of the applicable Plans or any law, governmental regulation, covenant, restriction or zoning ordinance affecting the Land, or, by reason of law, covenant, restriction or governmental regulation, the Improvements cannot be used for the intended purpose; provided, however, that CCDA shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the validity of such law, regulations or zoning ordinance;

(f) The County determines in good faith that the CCDA or Contractor will not or cannot complete the Improvements by the Completion Date, or construction or development is abandoned or ceases for more than 30 days, or CCDA does not or cannot correct any defects in the Improvements promptly after notice of such defects is received or obtained by CCDA;

(g) CCDA becomes insolvent or there is commenced a voluntary or involuntary proceeding under the federal bankruptcy laws or any other insolvency or similar law by or against any such person, or any such person becomes subject to the appointment of or a taking of possession by a receiver, trustee, custodian (or similar official) of any substantial part of such person's property;

(h) An assignment for the benefit of creditors is made by CCDA or any such person fails to pay any material amount due to County or fails generally to pay its debts as such debts become due;

(i) The Land should become subject to any lien or other third-party interest other than Permitted Encumbrances or mechanics' liens associated with work performed in connection with construction of the Improvements and such lien or other interest is not removed within thirty days after written notice thereof to CCDA, provided that no notice and grace period shall be required to be given if any action to foreclose or sell any portion of the Land is taken;

(j) There exists a default under any encumbrance of any of the Land, whether or not such encumbrance is a Permitted Encumbrance; or

(k) Any Funding Document, BLD Document or Construction Document is invalid or unenforceable in any material respect or CCDA terminates, repudiates or challenges the validity or enforceability of any Funding Document, BLD Document or Construction Document.

(l) The Events of Default described above are in addition to and not in limitation of any other event of default in any other Funding Document, BLD Document or Construction Document, which shall be Events of Default hereunder.

**8.2 Remedies of County.** Upon the occurrence of a Default, the County may withhold further advances hereunder. Upon the occurrence of an Event of Default, the County

may, without notice and without prejudice or any other right or remedy County may have as a matter of law:

(a) May resort to any and all remedies provided in any Funding Document or by law and in equity; and

(b) At its option, enter into possession of the Land and, with or without possession, perform or cause to be performed any and all work and labor necessary to complete the Improvements substantially according to the applicable Plans, or otherwise, and take all appropriate steps to secure, protect and operate the Property. Without limiting the generality of the foregoing, the County is specifically given the right to complete the Improvements and any other improvements which the County determines in good faith to be necessary or desirable. All sums expended or advanced by County for such purpose, whether or not in excess of the Maximum Funding Amount, shall be deemed to have been requested by and paid to CCDA, shall be additional obligations of CCDA immediately due and payable. Effective upon the occurrence of an Event of Default, CCDA hereby constitutes and appoints County and any receiver of the Property its true and lawful attorney-in-fact with full power of substitution in the premises, to complete the Improvements in the name of CCDA and hereby empowers County as its attorney-in-fact as follows: (1) to use any funds of CCDA, including any balance which may be held by County for whatever purpose and any funds which may remain unadvanced hereunder, for the purpose of completing the Improvements in accordance with the applicable Plans with such modifications therein as County deems appropriate; (2) to employ such contractors, subcontractors, agents, architects and inspectors as County may deem to be desirable for said purposes; (3) to execute all applications and certificates in the name of CCDA; (4) to pay, settle or compromise any claims which are or may be the basis for liens against the Property or as determined by County to be necessary or desirable for completion or protection of the Improvements; and (5) to do any and every act which CCDA could be required by County to do in its own behalf. County shall be paid as compensation for efforts and in addition to all other sums payable to it, a sum equal to ten percent (10%) of all costs incurred for the purposes described herein and of all costs directly related thereto. County, as attorney-in-fact, shall also have power to prosecute and defend all actions or proceedings in connection with the construction and/or security of the Improvements or in any other respect relating to the Property and to take such action and require such performance as it deems necessary under bonds, guaranties or other assurances of completion. County may, without liability to CCDA, bring suit on, compromise or release any bonds or agreements relating to the Property and may terminate or modify any construction or other agreements relating to the Property. CCDA hereby assigns and transfers to County all sums unadvanced hereunder and all other sums held by County for application against the obligations owed to County or, at County's option, for use in the completion of the Improvements and payment of all costs directly related to such completion and/or security thereof. In the event of such Default and entry by County, all materials purchased by CCDA for use in construction shall be and become forthwith the property of County and shall be deemed to have been delivered to County. Accordingly, and, upon demand, CCDA shall deliver to County bills of sale as further evidence thereof. In the absence of gross negligence or willful misconduct, County shall not be liable for any action or failure to act with respect to the Improvements and no action or failure to act by the County after Default shall discharge or otherwise affect the obligations of CCDA.

