



Village of Wellington  
12300 Forest Hill Boulevard  
Wellington, Florida 33414

**COMPREHENSIVE AGREEMENT FOR THE  
DESIGN, DEVELOPMENT, CONSTRUCTION AND OPERATION  
OF WELLINGTON COMMUNITY PARK**

**THIS COMPREHENSIVE AGREEMENT FOR THE DESIGN, DEVELOPMENT, CONSTRUCTION, AND OPERATION OF WELLINGTON COMMUNITY PARK** (the “Agreement”) is made and entered into this 21<sup>st</sup> day of June, 2022 (the “Effective Date”) by and between the **Acme Improvement District**, a dependent district of the Village of Wellington (the “District”), with its principal address at 12300 Forest Hill Boulevard, Wellington, Florida 33414, the **Village of Wellington**, a Florida municipal corporation (the “Village”), with its principal address at 12300 Forest Hill Boulevard, Wellington, Florida 33414, and **Wellington Athletics LLC**, a Florida limited liability company (“Wellington Athletics”), with its principal address at 3730 Pelican Bay Court, Wellington, Florida 33414.

**WHEREAS**, the District owns the property known as the Wellington Community Park located at 3401 South Shore Boulevard, Wellington, Florida 33414 and more particularly described in **Exhibit “A”** attached hereto (the “Property”); and

**WHEREAS**, the Village was incorporated in 1995 as a municipal corporation of the State of Florida, at which time the District became a dependent district of the Village; and

**WHEREAS**, pursuant to an interlocal agreement between the Village and the District, the Village is authorized to act on behalf of District with respect to property owned by Acme; and

**WHEREAS**, on May 10, 2022, Wellington Athletics submitted an unsolicited proposal to the Village to enter into a public private partnership agreement to design, construct, operate, and maintain a recreational facility at the Property for the benefit of the Village; and

**WHEREAS**, pursuant to Section 255.065, Florida Statutes, the Village published the required notice that it would accept other proposals for a recreational facility; and, after the requisite time period, did not receive any other proposals for the development of a recreational facility at the Property; and

**WHEREAS**, the Village has determined that Wellington Athletics is a responsible private entity and that the unsolicited proposal from Wellington Athletics to oversee the design, construction, operation, and maintenance of the recreational facility at the Property is in the public's best interest; and

**NOW, THEREFORE**, in consideration of Ten and 00/100 Dollars (\$10.00) and the mutual covenants and promises hereafter set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, District, Village, and Wellington Athletics agree as follows:

#### ARTICLE 1            DEFINITIONS.

For the purposes of this Agreement and the various covenants, conditions, terms, and provisions that follow, the definitions set forth below are assumed to be true and correct and are agreed upon by the parties:

- 1.1    **BOND:** Bond has the meaning assigned to it in Section 11.3.
- 1.2    **BUILDING PERMIT APPLICATION:** The plans, specifications, drawings, design documents, and construction documents required to be reviewed by the Village to obtain the Building Permits.
- 1.3    **BUILDING PERMITS:** The permits issued by the Village building official pursuant to the Florida Building Code authorizing the construction of the Improvements after issuance of the Development Approvals.
- 1.4    **COMMENCEMENT DATE:** The date upon which the Recreational Facility is open to the public for use after receipt of all required certificates of occupancy or use from the Village.
- 1.5    **CONCEPTUAL PLAN:** The conceptual site plan for the Recreational Facility attached hereto as **Exhibit "B"** and incorporated herein by reference. The Conceptual Plan may be amended by Wellington Athletics during the site design and regulatory approval process without invalidating this Agreement and without the need for a formal amendment to this Agreement.
- 1.6    **CONSTRUCTION COMMENCEMENT DATE:** The Construction Commencement Date has the meaning assigned to it in Section 10.1.
- 1.7    **CONSTRUCTION LIEN:** A Construction Lien has the meaning assigned to it in Section 17.4.
- 1.8    **CONSULTANT(S):** A registered architect, professional engineer, professional land surveyor, civil engineer, planner and/or registered landscape architect who have contracted with or who are employed by Wellington Athletics as the development team for the Project to provide professional services for the design or construction of the Project and who are appropriately licensed by the State of Florida to provide said services.

- 1.9 CONTRACTOR: A general contractor hired by Wellington Athletics for the construction of the Project and who is appropriately licensed by the State of Florida to provide said services. The primary contractor is intended to be Verdex Construction.
- 1.10 CONTRACT DOCUMENTS: The Conceptual Plan, Development Approvals, and Building Permits, including the plans, specifications, drawings, design documents, development documents, construction documents, and/or other written or graphic materials that are to be developed by the Consultant(s) as part of the record of this Agreement and approved by the Village through its regulatory review process, and any additional documents relevant to the Project that are required by this Agreement. Any changes or amendments that occur as part of the Village regulatory review process shall be deemed approved changes to the Contract Documents and such final approved documents shall be the Contract Documents for purposes of this Agreement.
- 1.11 DEFAULT: Default has the meaning assigned to it in Section 26.1.
- 1.12 DESIGN MATERIALS AND DOCUMENTS: Design Materials and Documents has the meaning assigned to it in Section 2.4.
- 1.13 DESIGNATED REPRESENTATIVE: An authorized representative of Wellington Athletics assigned to represent Wellington Athletics on this Project. The initial authorized representative shall be Jonathan Bostic.
- 1.14 DEVELOPMENT APPROVALS APPLICATION: The application and supporting materials required by the Village's regulatory review process to be submitted, reviewed, and approved in order to obtain the Development Approvals.
- 1.15 DEVELOPMENT APPROVALS: The approvals that are required by the Village's regulatory process, prior to the issuance of the Building Permits, for the construction of the Recreational Facility in accordance with the Conceptual Plan, including necessary planning and zoning approvals, such as site plan approval and architectural review board approval, and the expiration of all applicable appeal periods.
- 1.16 DUE DILIGENCE PERIOD: The Due Diligence Period has the meaning assigned to it in Section 4.1.
- 1.17 END-TERM AUDIT: The End-Term Audit has the meaning assigned to it in Section 28.7.
- 1.18 EQUITY FUNDING PERIOD: The Equity Funding Period has the meaning assigned to it in Article 3.
- 1.19 EVENT OF DEFAULT: An Event of Default has the meaning assigned to it in Section 26.1.

- 1.20 EXPIRATION DATE: The last day of the Initial Term and any Renewal Term, as applicable.
- 1.21 FINAL COMPLETION: The date that all construction work on the Project is fully and finally complete and Village has issued a Certificate of Occupancy for all components therein and the Recreational Facility is open to the public and is able to be used for its Permitted Use.
- 1.22 FORCE MAJEURE EVENT: A Force Majeure Event has the meaning assigned to it in Section 33.21.
- 1.23 IMPROVEMENTS: The Recreational Facility and all other improvements to be constructed on the Property in accordance with the Contract Documents.
- 1.24 INITIAL TERM: The Initial Term has the meaning assigned to it in Section 13.2.
- 1.25 LICENSE FEE COMMENCEMENT DATE: The License Fee Commencement Date has the meaning assigned to it in Section 16.2.
- 1.26 MATERIAL UNCURED DEFAULT: An event of default (i) which is material in nature; and (ii) whose occurrence would cause a landlord, acting in a commercially reasonable manner and in good faith, to elect to terminate this Agreement.
- 1.27 NOTICE OF TERMINATION: A Notice of Termination has the meaning assigned to it in Section 24.1.
- 1.28 NOTICE TO PROCEED: A written Notice to Proceed issued by the Village Representative as defined in the Project Schedule and Section 10.1.
- 1.29 PERMITTED USE. The Property shall be used for the recreational, fitness, medical, wellness, educational, and food and beverage uses, and other ancillary and support operations, including for the use and enjoyment of the public as described in Wellington Athletics' unsolicited proposal, the Conceptual Plan and as established by the Contract Documents and the Program Schedule.
- 1.30 PROGRAM SCHEDULE: The public shall have access to and use of the Recreational Facility as set forth in the Program Schedule attached hereto as **Exhibit "C"** and incorporated herein by reference.
- 1.31 PROJECT: The Project is the design, construction, operation, and maintenance of the Recreational Facility, as described herein and in accordance with the Contract Documents, complete with all appurtenances required to perform the work, including without limitation, construction services and labor, materials, and equipment necessary or used or incorporated in the construction, in accordance with the Contract Documents and as is required or reasonably inferred from them. The Project includes the work, services, and labor, and the goods, materials, tools, supervision, and equipment to be provided, and the cleanup, removal, and disposal of all debris, trash, and other material so as to leave the facilities in a clean and



ready-to-use condition; and the operation and maintenance thereof by Wellington Athletics.