(c) County is under no obligation to invoke any remedy provided herein, and County may avail itself of any one or more or all of the remedies described above and any or all other remedies available to it at law or in equity, under any Funding Document or hereunder, and all such remedies shall be cumulative and none shall be deemed exclusive of any other. In addition, CCDA hereby assigns, transfers and sets over to County, in furtherance of the remedies herein provided, all of CCDA's right, title and interest in and to any construction contract, bonds, deposits, and other rights, contracts and general intangibles relating to the construction and operation of the Improvements. CCDA does hereby constitute County its attorney-in-fact, with full power of substitution, to act in CCDA's name to execute assignments and contracts and to realize upon any of CCDA's right, title and interest therein and to negotiate, receive and receipt for all goods, funds or credits which may be owing to CCDA, and to such end to initiate legal action and prosecute or compromise all claims relating thereto.

## ARTICLE IX MISCELLANEOUS PROVISIONS

**9.1** Notices. For the purpose of any notice or demand hereunder, the address of CCDA and County are as stated in the opening paragraph of this Agreement or as otherwise designated in writing by one party to the other. Notice or demand, if required to be given hereunder, shall be deemed to be given and made when delivered by hand or when deposited in the United States Mail, registered or certified, postage prepaid, addressed to CCDA or County, as the case may be, at the address stated above, with return receipt requested.

**9.2** Signage. County shall have the right, at County's expense, to place and maintain a sign or signs on the Property to publicize the County's involvement.

**9.3** Severability. If any of CCDA's covenants, promises and agreements in this Agreement should be held to be unenforceable for any reason, all other covenants, promises and agreements of the CCDA shall remain in full force and effect. No waiver, at any time, of the provisions or conditions of this Agreement or any other Funding Documents shall be construed as a waiver of any of the other provisions or conditions, nor shall a waiver of any such provision or condition be construed to confer a right to subsequent waiver of the same provision or condition.

**9.4** Powers Irrevocable. All powers-of-attorney provided in this Agreement or any of the Funding Documents are acknowledged to be coupled with an interest and therefore irrevocable.

**9.5** Benefit. This Agreement shall benefit and bind the parties hereto and their heirs, personal representatives, successors and assigns, except as otherwise specified herein. Nothing herein shall be deemed to permit assignment of CCDA's rights hereunder to any person and such assignment is prohibited. No person (specifically including any contractors, subcontractors and material suppliers) other than the parties hereto and their successors and assigns shall be deemed to be beneficiaries of any of the provisions contained in this Agreement. This Agreement and the assignments herein shall inure to the benefit of County, its successors and assigns, any

receiver in possession of the Property, and any corporation formed by or on behalf of County which assumes County's rights and obligations under this Agreement.

**9.6 Powers Irrevocable.** All powers-of-attorney provided in this Agreement or any of the Funding Documents are acknowledged to be coupled with an interest and therefore irrevocable.

**9.7 No Waiver.** No acquiescence by County in any Default or noncompliance nor any disbursements by County with knowledge of any Default, failure of condition or noncompliance shall be deemed a waiver of such Default or any present or future condition or be deemed to permit any present or future event of noncompliance.

**9.8 No Right of Reliance.** All covenants of CCDA herein and all conditions to disbursement and Events of Default are placed herein for the sole benefit of County. County may waive, refrain from enforcing or grant indulgences with respect to any covenant, condition or term hereof without the consent of any person and no person shall be entitled to require or rely upon the strict enforcement of County's right thereunder. Specifically, County shall have no responsibility whatsoever for the timely or workmanlike construction of the Improvements or the protection of the Property.

**9.9 Amendments.** No amendment to or modification of this Agreement or other Funding Documents and no waiver of any rights of County hereunder or thereunder shall be effective unless in a writing signed by the party sought to be bound.

**9.10 Venue and Jurisdiction.** Any suit, action or proceeding may be brought against CCDA hereunder and under the other Funding Documents in the courts of Clay County, State of Florida or in the U.S. District Court for the Middle District of Florida as the County (in its sole discretion) may elect, and the CCDA hereby accepts the nonexclusive jurisdiction of those courts for the purpose of any suit, action, or proceeding. In addition, CCDA hereby irrevocably waives, to the fullest extent permitted by law, any objection which CCDA may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to the Funding Agreement or any other Funding Document or any judgment entered by any court in respect of any part thereof brought in the State of Florida, and hereby further irrevocably waives any claim that any suit, action or proceeding brought in the State of Florida has been brought in an inconvenient forum. CCDA irrevocably agrees that any pleadings or service of process may be had on the CCDA by mailing to the CCDA at the address set forth herein by certified or registered mail and such mailing shall be effective for all purposes, including the establishment of personal jurisdiction of the court in any such action.

**9.11 Consent.** If any Funding Document requires or permits the approval or consent of County, such approval or consent may be given or withheld in the discretion of the County.

**9.12 Governing Law.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Florida.

**9.13 Time of the Essence.** The time provided for CCDA's performance of its covenants and agreements hereunder are of the essence of this Agreement.

**9.14 Superseding Agreement.** This Agreement shall remain in effect until (a) all obligations of the CCDA have been paid and performed in full, (b) the County has no further obligation to the CCDA, and (c) this Agreement shall have been formally terminated in writing.

**9.15 Waiver of Jury Trial.** **CCDA AND COUNTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.**

**9.16 Purchase Option.** Notwithstanding anything to the contrary in this Agreement, the County shall have the continuing option to purchase the Property (or that portion thereof which has not previously been conveyed or dedicated to the County or applicable utility authority), together with all tangible and intangible personal property used in connection with the operation of the Sports Park (including all of CCDA's right, title and interest in and to BLD Agreements and any other contracts related to the Property), upon the following terms and conditions:

(a) The option to purchase herein granted (the "**Purchase Option**") may be exercised by the County, at its option, by providing CCDA with written notice of its exercise of the Purchase Option (the "**Purchase Option Notice**"). The closing (the "**Purchase Option Closing**") shall be consummated as soon as reasonably practicable after the giving of the Option Notice as the parties may mutually agree, or, in the absence of such agreement on the date that is thirty (30) days after CCDA receives the Purchase Option Notice.

(b) The purchase price for the Property shall be determined as follows:

(i) If an Event of Default has occurred hereunder at any time prior to the Purchase Option Closing, the purchase price for the Property shall be the total amount of the Funding hereunder by the County plus One Dollar and No/100 (\$1.00) ("**Default Purchase Price**"). The County shall receive a credit against the Default Purchase Price in an amount equal to the total amount of the Funding disbursed hereunder by the County. The Default Purchase Price shall be paid at Closing.

(ii) If an Event of Default has not occurred at any time hereunder, the purchase price for the Property shall be the sum of (1) all monies actually paid by CCDA to unrelated third parties in connection with development, construction, ownership and operation of the Property and the Sports Park (other than such amounts paid with any Funding advances made pursuant to this Agreement) (collectively, the "**CCDA Expenses**"), and (2) the total amount of the Funding disbursed hereunder by the County plus One Dollar and No/100 (\$1.00) (the "**Non-Default Purchase Price**"), less (3) any Sports Park proceeds received by CCDA pursuant to Section 9.17 hereof. County shall receive a credit against the Non-Default Purchase Price in an amount equal to the total amount of the Funding disbursed hereunder by the County. The Non-



Default Purchase Price shall be paid over time by the County from the Sports Park Proceeds. The County shall have no obligation to pay any portion of the Non-Default Purchase Price from any monies other than the Sports Park Proceeds.

(c) At the Purchase Option Closing, CCDA shall convey good and marketable fee simple title to the Property to the County by special warranty deed, free and clear of all indebtedness or liens of any kind except for Permitted Encumbrances and other matters consented to by the County. CCDA shall also execute and deliver such other conveyances and assignments as shall be reasonably necessary to convey all of the Property and all Personal Property to the County.

(d) CCDA and County shall each pay their own attorneys' fees. At the Purchase Option Closing, CCDA shall pay all the costs of recording the special warranty deed, any documentary stamp taxes and other transfer taxes associated with the transfer of the Property, real estate taxes for the year of Closing (prorated as of the date of the Purchase Option Closing), the costs of any survey of the Property and any title insurance premiums or search fees.

(e) The provisions of this Section 9.16 shall survive the termination of this Agreement.

**9.17 Revenue Sharing.** To the extent that CCDA receives any funds or payments from the operation, maintenance and/or ownership of the Property or under any agreements relating to the operation, maintenance and/or ownership of the Property, including, but not limited to, the BLD Documents (all such funds and payments are referred to as the “**Sports Park Proceeds**”), such Sports Park Proceeds shall be disbursed among the County and CCDA as follows:

**[TO BE DISCUSSED]**

*[Signature Page Follows]*

EXECUTED the day and year first above written.