- 1.32 PROJECT APPROVALS: Project Approvals has the meaning assigned to it in Section 8.4.
- 1.33 PROJECT SCHEDULE: The schedule for the development and construction of the Project as described herein and attached hereto as **Exhibit "D"** and incorporated herein by reference. Wellington Athletics and Village/District may request an extension to deadlines provided in the Project Schedule upon written notice, which requests shall not be unreasonably conditioned, delayed, or denied. Wellington Athletics and Village Representative may make changes to the Project Schedule without invalidating this Agreement and without the need for a formal amendment to this Agreement.
- 1.34 PROHIBITED USES: The uses prohibited pursuant to Schedule 14.8.
- 1.35 PUBLIC FINANCING PERIOD: Public Financing Period has the meaning assigned to it in Section 6.1.
- 1.36 RECREATIONAL FACILITY: The facilities for recreational, fitness, medical, wellness, educational, and food and beverage uses, and other support operations, including an indoor multi-use facility, indoor basketball/volleyball courts, indoor batting cage/pitching facility, covered pavilion, baseball field, softball field, and multi-purpose field, and support operations, as more particularly described in the Conceptual Plan and to be constructed on the Property by the Contractor in accordance with the Contract Documents.
- 1.37 RENEWAL TERM: The Renewal Term has the meaning assigned to it in Section 13.3.
- 1.38 RENEWAL TERM EXERCISE PERIOD: The Renewal Term Exercise Period has the meaning assigned to it in Section 13.3.
- 1.39 SITE WORK: Site Work has the meaning assigned to it in Section 9.1.
- 1.40 SURETY: The surety company acceptable to the Village as provided in Section 11.3, that is bound by a contract bond with and for contractor who is primarily liable, and which surety company is responsible for contractor's acceptable performance of the work under the contract and for the payment of all costs pertaining thereto per Chapter 255.05, *Florida Statutes*.
- 1.41 TERM: The collective reference to the Initial Term and any applicable Renewal Term(s).
- 1.42 UPFRONT DESIGN COSTS: Upfront Design Costs has the meaning assigned to it in Section 5.2.

- 1.43 VILLAGE MANAGER: The administrative head of Village's government who is authorized to act on behalf of District and Village in performance of this Agreement as set forth herein, including notices required hereunder.
- 1.44 VILLAGE REPRESENTATIVE: Unless otherwise explicitly stated, all contract duties, contract responsibilities, and contract communications of Village shall be made through the Village Engineer as Village Representative. The foregoing sentence shall not apply to Village regulatory review process or construction inspections made to assure compliance with applicable regulatory law and which Village conducts in a governmental regulatory capacity.
- 1.45 WELLINGTON ATHLETICS: Wellington Athletics is the private entity which submitted to Village an unsolicited public private partnership proposal for the development of the Recreational Facility on the Property. Wellington Athletics shall supervise and manage the Consultants in connection with the design and approval of the Project and shall engage the Contractor to perform the work on the Project.

## ARTICLE 2 GENERAL INTENTION AND UNDERSTANDING.

- 2.1 This is a public-private partnership project. Village, as the responsible public entity, owns the Property and will retain ownership of the Recreational Facility to be constructed in accordance with this Agreement. Wellington Athletics, as the responsible private entity, will serve as an owner's representative of the Village to facilitate the design and construction of the Recreational Facility and ultimately operate and maintain the Recreational Facility.
- 2.2 The intent of the parties to this Agreement is that the Permitted Use of the Recreational Facility will compliment and supplement existing offerings from Village at the Property and enhance the use of the Property for the benefit of the public. The parties envision a Recreational Facility that helps to position the Village as a premier sports destination, while providing tangible community benefits. The Recreational Facility shall be operated subject to the Village's applicable codes, in a non-discriminatory fashion, in compliance with all laws.
- 2.3 In addition to the equity contributions set forth herein, the parties intend to use public financing in the nature of 30-year revenue bonds to fund the design and construction costs of the Recreational Facility, subject to amendment of the Village's debt policy to allow for a 30-year term. The debt service held by the Village will be repaid by Wellington Athletics through the revenue generated by the Recreational Facility and the payment requirements set forth in this Agreement. The Village will be responsible for administering the funds obtained through such public financing and making payments to Wellington Athletics and its Consultants and Contractor as set forth in this Agreement.
- 2.4 Except as otherwise provided in Section 19.7 below, all design materials, drawings, specifications, plans, architectural work, and other documents (the "Design

Materials and Documents”) shall remain the property of Wellington Athletics and shall not be used for any purpose without the prior written consent of Wellington Athletics. However, Wellington Athletics shall provide to the Village copies of all the Design Materials and Documents, including any updates or changes during the Term of this Agreement.

- 2.5 Wellington Athletics agrees to meet with the Village at reasonable times, and with reasonable notice, during the Term of this Agreement and, specifically, during the design, permitting, and construction phases of the Project.

#### ARTICLE 3 EQUITY FUNDING PERIOD.

Commencing one (1) day after the Effective Date, Wellington Athletics shall have a period of ninety (90) days (the “Equity Funding Period”) to secure equity funding for the Project in the amount of Three Million Dollars and No Cents (\$3,000,000.00). If Wellington Athletics is unable to secure such equity funding for the Project, then Wellington Athletics may (1) request an extension of thirty (30) additional days to secure the required equity funding, which request shall not be unreasonably conditioned, delayed, or denied, or (2) terminate this Agreement upon written notice to the Village on or prior to the expiration of the Equity Funding Period, in which case this Agreement shall be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination.

#### ARTICLE 4 DUE DILIGENCE PERIOD.

- 4.1 Commencing one (1) day after the Effective Date, Wellington Athletics shall have a period of ninety (90) days (the “Due Diligence Period”) to investigate the Property and to satisfy itself with respect to the condition of the Property, the feasibility of operating the Recreational Facility on the Property, and the ability to maintain the Property’s tax-exempt status. Wellington Athletics shall have the right to enter upon and investigate any and all aspects of the Property it deems appropriate, in its sole and absolute discretion, and District and Village agree to reasonably cooperate with Wellington Athletics in Wellington Athletics’ review and inspection of the Property for the Project. During the Due Diligence Period, District will provide Wellington Athletics and its agents and consultants with access to the Property for the purposes of conducting any and all testing, sampling and investigation that Wellington Athletics deems appropriate with respect to the Property. Wellington Athletics hereby indemnifies and holds District harmless from any loss, cost or expense arising out of Wellington’s Athletics’ physical inspections of the Property (i.e., for damage caused by such inspections, but not as a result of the discovery of any defects or other matters with respect to the Property). Wellington Athletics shall make prompt reasonable repair of all damages caused by its inspections. Wellington Athletics may terminate this Agreement on or prior to the expiration of the Due Diligence Period for any reason or for no reason in which case this Agreement shall be terminated, the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination. Prior to commencing any inspections, and during the inspections and

any physical testing of the Property, Wellington Athletics, and any agent or vendor of Wellington Athletics conducting any inspections or physical testing on or about the Property, shall maintain (a) workers' compensation insurance in accordance with applicable law, (b) commercial general liability insurance, on a per occurrence basis, in the amounts of at least One Million Dollars (\$1,000,000.00) per occurrence for bodily or personal injury or death, and (c) commercial automobile insurance, owned, hired, non-owned or leased in the amount of at least One Million Dollars (\$1,000,000.00). Wellington Athletics shall deliver to the District/Village evidence of such workers' compensation insurance and a certificate evidencing the commercial general liability, and commercial automobile insurance prior to conducting any inspections or physical testing on or about the Property, and all such policies, to the extent applicable, shall name the District and Village as additional insured(s) thereunder.