“CCDA”

CLAY COUNTY DEVELOPMENT  
AUTHORITY, an independent special district  
of the State of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“COUNTY”

CLAY COUNTY, a political subdivision of the  
State of Florida by and through its Board of  
County Commissioners

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

DRAFT

**EXHIBIT A**  
**Conditions Precedent to the First Advance of Funds**

The obligation of the County to advance funds to CCDA shall be conditional upon prior compliance with the following conditions, unless waived in writing by the County:

1. The Funding Documents shall have been executed and delivered to the County and all registrations, filings or recordings necessary or desirable to preserve or protect their security and priority shall have been completed.
2. There shall exist no Default or default under the Funding Documents or BLD Documents.
3. Arrangements satisfactory to the County, at the CCDA's expense, shall have been made for the County's engineer or consultant to inspect the Property during construction to ensure that construction has been effected in accordance with the Plans and to report to the County monthly as construction progresses, it being specifically understood that the County reserves the right, at its sole discretion, to accept the reports of the Architect or Engineer or to change the architect or engineer for inspection purposes if unsatisfactory to the County.
4. There shall be no eminent domain or other government or judicial action or proceeding, of any nature, pending or threatened against the Property or any part thereof.
5. The Master Stormwater System shall be of sufficient capacity to accommodate drainage from the Property, the Entrance Road and Donor's Surrounding Property.
6. The County shall have received the following documents and materials which shall be satisfactory in substance and in form to the County:
  - (a) the existing boundary survey satisfactory to County, certified to County and the title insurer, showing no encroachments upon the Property, showing the flood plain classification of the Property, and showing that any set-back and similar building restrictions affecting the Property have not and will not be violated by the erection of the Improvements. The survey shall be made by a civil engineer or surveyor acceptable to the title insurance company and to the County and shall include plot dimensions, locations and dimensions of all improvements, easements, rights-of-way and means of access to and location of adjoining streets, and any construction control lines as established by law or regulation, if applicable, and shall contain a certified statement that the survey conforms to the Minimum Technical Standards for Land Surveying in the State of Florida, that the survey is true and correct to the best of Surveyor's knowledge and belief as surveyed in the field under his direction on a specified date certain and certifying such other matters as the County may reasonably require;
  - (b) certificate of incumbency of the persons signing on behalf of the CCDA;

- (c) certified copies of such governing documents of the CCDA as the County may reasonably require, and certified copies of relevant resolutions;
- (d) evidence of such builder's risk, fire, liability, flood, extended coverage and other insurance in respect of the Property and CCDA as may be required by this Agreement, together with paid invoices;
- (e) evidence satisfactory to the County that public water and sewage facilities of adequate capacity and electrical, gas (if applicable), and telephone service are or will be available to the Sports Park Land and that sewer, water, electrical, gas (if applicable), cable television and telephone and fiber optic lines to the Sports Park Land will be in place when required for scheduled occupancy;
- (f) evidence satisfactory to the County that all permits necessary for construction of the Improvements, the Entrance Road, the Utilities and the Master Stormwater System pursuant to the applicable Plans have been obtained from the appropriate local, state and federal authorities, that a valid building permit for the Improvements has been issued and is in good standing, and that the Improvements, the Entrance Road, the Utilities and the Master Stormwater System, when constructed, will be in compliance with all environmental laws, zoning ordinances and building codes then applicable thereto;
- (g) a report by the Architect or Engineer indicating that the Direct Costs (as defined in Exhibit B) of the construction, as disclosed by the CCDA to the County, have been estimated on a reasonably accurate basis, and confirming that the Improvements to be constructed shall be substantially as described in the applicable Plans;
- (h) a soils report showing the Property to be suitable for the construction of the Improvements and a letter from the Architect or Engineer stating that the soils report is satisfactory for purposes of the planned Improvements;
- (i) an environmental audit with respect to the Land in form and content acceptable to the County.
- (j) at County's request, a report by a structural engineer acceptable to the County setting forth the type of construction and/or servicing required to ensure the stability of the foundations of the Improvements;
- (k) detailed project budget, trade and materials breakdown and schedule of values showing all projected Direct and Soft Costs, as defined in Exhibit B and all reserves, all of which shall be approved by the County;

or detailed project budget, trade and materials breakdown and schedule of values showing all projected Direct and Soft Costs, as defined in Exhibit B and all reserves, all of which shall be approved by the County, which has been approved by County and is attached herewith as Exhibit D;

- (l) construction and disbursement schedules;
- (m) a complete certified set of Plans as more fully described in this Agreement, as reviewed and approved by the appropriate governmental authorities for the issuance of all permits necessary to construct the Improvements, the Entrance Road, the Utilities and the Master Stormwater System, all of which shall be satisfactory to County;
- (n) true and correct copies of all Construction Documents to be executed with contractors, architects and engineers relating to construction of the Improvements;
- (o) consents and subordinations from the Architect, BLD, Engineer and Contractor in form satisfactory to County;
- (p) a title insurance commitment satisfactory to County and all documentation necessary to delete all exceptions other than Permitted Encumbrances;
- (q) evidence of adequate parking for the Sports Park;
- (r) a UCC search showing no adverse matters except Permitted Encumbrances;
- (s) list of subcontractors, if required by County;
- (t) copies of major subcontracts, if required by County;
- (u) evidence of zoning appropriate for the intended use of the Property;
- (v) a MAI appraisal of the Land satisfactory in form and amount to County;
- (w) evidence of the Architect's and Engineer's errors and omissions coverage in amounts satisfactory to County;
- (x) copy of the Notice of Commencement;
- (y) a certificate relating to Hazardous Wastes and such other evidence as the County may require that the Property has not been, and is not now being, used to manufacture, distribute or store any hazardous or toxic wastes;
- (z) evidence that the Property is not in a flood plain or special flood hazard area or evidence of flood insurance satisfactory to the County;
- (aa) such other evidence or documents as the County or County's counsel reasonably deem necessary;
- (bb) copy of the Donation Agreement, in form and content acceptable to County;
- (cc) Master Plan for Donor's Surrounding Lands, in form and content acceptable to County;

- (dd) CC&Rs, in form and content acceptable to County;
- (ee) a duly executed License Agreement between BLD and CCDA, in form and content acceptable to County;
- (ff) maintenance and operation agreement to be executed by operator of the Property and CCDA, in form and content acceptable to County;
- (gg) consulting agreement executed by any consultant and CCDA, in form and content acceptable to County;
- (hh) satisfactory evidence that the Property, if operated pursuant as a local sports park, shall be exempt from ad valorem taxation;
- (ii) satisfactory evidence, including, but not limited to, an opinion of legal counsel, that the construction, use and operation of the Improvements and Donor's Surrounding Land are not subject to laws relating to developments of regional impact;
- (jj) a concurrency reservation certificate evidencing sufficient concurrency for the construction and operation of the Improvements in form and content acceptable to the County
- (kk) copies of all Construction Contracts and any other construction contracts between any third party and any contractor, architect, and engineer in connection with the construction of the Entrance Road, Utilities and Master Stormwater System, each in form and content acceptable to County. All such construction contracts shall be guaranteed maximum price. If the party responsible for constructing the Entrance Road, Utilities or Master Stormwater System is not the County, CCDA, or local utility authority, said third party shall also be required to provide the County with an irrevocable standby letter of credit in form and amount acceptable to County;
- (ll) payment and performance bonds securing the obligations under all Construction Contracts and any other construction contracts any third party and any Contractor, Architect, and Engineer in connection with the construction of the Entrance Road, Utilities and Master Stormwater System, each in form and content acceptable to County;
- (mm) satisfactory evidence that sufficient funds have been secured for the construction, development and installation of Entrance Road, Utilities and Master Stormwater System, as determined by the County in its sole discretion;
- (nn) easement agreements, in form reasonably acceptable to the County if determined to be required by the County, creating temporary construction and perpetual non-exclusive easements benefiting the Property for the construction, installation, use and maintenance of the Improvements;

- (oo) plans, drawings, specifications, construction budget, schedule of values, trade and materials breakdown and other cost allocations for construction of the Entrance Road, Utilities and Master Stormwater System, each in form and content acceptable to County;
- (pp) copies of all Applicable Permits for construction of the Entrance Road, Utilities and Master Stormwater System, each in form and content acceptable to County;
- (qq) the Security Instrument executed by CCDA in favor of the County in form and content acceptable to the County;
- (rr) evidence of such other matters regarding the construction of the Entrance Road, Utilities and Master Stormwater System as requested by the County, including but not limited to evidence similar to CCDA's delivery obligations hereunder with respect to the construction of the Improvements; and
- (ss) a master schedule prepared by CCDA which provides sequencing of all major aspects of the development and construction of the Improvements, Entrance Road, Utilities and Master Stormwater System with milestones of commencement and completion of major activities.