- 4.2 Within seven (7) days of the Effective Date, District/Village shall assist Wellington Athletics by placing at its disposal any available information pertinent to the Project, including previous reports, laboratory tests, and inspections of samples, materials, and equipment; property, boundary, easement rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed, and other land-use restrictions.
- 4.3 District/Village shall provide and pay for any necessary environmental assessments and remediation or permitting, including but not limited to Phase 1 and Phase II Site Assessments and Natural Resource Assessments, species specific surveys, species permitting, species relocation services, wetland delineation, wetland permitting, landfill, and contamination. Such assessments or reports shall be provided to Wellington Athletics within thirty (30) days of the Effective Date. If such assessments and reports are not provided to Wellington Athletics within thirty (30) days of the Effective Date, then the Due Diligence Period shall be tolled until thirty (30) days after Wellington Athletics receives the assessments or reports.
- 4.4 During the Due Diligence Period, Village may perform a market study for the Project at its sole cost and expense. If a market study is performed, Village shall make the study available to Wellington Athletics. If the market study fails to support the need for the Project in the South Florida geographical area, Wellington Athletics or Village may terminate this Agreement upon written notice on or prior to the expiration of the Due Diligence Period, in which case this Agreement shall be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination.

## ARTICLE 5 DEVELOPMENT APPROVAL APPLICATION.

- 5.1 Commencing one (1) day after the expiration of the Equity Funding Period or the Due Diligence Period, whichever is later, Wellington Athletics shall have a period of ninety (90) days to submit a Development Approvals Application for the Project



to the Village for review and approval in accordance with its regulatory review process and land development regulations.

- 5.2 Wellington Athletics shall pay the upfront costs to the Consultants necessary to complete the site design and obtain the Development Approvals for the Project (the "Upfront Design Costs"). Upon issuance of the bonds described in Article 6, Wellington Athletics shall submit invoices to the Village for the Upfront Design Costs for reimbursement from the Village pursuant to the Procedures for Payment and Reimbursement to be established pursuant to Article 7.
- 5.3 Village and District hereby waive the application fees for the Planning and Zoning approval and Engineering approval, but not Building Permit filing fees nor any impact fees.

#### ARTICLE 6 PUBLIC FINANCING PERIOD.

- 6.1 Commencing one (1) day after the expiration of the Due Diligence Period, the Village shall have a period of one hundred eighty (180) days (the "Public Financing Period") to secure public financing for the design and construction of the Project. The amount of the bonds to be issued shall be based upon the estimated design and construction costs of the approved site plan but shall not exceed Thirty-Three Million Fifteen Thousand Five Hundred Thirty-Nine Dollars and No Cents (\$33,015,539.00) plus bond issuance costs. Prior to bond closing, Village shall notify Wellington Athletics in writing of the financing terms available for the design and construction of the Project and the resulting debt service. If the financing terms are mutually acceptable to Wellington Athletics and the Village, then Wellington Athletics shall notify Village in writing to proceed to bond closing. Wellington Athletics understands that it will be necessary for it to agree upon a not to exceed annual debt service figure rather than the exact terms of the debt, which will not be known until approximately 30 days prior to bond closing. If such not to exceed amount is not acceptable to Wellington Athletics, in its sole and absolute discretion, then Wellington Athletics may terminate this Agreement upon written notice to the Village prior to the bond closing, in which case this Agreement shall be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination. If Village is unable to secure the public financing prior to the expiration of the Public Financing Period, Wellington Athletics may provide a reasonable extension of time to secure such financing or may terminate this Agreement upon written notice to the Village on or prior to the expiration of the Public Financing Period, in which case this Agreement shall be terminated, and the parties hereto shall be relieved of all liabilities and obligations under this Agreement except those which specifically survive termination.
- 6.2 Village shall be responsible for fees and costs incurred by Village in performing its obligations herein.

## ARTICLE 7

## PROCEDURES FOR PAYMENT AND REIMBURSEMENT.

- 7.1 Village shall be responsible for the payment of the design and construction costs incurred by Wellington Athletics and its Consultants and Contractor in the development of the Recreational Facility. To facilitate such payments, Village and Wellington Athletics shall, during the Public Financing Period, establish the procedures for the Village's reimbursement to Wellington Athletics of the Upfront Design Costs and Village's payment to Consultants and Contractor for the design and construction costs to be incurred for the development and construction of the Recreational Facility.
- 7.2 Upon Bond Closing, the Village shall reimburse Wellington Athletics, in accordance with the procedures established pursuant to Section 7.1 above, for the Upfront Design Costs.

## ARTICLE 8

## BUILDING PERMIT APPLICATION; PROJECT APPROVALS.

- 8.1 Commencing one (1) day after Wellington Athletics' receipt of the Village's reimbursement for the Upfront Design Costs, Wellington Athletics shall have a period of one hundred eighty (180) days to submit the Building Permit Application to the Village Representative for review. Village Representative is authorized to grant a reasonable extension to Wellington Athletics to submit the Building Permit Application. Wellington Athletics agrees to not submit the Building Permit Application to the Village's regulatory approval process until the Village Representative has reviewed and approved such pre-application plans and specifications in writing. If the Village Representative has not provided comments or responded with an approval of the preliminary Building Permit Application within fifteen (15) days following submission of the documents by Wellington Athletics, the pre-application plans and specifications shall be deemed approved by the Village Representative. Such approval by the Village Representative shall not be deemed a regulatory approval. Within fifteen (15) days following pre-application approval by the Village Representative, Wellington Athletics shall submit the Building Permit Application to the appropriate governmental authorities to be reviewed and approved through the regulatory process.
- 8.2 In the event any conflict exists between the Conceptual Plan and the Development Approvals and Building Permits prepared pursuant to this Agreement, the plans and specifications ultimately approved by the Village in its regulatory process shall prevail.
- 8.3 It is the intent of the Contract Documents to describe a functionally complete Recreational Facility to be designed and constructed by the Contractor in accordance with the Contract Documents and to be operated and maintained by Wellington Athletics in accordance with this Agreement. Any labor, work, materials, or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result, shall be provided by Wellington Athletics and its Consultants and Contractor. When words that have a

well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the standard specification, manual, code, laws, or regulations in effect at the time of the date of the execution of this Agreement.

8.4 This Agreement is contingent upon Wellington Athletics obtaining all necessary permits and approvals to design, develop, construct, operate, and use the Project for the Permitted Use, including, without limitation, the Development Approvals and Building Permits (collectively, the "Project Approvals"). All of the Project Approvals must be (i) validly and irrevocably granted in form and substance reasonably satisfactory to Wellington Athletics, (ii) on terms and conditions and at a cost satisfactory to Wellington Athletics in its reasonable discretion; and (iii) no longer subject to appeal or be the basis of an appeal, on or before the date which is fifteen (15) months after the expiration of the Equity Funding Period or the Due Diligence Period, whichever is later (the "Project Approvals Date"). Wellington Athletics shall submit for such Project Approvals in accordance with this Agreement and the Project Schedule and shall use commercially reasonable efforts to timely address any changes requested or required by Village during its review. District and Village, in their proprietary capacity, agree to reasonably cooperate, without cost or expense to District or Village, with Wellington Athletics' efforts to obtain such Project Approvals. All approved plans, general and detail, are to be deemed a part of this Agreement. Nothing contained herein shall be deemed to be an approval by Village of any regulatory approval, which shall be required to meet all applicable regulations and follow all required processes.

8.5 Provided that Wellington Athletics has complied with its obligations in the previous paragraph, in the event that Wellington Athletics is unable to obtain the Project Approvals on or before the Project Approvals Date, Wellington Athletics shall have the right to (a) cancel this Agreement within thirty (30) days of the Project Approvals Date upon written notice to District and Village or (b) extend the Project Approvals Date for such period of time as is reasonably necessary for Wellington Athletics to obtain such Project Approvals.

## ARTICLE 9 DISTRICT/VILLAGE SITE WORK.

9.1 Within thirty (30) days after Wellington Athletics' receipt of Building Permits, District/Village shall commence the site work necessary to put the Property in a state suitable for construction of the Project, as set forth in the scope of work described in **Exhibit "E"** attached hereto and incorporated herein by this reference (the "Site Work"). The Site Work shall be completed at District/Village's sole cost and expense.

9.2 In no event shall the Site Work include any work to enhance, move or in any way affect the existing lift station situated on the Property. District/Village shall

commence the Site Work within 30 days after Wellington Athletics' receipt of Building Permits. District/Village shall have no obligation whatsoever to provide any other type of monetary or financial support for the design, construction, operation, or maintenance of the Project, except as set forth herein and provided in Articles 5 and 6.

## ARTICLE 10 CONSTRUCTION OF THE PROJECT.

- 10.1 The Village Representative shall instruct Wellington Athletics and Contractor to commence the construction phase of the Project by written instructions in the form of a Notice to Proceed issued by the Village Representative. The Village Representative shall issue the Notice to Proceed to Wellington Athletics and Contractor within seven (7) days of completion of the Site Work. Wellington Athletics shall use commercially reasonable efforts to cause the Contractor to commence construction of the Project within thirty (30) days following the receipt of the Notice to Proceed (the "Construction Commencement Date"). The Notice to Proceed will not be issued until after the Village's approval of the Contract Documents, the issuance of any and all Project Approvals as may be necessary to commence construction, and the completion of the Site Work.
- 10.2 Wellington Athletics and Village shall jointly endeavor to cause the Contractor to adhere to the Project Schedule, but the Contractor's failure to do so shall not be deemed a default of this Agreement by either party. Anticipated deviations from the Project Schedule, including the Construction Commencement Date and time delays, shall be provided in writing by the Contractor to the Village Representative.
- 10.3 Village shall timely pay for all Contractor requisitions in accordance with the Procedures for Payment to be established pursuant to Article 7, subject to delays due to a Force Majeure Event.
- 10.4 The Contract Documents shall be followed in strict accordance as to work, material, and dimensions, except when the Village Representative may authorize an exception in writing. Approval of requests by Wellington Athletics for minor "in the field" (defined as those that do not require changes to the plans or the Development Approvals in the reasonable opinion of the Village Representative) exceptions to the Contract Documents shall not be unreasonably conditioned, delayed, or denied. Wellington Athletics hereby agrees to engage the Consultants and Contractor necessary for the design and construction of the Project, inclusive of furnishing land surveying, labor, materials, equipment, and other services necessary to perform all of the work to develop and operate the Project, except as otherwise provided in this Agreement.
- 10.5 Wellington Athletics shall cause the contracts between Wellington Athletics and the Consultants and Contractor to contain warranties that the Project shall conform to all applicable building codes and construction requirements for public buildings in the State of Florida.



- 10.6 Wellington Athletics shall cause the Contractor, prior to the start of construction, to notify the Village Representative in writing of the names of the subcontractors who will be used to construct the Project and identify the portion of the work that each will perform. The Contractor shall have a continuing obligation to notify the Village Representative of any additions or changes in the subcontractors.
- 10.7 Wellington Athletics shall maintain two (2) copies of the Contract Documents, one (1) of which shall be preserved and always kept accessible to the Village Representative or his/her authorized representative. Wellington Athletics shall maintain in a safe place at the site one (1) record copy of all drawings (plans), specifications, addenda, written amendments, change orders, and written interpretations and clarifications in good order, annotated to show all changes made during construction. These record documents, together with all approved samples and a counterpart of all approved shop drawings, shall be available to the Village Representative for reference. Upon completion of the construction, these record documents, samples, and shop drawings shall be delivered to the Village Representative.
- 10.8 At the completion of the construction of the Project, Wellington Athletics shall turn over to Village a set of reproducible drawings that accurately reflect the "as-built" conditions of the Project. All changes made to the construction documents, either as clarifications or as changes, shall be reflected in the "as-built" drawings. The final "as-built" drawings shall be signed and sealed by a registered Florida engineer or architect.
- 10.9 At the completion of the construction of the Project, the contractor shall submit for review and approval a project manual that includes all approved as-builts, shop drawings, contract change orders (including contingency use), substantial completion letter, contractor's warranty, sub-contractor's warranties, engineer's certification, and all operation and maintenance manuals needed for operation of the project.

## ARTICLE 11 CONTRACTOR REQUIREMENTS.

- 11.1 Contractor shall, during the construction of the improvements required under the terms of this Agreement, maintain in full force and effect:
  - 11.1.1 Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit protecting against any and all claims for injury to persons or property occurring in or about the Property. Commercial general liability shall be on an occurrence basis and shall include "products and completed operations coverage."
  - 11.1.2 Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be afforded on a

form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and shall include owned vehicles and non-owned and hired vehicles.

11.1.3 Standard "All Risk" or "Special Form" policy of insurance, insuring loss or damage to all improvements constructed by Contractor by fire, windstorm, flood and the other perils in the amount of the full replacement value of all Improvements; together with "builder's risk" completed value (non-reporting) form during the construction of any improvements by Contractor.

11.1.4 Workers' compensation and employer's liability insurance in compliance with applicable legal requirements or evidence of exemption of such requirements.

11.2 The policy(ies) shall be endorsed to provide District/Village with thirty (30) calendar days' advanced written notice of cancellation, expiration, and/or restriction to the attention of the Village of Wellington, c/o Insurance Tracking Services, Inc. (ITS), P.O. Box 60840 Las Vegas, NV 89160 VOW@instracking.com, Village Representative, or to such other address or contact as may be designated by District/Village in writing from time to time. Wellington Athletics shall deliver any certificate of insurance evidencing an insurance policy renewal not less than five (5) business days before the expiration date of any such policy.

11.3 At least ten (10) days prior to (i) the commencement of any construction on the Property by Contractor, or (ii) the purchase and delivery of any materials, equipment, or supplies for construction at the Property by Contractor, Contractor shall provide the District and Village with a payment and performance bond ("Bond") to guarantee performance for the construction of the Improvements and the payment for any and all work, materials, equipment, or supplies required for the construction of the Project by Contractor. The Bond shall be in the amount of one hundred percent (100%) of the amount of the hard construction costs of the Improvements as identified in the application for Building Permits. The Bond shall name the District/Village as a dual obligee and shall be issued by a Surety reasonably acceptable to the District and the Village. Such Bond shall be in effect for one (1) year after completion of the Improvements with liability equal to one hundred percent (100%) of the hard construction costs, or an additional Bond shall be conditioned that Contractor shall, upon notification by the Village, correct any defective or faulty work or materials which appear within one (1) year after completion of the construction. The Bond required herein shall be in conformance with Chapter 255.051, Florida Statutes, and shall be on such forms provided by the Village.

## ARTICLE 12

## OWNERSHIP OF IMPROVEMENTS.

This is a public-private partnership project, subject to the provisions of Chapter 255.065, Florida Statutes. The Village, as the responsible public entity, will own the Improvements to be constructed in accordance with this Agreement, excluding any removable personal property or equipment owned solely by Wellington Athletics.

#### ARTICLE 13            AGREEMENT TERM.

- 13.1    District hereby demises and leases to the Village, and the Village hereby leases from District, subject to and with the benefit of the terms, covenants, conditions, and provisions of this Agreement, the Property. Village hereby grants Wellington Athletics the exclusive license to operate the Property as a Recreational Facility during the Term of this Agreement.
- 13.2    The initial term of this Agreement (the "Initial Term") shall be thirty (30) years commencing upon the Commencement Date and expiring on the Expiration Date, unless extended or terminated sooner pursuant to the terms herein.
- 13.3    Wellington Athletics shall have the right and option, exercisable upon written notice to District and Village no earlier than seven hundred thirty (730) days prior to the Expiration Date or the expiration date of the first Renewal Term, as the case may be, and no later than three hundred sixty-five (365) days prior to the Expiration Date or the expiration date of the first Renewal Term, as the case may be, (each a "Renewal Term Exercise Period") to extend the Initial Term for two (2) separate successive renewal periods of twenty-five (25) years each (each such period being hereinafter called a "Renewal Term") upon the same terms and conditions as are herein set forth. The first (1st) Renewal Term shall be deemed to have been properly and timely exercised if: (i) Wellington Athletics provides written notice to the District and the Village of Wellington Athletics' exercise thereof at any time during the first Renewal Term Exercise Period, and (ii) no Material Uncured Default then exists. If the first (1st) Renewal Term is duly exercised, then Wellington Athletics may exercise the second (2nd) Renewal Term, which shall be deemed to have been duly and timely exercised if: (i) Wellington Athletics provides written notice to the District and the Village of Wellington Athletics' exercise thereof at any time during the second (2nd) Renewal Term Exercise Period; and (ii) no Material Uncured Default then exists. Notwithstanding the foregoing, no Material Uncured Default shall be deemed to exist at a given point in time if it is cured at any time prior to the expiration of the Initial Term or the first Renewal Term, as applicable.

#### ARTICLE 14            USE OF FACILITIES; OPERATION AND MAINTENANCE.

- 14.1    Wellington Athletics shall use, and shall permit the public to use, the Recreational Facility for the Permitted Use. Wellington Athletics may charge certain fees for the use of certain facilities.
- 14.2    The Village and public shall have access to and use of the Recreational Facility as set forth in the Program Schedule. Wellington Athletics shall develop a non-discrimination policy and applicable processes and procedures to allow the public

to access and use the Recreational Facility. Furthermore, Wellington Athletics shall assure and certify that it will comply with the Title VI of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, with respect to any activity occurring on the Property or conducted pursuant to this Agreement. Wellington Athletics warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression or genetic information. Wellington Athletics shall conform to Palm Beach County's non-discrimination policy as provided in R-2014-1421, as may be amended. Wellington Athletics shall comply will all applicable Americans with Disabilities Act provisions and shall ensure that reasonable accommodations are made for all users of the Recreational Facility.