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## **EXHIBIT B**

### **Funding Advances**

Subject to further particular provisions, if any, contained herein, the proceeds of this Funding will be advanced at the time and in the amounts set forth below up to the Maximum Funding Amount:

1. Disbursements Prior to Completion. Prior to any disbursement CCDA will furnish to County a complete set of Plans for each of the Improvements, together with a documented estimate as to the Cost of the Improvements, including an itemized breakdown of all trade and material payments (“**Trade and Material Breakdown**”) to be made. County shall have a reasonable period within which to verify said costs. Determination and verification of the total amount of CCDA's Cost and Cost of Improvements shall remain solely with County.

The proceeds of the Funding shall be disbursed to the CCDA as construction of the Improvements progresses, upon written request from the CCDA and the Contractor given at least five (5) days prior to the requested advance. At the time each advance is requested, CCDA will furnish to County the CCDA's Certificate hereinafter described. Each request for Funding advances shall be accompanied by receipted invoices (or other evidence of payment which the County may consider satisfactory) for all of CCDA's Costs which have been paid prior to the request for advance, and shall be accompanied by invoices not receipted covering CCDA's Costs which are due and payable, but which have not been paid. Each request for Funding advance shall also be accompanied by a certification by CCDA and the Engineer stating that the work has been accomplished to entitle the CCDA to the Funding disbursement requested and a certification by the CCDA and the Contractor that all bills for labor, materials and services then incurred and payable in connection with the Improvements have been paid or will be paid from the Funding advance being requested. County shall be entitled to require further reasonable evidence of the progress of the work and that the CCDA has paid or incurred costs forming the predicate for the requested advance or for advances previously made, but County shall be fully protected in making advances based solely upon the CCDA's requests therefor.

Not more frequently than monthly, County will disburse to CCDA a sum which, when added to all previous advances (and subject to the Maximum Funding Amount and required reserves), will equal the CCDA's Costs which are due and payable by CCDA and CCDA's Costs theretofore actually expended by CCDA in accordance with the Construction Documents. In addition, the County will advance, as incurred and payable, one hundred percent (100%) of the Funding allocated to CCDA's Costs other than Direct Costs (“**Soft Costs**”) specifically approved by County relating to construction or financing of the Improvements. The determination by County of the amount of CCDA's Costs which properly form a predicate for any Funding advance and allocation between Direct and Soft Costs shall be final and conclusive. Notwithstanding anything to the contrary in this Exhibit B or in the Agreement, County shall not be required to disburse any amount which would reduce the undisbursed portion of the Funding below the cost



estimated by County as required to complete the Improvements in accordance with the requirements of the Plans, taking into account any required reserves. For purposes herein, “**Direct Costs**” means the estimated total CCDA’s Cost of labor, material and other direct costs of construction of the Improvements.

2. Final Disbursement. County will disburse to the CCDA all undisbursed Funding proceeds upon performance of CCDA's obligations and satisfaction of all conditions under the Funding Documents and completion of all of the Improvements contemplated by the Funding Agreement according to the Plans and all applicable laws, regulations, building codes, covenants and restrictions.
3. CCDA's Certificate. With each request for advance, CCDA shall deliver to County a duly executed and notarized certificate from an authorized officer of CCDA certifying as to the progress of construction during the period from the date of the last Certificate and shall show the cumulative total of the cost of labor and materials incorporated in the Improvements and all of CCDA's Costs; that all work and materials are in accordance with the Plans; that all certifications and approvals which may be necessary or customary at such stage of construction have been received; that all work has been done according to all applicable laws, regulations, building codes, covenants and restrictions and in a good and workmanlike manner; that the unpaid portion of the Cost of the Improvements, whether complete or incomplete, will not exceed the undisbursed portion of the Funding proceeds (less required reserves); that all representations of the CCDA herein are true and correct; that there exists no Default under this Agreement or other Funding Documents; and such other facts as County may reasonably require (the “**CCDA’s Certificate**”).
4. Other Requirements. The terms and conditions of this exhibit shall be in addition to any terms and conditions contained in the body of this Agreement.

**EXHIBIT C**  
**Permitted Exceptions**

1. Taxes for the year 2014 and subsequent years.

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**EXHIBIT D**  
**Property Description**

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**EXHIBIT E**  
**Construction and Disbursement Schedule**

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