- 14.3 The programmatic operation of the Recreational Facility shall be in accordance with the Program Schedule. Wellington Athletics and Village may make changes to the Program Schedule during the Term of this Agreement without invalidating the Agreement and without the need for a formal amendment to this Agreement. Except as provided by the Program Schedule, Wellington Athletics shall have full discretion as to the hours of operation and programs offered at the Recreational Facility, provided such operation does not conflict with existing laws or violate the terms of this Agreement.
- 14.4 The recreation activities shall be conducted according to policies, procedures, and costs developed by Wellington Athletics provided such policies and procedures are not in conflict with Village's regulatory policies. Village shall not be responsible for providing staff, additional facilities, or the collection of fees for Wellington Athletics. Notwithstanding anything to the contrary contained herein, the Village's approval of any programming schedule (s) shall not be construed or deemed to be a representation or warranty by the Village that Wellington Athletics complies with the rules and regulations of any governmental authorities having or asserting jurisdiction over such activities, the Property, or the Improvements.
- 14.5 The parties agree that the intent is for the public to have access to the services offered at the Recreational Facility in accordance with the Program Schedule and Wellington Athletics' operations. Notwithstanding the foregoing, proposed medical and wellness uses may be limited by the operator of such use(s) in its reasonable business discretion. Wellington Athletics shall have the right to establish fees reasonably within industry norms for services and programs provided to the public.
- 14.6 After the construction phase of the Project is completed and Wellington Athletics has begun operating the Project, Village's Parks and Recreation Director or



designee shall perform the functions of Village Representative during the remaining term of the Agreement.

- 14.7 On or before July 31 of each calendar year, Wellington Athletics shall attend one (1) annual meeting with staff from the Village, which annual meeting may be attended by any other stakeholder, such as representatives from the Palm Beach County School District or the Palm Beach County Sports Commission, as such representatives may be determined and changed from time to time. This meeting shall be mutually scheduled between the parties at a location and time convenient to all. The purpose of the meeting shall be for Village, Wellington Athletics, and any other stakeholders to discuss current and future plans for the Recreational Facility, operational issues, scheduling, programming, and any other matter that the parties determine relevant.
- 14.8 Notwithstanding anything contained herein to the contrary, Wellington Athletics hereby agrees that the Property shall not be used for the Prohibited Uses without the Village Manager's express prior written consent, which may be withheld in his or her sole discretion.
- 14.9 Wellington Athletics shall be responsible for performing all maintenance, repair, and replacement for the Recreational Facility during the Term, at its sole cost and expense, except as otherwise set forth herein. Wellington Athletics shall maintain the Recreational Facility to the same or higher standard as Village maintains other Village recreational facilities.

#### ARTICLE 15            ASSIGNMENT; SUBLICENSE.

- 15.1 Except as set forth below, Wellington Athletics shall not assign or otherwise transfer Wellington Athletics' interest in this Agreement without District's/Village's prior written consent, which consent may not be unreasonably withheld or delayed. It shall not be deemed unreasonable for District/Village to withhold consent to assign or transfer Wellington Athletics' interest in this Agreement to any party that appears on an OFAC list at the time of such transfer request; has had any criminal felony convictions within the immediately preceding ten (10) years prior to such proposed transfer; does not have substantial experience in owning or operating projects which are comparable to the Project; or does not assume in writing all of the obligations of Wellington Athletics hereunder.
- 15.2 Notwithstanding Section 15.1, Wellington Athletics may sublicense any area of the Recreational Facility without the prior written consent of the District or Village, provided that the activities and services provided by the sub-licensee are related to, support, complement, or provide for the Permitted Use. Any sub-licensee shall be subject to and bound by all applicable terms of this Agreement.
- 15.3 Notwithstanding anything contained herein to the contrary, Wellington Athletics may assign this Agreement and/or sublicense all or part of the Recreational Facility without District's/Village's prior written consent to (a) any entity that controls

Wellington Athletics, is controlled by Wellington Athletics or is under common control with Wellington Athletics, or (b) any entity resulting from the merger or consolidation with Wellington Athletics or to any entity that acquires a majority or controlling interests of Wellington Athletics or the assets of Wellington Athletics as a going concern of the business that is being conducted on the Property.

ARTICLE 16            ANNUAL LICENSE FEE.

- 16.1    During the construction phase(s) of the Project, Wellington Athletics shall not be required to make payments of any license fees.
- 16.2    Beginning one (1) year after the Commencement Date, or a later date as determined by Village (the "License Fee Commencement Date"), Wellington Athletics shall be required to pay a semi-annual license fee on or before the date on which the debt service payments are due during the Initial Term of this Agreement in the amount of the semi-annual debt service of the public financing obtained by the Village for the Project in accordance with Article 6. All payments are due and payable to Village no later than January 31st of each year following the initial payment.
- 16.3    Upon the expiration of the Initial Term and Wellington Athletics' repayment of the debt service for the Project, Wellington Athletics shall be required to pay an annual license fee during the Renewal Term(s), if exercised, in the amount of One Hundred Dollars and No Cents (\$100.00).

ARTICLE 17            TAXES, FINES, AND LIENS.

- 17.1    Subject to the right to contest taxes or seek exemptions, Wellington Athletics shall be responsible for any ad valorem property taxes imposed or assessed against the Property, if any, during the Term.
- 17.2    Wellington Athletics shall pay prior to delinquency all taxes assessed against and levied upon the trade fixtures, furnishings, equipment and all other personal property of Wellington Athletics contained in the Project. Wellington Athletics shall also pay, before delinquency, any and all taxes and assessments, sales, use, business, occupation or other taxes, and license fees or other charges whatever levied, assessed or imposed upon its business operations conducted at the Recreational Facility. Wellington Athletics shall provide evidence of the payment of all such taxes upon receipt of written request therefor from the Village.
- 17.3    Notice is hereby given, and Wellington Athletics shall cause all construction agreements to provide, that to the extent enforceable under Florida law: (i) neither the District nor Village shall be liable for any work performed or to be performed at or on the Property or the Improvements or any part thereof for Wellington Athletics, or for any materials furnished or to be furnished to the Property or the Improvements or any part thereof for any of the foregoing; and (ii) no Construction Lien for such work or materials shall attach to or affect the District's fee simple

interest in the Property or any part thereof or any assets of the District or Village or the District's or Village's interest in any semi-annual license fee.

- 17.4 Nothing in this Agreement shall be construed as: (i) constituting the consent by the District or the Village, express or implied, by inference or otherwise, to (or the request by the District or the Village for) any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Property or the Improvements or any part thereof; or (ii) giving Wellington Athletics any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials, which, in the case of either clause (i) or clause (ii) above, would give rise to the filing of any Construction Lien against District's fee simple interest in the Property or any part thereof, the assets of District/Village, or Village's interest in any Annual License Fee. The term "Construction Lien" means any mechanic's, laborer's, vendor's, materialman's, construction or other similar statutory lien, whether pursuant to Chapter 713, F.S., or otherwise.
- 17.5 Wellington Athletics shall not cause, suffer or permit any Construction Liens to be filed against the fee simple title to the Property or the Improvements by reason of any labor, services or materials supplied or claimed to have been supplied to Wellington Athletics. If any such Construction Lien is filed, Wellington Athletics shall cause it to be discharged of record by payment, deposit, bond (including any notice of bond in the case of any work which is covered by a payment and performance bond), order of a court of competent jurisdiction or otherwise, within ninety (90) days after the date Wellington Athletics has knowledge of its filing. If Wellington Athletics shall fail to do so within such ninety (90) day period, and such failure shall continue for an additional thirty (30) days after written notice thereof by the District and/or Village to Wellington Athletics, then in addition to any other right or remedy available to the District or Village hereunder, the District and/or Village may, but shall not be obligated to, discharge such Construction Lien, either by paying the amount claimed to be due or by procuring the discharge of same by deposit in court or bonding. All such amounts paid by the District and/or Village in connection therewith, including, without limitation, interest, costs and allowances, shall constitute additional License Fee due and payable under this Agreement and shall be repaid to the District and/or Village (as applicable) by Wellington Athletics within ten (10) business days upon rendition of an invoice or bill by the District and/or Village (as applicable).
- 17.6 To the extent permitted under Florida law, Wellington Athletics shall obtain releases or waivers of any contractor, subcontractors and any other Persons furnishing work and materials discharging all liens and claims for all work and materials furnished and similar releases from the architect or other recipient in the case of payments out of the funds to the architect or other recipient.

## ARTICLE 18

## QUIET ENJOYMENT.

District/Village agree that Wellington Athletics shall and may peaceably and quietly have, hold, and enjoy the Recreational Facility during the Term, subject to the covenants and conditions of this Agreement and the use rights of the Village as provided in the Programming Schedule.

ARTICLE 19            WELLINGTON ATHLETICS' RESPONSIBILITIES.

- 19.1 Wellington Athletics agrees to coordinate and administer the design and construction of the Project as set forth herein, including the obligations to coordinate and administer certain rights and obligations with respect to: (a) the Consultant(s) under consultant contracts, and (b) the Contractor under the construction contract such that the Project shall be constructed in accordance with the Contract Documents and Project Approvals and comply with all applicable laws and technical codes. Once started, construction shall be diligently and continuously pursued until completion. Wellington Athletics agrees that construction of the Project shall be substantially completed in a good and workmanlike manner and in accordance with good construction practices; shall maintain its construction site in a safe condition and a reasonably orderly manner and shall remove all major debris on a regular basis (including debris that has accumulated on adjacent lands, parcels or streets if created by Wellington Athletics or its contractors; it being understood that in no event shall the same be deemed to be permission to store debris on any such adjacent lands, parcels or streets) and store all equipment in a neat manner when not in use; and, to the extent practical in connection with a Project of this size and scope, take such precautions as may be reasonably necessary to minimize the impact of noise, dust, truck traffic, nuisances and other consequences of construction activities.
- 19.2 Village and District acknowledge that Wellington Athletics is providing for the services described herein as an owner's representative/operator and not as a licensed general contractor, architect, or other licensed professional. Wellington Athletics will engage and contractually require appropriately licensed professionals to complete the construction work in accordance with the requirements of this Agreement and will enforce such contracts and administer any claims process associated with such contracts as set forth herein. Wellington Athletics shall require each contractor and each design consultant to provide customary warranties, enforce said warranties, and name District and Village as a third-party beneficiary of all such warranties.
- 19.3 Wellington Athletics agrees to bind specifically Consultant(s) and Contractor to the applicable terms and conditions of this Agreement for the benefit of District/Village.
- 19.4 Unless otherwise provided in this Agreement, Wellington Athletics shall provide for all land surveying services, materials, labor, water, tools, equipment, light, power, transportation, and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent, and



whether or not incorporated or to be incorporated in the Project. Wellington Athletics will submit to Village for payment of such services pursuant to Article 7.

- 19.5 Wellington Athletics shall cause all its agents, employees, Contractor, subcontractors, and Consultant(s) to observe and comply with all such existing and future applicable laws, ordinances, regulations, orders, and decrees, at no additional cost to District/Village.
- 19.6 Wellington Athletics shall pay all applicable sales, consumer, use, and other taxes required by law. Wellington Athletics is responsible for reviewing the pertinent state, federal, and local statutes, laws, rules, regulations, guidelines, and directions involving such taxes and complying with all requirements.
- 19.7 In the event of termination of this Agreement on account of an Event of Default, District/Village shall be entitled to the full, complete and unconditional use and ownership of the Design Materials and Documents and the Contract Documents and the ability to grant to other professionals the right to use the Design Materials and Documents and the Contract Documents (subject to the approval/rights of the architect(s), engineer(s), or any other consultant who prepared the Design Materials and Documents and the Contract Documents), and full, complete and unconditional ownership of the Design Materials and Documents and the Contract Documents, without payment of any consideration therefor by District/Village to Wellington Athletics, provided that District/Village has executed and delivered a written release and hold harmless agreement in favor of Wellington Athletics that releases Wellington Athletics from all liability associated therewith. District/Village acknowledges that Wellington Athletics makes no representations or warranties as to the validity, accuracy, or reliability of the Design Materials and Documents and the Contract Documents, and Wellington Athletics will not be liable for any errors or omissions in the Design Materials and Documents and the Contract Documents, or for any use of the Design Materials and Documents and the Contract Documents by District/Village. The provisions of this Section shall survive any termination of this Agreement.

#### ARTICLE 20 DISTRICT/VILLAGE'S RESPONSIBILITIES.

- 20.1 District/Village shall arrange for access to and make all provisions for Wellington Athletics to enter upon the Property as required for Wellington Athletics and its Consultants and Contractor to perform their services.
- 20.2 Village shall be responsible for maintaining the funds obtained through the public financing process and making payments to the Consultants and Contractor for the costs of design and construction of the Recreational Facility and in accordance with Article 7.
- 20.3 District/Village shall provide and pay for site or groundwater contamination issues, testing, assessment, monitoring, or any other related services.

- 20.4 District/Village shall be responsible for hazardous subsurface or surface conditions and Hazardous Materials removal.
- 20.5 District/Village shall sign all forms as may be required for permits and approvals, grant applications, or other requests, as may be required by any governmental agency.

#### ARTICLE 21 RESOLUTION OF DISPUTES.

- 21.1 In order to prevent all disputes and litigation, it is agreed by the parties hereto that during the construction phase of the Project, the Village Engineer shall decide all questions, difficulties, and disputes of whatever nature that may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount, and value of any work done and materials furnished under or by reason of this Agreement, and disputes shall be final and conclusive upon the parties hereto as set forth in this Article 21. The Village Engineer's decisions shall be reasonable and based on consideration of the terms of this Agreement and best engineering principles.
- 21.2 In the event that Wellington Athletics disagrees with a determination of the Village Engineer, the parties shall, at a shared and equal cost, engage an independent, third-party engineer, agreed upon by the parties, to review any area of disagreement. The determination of any third-party engineer engaged for such purpose shall be final and binding on the parties.
- 21.3 This Article does not preclude either or both parties from seeking any and all remedies available at law or in equity. The parties hereto may also seek other mediation sources to resolve any dispute related to this Agreement.

#### ARTICLE 22 SUPERVISION.

The instructions of Village shall be given through the Village Representative; whose instructions shall be reasonable and are to be strictly and promptly followed in every case, subject to the terms and conditions of this Agreement. Wellington Athletics shall maintain a competent resident supervisor, who shall serve as the Designated Representative, or any necessary assistants (which may include the project manager of the selected general contractor) on the construction site throughout the duration of the construction phase of the Project. The Designated Representative shall serve as the Superintendent on site and shall be responsible for continuous field supervision, coordination, and completion of the work. The Designated Representative shall represent Wellington Athletics, and all direction given to the Designated Representative shall be as binding as if given to Wellington Athletics. Directions shall be confirmed in writing to Wellington Athletics. Other directions will be so confirmed on written request in each case.

#### ARTICLE 23 WELLINGTON ATHLETICS' RIGHT TO STOP WORK.

If the construction of the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of Wellington Athletics or of anyone employed by Wellington Athletics, then Wellington Athletics may, upon seven (7) business days' written notice to Village and the Village Representative, stop work on the construction of the Project, without any penalties hereunder, and the Project Schedule shall be tolled until such time Wellington Athletics is legally permitted to commence or continue performance under this Agreement.

ARTICLE 24                      DISTRICT/VILLAGE'S RIGHT TO TERMINATE AGREEMENT  
DURING DEVELOPMENT AND CONSTRUCTION.

- 24.1 If construction of the Project does not commence by the Construction Commencement Date, subject to delays due to a Force Majeure Event or unforeseen Property conditions, then District/Village shall provide written notice to Wellington Athletics and Contractor and Wellington Athletics shall have thirty (30) days to commence such construction. If Wellington Athletics fails to commence such construction within said thirty (30) day period, then the District/Village may terminate this Agreement by written notice to Wellington Athletics ("Notice of Termination") at any time prior to construction actually commencing, whereupon the District/Village may exclude Wellington Athletics from the site and take the construction of the Project out of the hands of Wellington Athletics, and appropriate or use any or all materials and equipment on the site as may be suitable and acceptable; District/Village hereby waive any statutory or other form of landlord lien in any of Wellington Athletics' furnishings, fixtures, equipment, proceeds, or other personal property.
- 24.2 In the event of a termination of this Agreement in accordance with Section 24.1 above, District/Village may enter into a separate agreement for the completion of the Project according to the terms and provisions of the Contract Documents or Village may utilize such other methods as Village has determined are necessary and proper to complete the construction in an acceptable manner. In the event of a termination of this Agreement in accordance with Section 24.1 above, actions may be instituted to recover on the posted bonds.
- 24.3 If this Agreement is improperly terminated by District/Village (i.e., it is determined for any reason that Wellington Athletics was not in default or breach of this Agreement), Wellington Athletics shall be reimbursed for any unreimbursed Upfront Design Costs paid prior to termination. Payment shall include all costs, expenses, and deposits for expenses and services actually performed prior to the termination date, but shall exclude all lost profits, indirect or special, or other damages for the remainder of the Agreement.
- 24.4 Upon receipt of the Notice of Termination, Wellington Athletics shall promptly discontinue all affected work, unless the Notice of Termination directs otherwise (in which case Wellington Athletics shall be entitled to all expenses related to such continued work), and deliver or otherwise make available to the Village Representative all data, drawings, specifications, reports, estimates, summaries,

and such other information as may have been required by the Contract Documents, whether completed or in process.

ARTICLE 25                      SURRENDER.

Upon the expiration or earlier termination of this Agreement, Wellington Athletics shall remove all furnishings, trade fixtures, equipment, assets and other personal property and surrender the Property to District in the same condition in which Wellington Athletics is obligated to keep and maintain the Property under the terms of this Agreement, reasonable wear and tear and insured damage by fire, casualty, or taking excepted. Any personal property not so removed at or prior to the expiration or earlier termination of the Term shall be deemed abandoned and may be removed and disposed of by District, in such manner as District shall determine, at District's sole cost and expense, without any obligation on the part of District to account to Wellington Athletics for any proceeds therefrom, all of which shall become the property of District, and same shall not be deemed a holdover by Wellington Athletics. Wellington Athletics shall not have the right to remove any capital improvements, equipment, fixtures, or other assets or property belonging to District/Village, or any of their respective agents or representatives.

ARTICLE 26                      DEFAULT; REMEDIES.

- 26.1            The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by Wellington Athletics (in each instance a "Default" or an "Event of Default"):
- a.            If Wellington Athletics defaults in the performance of any of its obligations under this Agreement and such default continues for thirty (30) days after written notice from District and/or Village designating such default, provided, however, that if such default is of such a nature that it cannot reasonably be cured within such thirty (30) day period, an event of default shall not be considered to have occurred so long as Wellington Athletics commences such cure within the aforesaid thirty (30) day period and thereafter diligently pursues the same to completion;
  - b.            If Wellington Athletics fails to maintain insurance in accordance with Article 27 of this Agreement which failure continues for a period of three (3) business days after Wellington Athletics' receipt of written notice of such failure;
  - c.            The making by Wellington Athletics or any guarantor of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Wellington Athletics or any guarantor of a petition to have Wellington Athletics or any guarantor, as applicable, adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Wellington Athletics or any guarantor the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of



substantially all of Wellington Athletics' assets located at the Recreational Facility or of Wellington Athletics' interest in this Agreement, where possession is not restored to Wellington Athletics within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Wellington Athletics' assets located at the Recreational Facility, or of Wellington Athletics' interest in this Agreement, where such seizure is not discharged within sixty (60) days.

- 26.2 If an Event of Default by Wellington Athletics occurs, then District/Village may (i) terminate this Agreement by giving Wellington Athletics written notice of termination, in which event this Agreement shall terminate on the date specified in such notice and all rights of Wellington Athletics under this Agreement shall expire and terminate as of such date, Wellington Athletics shall remain liable for all obligations under this Agreement up to the date of such termination, and Wellington Athletics shall surrender the Park to District on the date specified in such notice; and if Wellington Athletics fails to so surrender, District shall have the right, without notice, to enter upon and take possession of the Recreational Facility and to expel and remove Wellington Athletics and all persons and entities claiming by, through or under Wellington Athletics, and Wellington Athletics' and their personal property and other effects without being liable for prosecution or any claim of damages therefor; or (ii) pursue such other remedies as are available at law or in equity.
- 26.3 Should Wellington Athletics fail or refuse to perform any of its obligations under this Agreement, and shall not cure such default within thirty (30) days after written notice thereof from District/Village (or if such default cannot be reasonably cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such failure), District/Village shall have the right, but not the obligation, to perform such obligations, or any of them, on Wellington Athletics' behalf. In such event, Wellington Athletics shall reimburse District/Village for the reasonable cost and expense incurred by District/Village in so doing, within thirty (30) days after written demand for such reimbursement, which demand shall be accompanied by a reasonably detailed description of all such claimed costs and expenses, provided that District/Village obtains applicable contractor's affidavits and final lien waivers (as applicable) from the contractor(s) and delivers the same to Wellington Athletics.
- 26.4 Should District and/or Village fail or refuse to perform any of its obligations under this Agreement or if District/Village otherwise defaults under this Agreement, and shall not cure such default within thirty (30) days after notice thereof from Wellington Athletics (or if such default cannot be reasonably cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such failure), Wellington Athletics shall have the right to terminate this Agreement or Wellington Athletics shall have the right, in addition to all rights and remedies available to it at law and/or in equity, but not the obligation, to perform any non-

regulatory obligations on District's/Village's behalf. In such event, District/Village shall reimburse Wellington Athletics for the reasonable out of pocket cost and expense incurred by Wellington Athletics in so doing, within thirty (30) days after demand for such reimbursement, which demand shall be accompanied by a reasonably detailed description of all such claimed costs and expenses, provided that Wellington Athletics obtains applicable contractor's affidavits and final lien waivers (as applicable) from the contractor(s) and delivers the same to the District/Village.

- 26.5 Notwithstanding anything to the contrary contained in this Agreement, in no event shall District or Village have the right to receive consequential, speculative, punitive or other similar measures of damages against Wellington Athletics and District and Village hereby irrevocably waive, for themselves and their successors and assigns, their right to seek or receive any such measure of damages or remedy.

## ARTICLE 27 INDEMNIFICATION OF DISTRICT/VILLAGE; INSURANCE

- 27.1. Unless caused by the negligence, recklessness, or intentionally wrongful conduct by District/Village or their respective officers, employees, agents and instrumentalities, Wellington Athletics shall defend, indemnify and hold harmless the District, the Village, and their respective officers, employees, agents and instrumentalities from liabilities, damages, and losses, including, but not limited to, reasonable attorneys' fees and costs, including fees and costs on appeal, as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the construction, use, occupancy, management, repair, maintenance, or control of the Property by Wellington Athletics, its employees, agents, or contractors, except as set forth in Section 27.2, including without limitation, claims relating to violation by Wellington Athletics of any statutes, laws, codes, resolutions and policies set forth in Section 14.2 above. This provision shall survive the expiration or termination of this Agreement.
- 27.2. District/Village shall, to the extent permitted by applicable law, and subject to the monetary limits set forth at Section 768.28, Florida Statutes, defend, indemnify and hold harmless Wellington Athletics, its officers, employees, agents and instrumentalities from liabilities, damages, and losses, including, but not limited to, reasonable attorneys' fees and costs, including fees and costs on appeal, to the extent caused by (i) the negligence, recklessness, or intentionally wrongful conduct of District/Village or their respective employees, agents or contractors, and/or (ii) any breach of the representations of District/Village set forth in this Agreement. This provision shall survive the expiration or termination of this Agreement.
- 27.3. Wellington Athletics shall, throughout the Term, and, during the construction of any improvements under the terms of this Agreement, prior to the Term, obtain and maintain in full force and effect:

- a. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit protecting against any and all claims for injury to persons or property occurring in or about the Property. Commercial general liability shall be on an occurrence basis and shall include "products and completed operations coverage."
  - b. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and shall include owned vehicles and non-owned and hired vehicles.
  - c. Standard "All Risk" or "Special Form" policy of insurance, insuring loss or damage to all improvements constructed by Wellington Athletics by fire, windstorm, flood and the other perils in the amount of the full replacement value of all Improvements; together with "builder's risk" completed value (non-reporting) form during the construction of any improvements by Wellington Athletics to the Park.
  - d. If Wellington Athletics or any of its agents or licensees sell any alcoholic beverages, including wine, beer and hard liquor, then Wellington Athletics agrees to purchase and maintain in full force and effect liquor liability insurance with limits of not less than Three Million Dollars (\$3,000,000.00) per occurrence covering the operations of selling liquor, naming the District/Village as additional insured and agrees to indemnify, defend and hold District/Village harmless in connection with any costs, claims, losses or liabilities of District/Village (collectively "Damages") arising directly or indirectly or in any way growing out of or relating to "Dram Shop" liability arising from Wellington Athletics' use or occupancy of the Project, regardless of whether such Damages are (a) direct, incidental or consequential and are (b) foreseeable or unforeseeable. This indemnity includes without limitation District/Village's, attorneys' fees and court costs resulting from such Damages and shall survive termination of this Agreement.
  - e. Workers' compensation and employer's liability insurance in compliance with applicable legal requirements or evidence of exemption of such requirements.
- 27.4. The adequacy of the insurance coverage required by Section 27.3 may be reviewed periodically by the Village/District in its reasonable discretion. The Village/District may request a change in the insurance coverage if it is commercially reasonable, customary and commonly available regarding properties similar in type, size, use and location to the Property and Improvements provided that such coverage is

available at commercially reasonable rates. Wellington Athletics has the right to contest the request for a change in insurance.

- 27.5. The policy(ies) shall be endorsed to provide District/Village with thirty (30) calendar days' advanced written notice of cancellation, expiration, and/or restriction to the attention of the Village of Wellington, c/o Insurance Tracking Services, Inc. (ITS), P.O. Box 60840 Las Vegas, NV 89160 VOW@instracking.com, Village Representative, or to such other address or contact as may be designated by District/Village in writing from time to time. Wellington Athletics shall deliver any certificate of insurance evidencing an insurance policy renewal not less than five (5) business days before the expiration date of any such policy.
- 27.6. Wellington Athletics shall furnish to the Village Representative Certificate(s) of Insurance evidencing the insurance coverages required herein prior to commencement of any work on this Project. Such certificate(s) shall reference this Agreement. District reserves the right to require a certified copy of such policies upon request. All certificates shall state that District shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.
- 27.7. The official title of District is "Acme Improvement District". This official title shall be used in all insurance or other legal documentation. District shall be included as "Additional Insured" with respect to liability arising out of operations performed for District by or on behalf of Wellington Athletics or acts or omissions of Wellington Athletics in connection with such operation. The official title of Village is "Village of Wellington, a Florida municipal corporation". This official title shall be used in all insurance or other legal documentation. Village shall be included as "Additional Insured" with respect to liability arising out of operations performed for the Village by or on behalf of Wellington Athletics or acts or omissions of Wellington Athletics in connection with such operation.

## ARTICLE 28 ENVIRONMENTAL MATTERS.

- 28.1 District and Village represent and warrant to Wellington Athletics that, to the best of their knowledge, (i) the Property is in full compliance with all Environmental Laws, (ii) there has been no discharge of Hazardous Materials at the Property in violation of Environmental Laws, (iii) there are no underground storage tanks, septic tanks, potable water well or septic fields in, on, at, under or about the Property; and (iv) no claim, action, suit, or proceeding is pending or threatened against District or Village or any third party arising directly or indirectly out of the discharge of Hazardous Materials at the Property, or the presence of underground storage tanks beneath the Property. Simultaneously with the execution of this Agreement, District/Village shall deliver to Wellington Athletics all environmental reports concerning the Property in District/Village's possession. Further, District and Village agree to indemnify, defend, and hold Wellington Athletics harmless, up to the maximum amount allowed by section 768.28, Florida Statutes, from any claims, judgments, damages (including, without limitation, natural resource



damages,) fines, penalties, costs, liabilities, and/or losses, including, without limitation, reasonable attorney's fees, reasonable consultants fees, and reasonable expert fees that arise during or after the Term of this Agreement by reason of the presence of Hazardous Materials in the soil, groundwater, soil vapor, or other environmental media at, on, under, to or from the Property based on or in connection with events occurring or conditions arising or accruing (a) prior to the Commencement Date or (b) during the Term of this Agreement that are not caused or introduced by Wellington Athletics, its employees, agents or contractors. Simultaneously with the execution of this Agreement, District/Village shall order an environmental assessment of the Property which shall provide the basis for the condition of the Property at the commencement of this Agreement. To the extent that the environmental assessment determines the presence of Hazardous Materials in the soil, groundwater, soil vapor, or other environmental media at, on, under, to or from the Property or that the Property is not in full compliance with all Environmental Laws, District/Village shall undertake, at District/Village's sole cost and expense, any necessary action, including any remediation and/or disposal reasonably required, as determined by District/Village in good faith prior to delivering the Property to Wellington Athletics for construction of the Project.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, codes, rules, regulations, ordinances, environmental permits, guidelines, standards, and directives and all applicable agreements and judicial and administrative orders and decrees pertaining to health, safety, or the environment, and all common law providing for any right or remedy with respect to environmental matters, each as currently in effect or hereinafter amended, adopted, promulgated, or enacted.

"Hazardous Materials" means any and all materials, pollutants, contaminants, wastes, chemicals, or substances listed, defined, designated, classified, or considered or regulated as dangerous, special, hazardous, toxic, or radioactive, or any terms of similar import, under any applicable Environmental Laws, including petroleum and any derivation or by-product thereof, asbestos and asbestos-containing materials, lead-based paint, PCBs, and perchloroethylene or related or similar dry cleaning.

28.2 Wellington Athletics hereby covenants and agrees that during the Term it shall not: (a) cause or permit any Hazardous Materials to be generated, produced, brought, used, stored, treated, discharged, released, spilled or disposed of upon, in, under or about the Property by Wellington Athletics, or by any subtenants, assignees or invitees thereof, or by any of the employees, agents, contractors or subcontractors of any of the foregoing (all the foregoing collectively, "Related Parties"), which activity is, in any case, in violation of the Environmental Laws, or (b) otherwise cause or permit the violation of any Environmental Law in connection with the Property.

28.3 Wellington Athletics shall undertake, at Wellington Athletics' sole cost and expense, any necessary action, including any remediation and/or disposal

reasonably required, as determined by Wellington Athletics in good faith, as a result of a release of a Hazardous Material occurring on or from the Property in connection with any activity or acts of Wellington Athletics or any of its Related Parties ("Release") during the Term of this Agreement and upon termination or expiration of such Term. This provision shall survive the termination or expiration of the Term.

- 28.4 Wellington Athletics shall defend, indemnify, and hold harmless the District and the Village, and their respective agents, officials, and employees, to the fullest extent permitted by law, from and against all expenses of remediation, disposal or other similar type of clean up or action necessary for compliance with the Environmental Laws, and any and all claims, causes of action, or demands, in law or in equity, including, but not limited to, all lien claims, administrative claims, claims for injunctive relief, claims of property damage, natural resources damages, environmental response and clean-up costs, fines, penalties, and expenses (including, without limitation, counsel fees, consultant fees and expert fees, costs and expenses incurred in investigation and defending against the assertion of such liabilities), which may be sustained, suffered or incurred by District/Village, its agents, officials or employees for any Release caused by Wellington Athletics or its Related Parties. The parties acknowledge and agree that the indemnification provided above in this section is conditioned upon the failure of Wellington Athletics or its Related Parties to fully comply with the provisions of this Article and that such indemnification does not cover any costs of clean-up required by the presence of any Hazardous Materials on the Property or other portions of the Property resulting from any party other than Wellington Athletics or its Related Parties.
- 28.5 If Wellington Athletics or the District/Village receive any written notice of a Release, Threat of Release or environmental condition at the Property or a written notice with regard to air emissions, water discharges, noise emissions, recycling, or any violation of any Environmental Law (any such notice, an "Environmental Complaint") independently or by notice from any Governmental Authority, or with respect to any litigation regarding environmental conditions at or about the Property, then such Party shall give prompt written notice of the same to the other Party detailing all relevant facts and circumstances.
- 28.6 Promptly after becoming aware of any violation of any Environmental Law at the Property resulting from any Release caused by Wellington Athletics or its Related Parties, Wellington Athletics shall commence to remediate in accordance with its obligations hereunder and thereafter diligently pursue the completion thereof in a reasonable time (and in any event in accordance with Environmental Laws). If Wellington Athletics fails to do so, the District and/or the Village may give written notice of such failure to Wellington Athletics, and if such failure continues for five (5) days after Wellington Athletics receives such notice, the District and/or the Village shall have the right, but not the obligation, to enter onto the Property and to take such action as it reasonably deems necessary or advisable to clean up, remove,

resolve or minimize the impact of or otherwise deal with any Hazardous Materials, or Environmental Complaint upon its obtaining knowledge of such matters independently or by receipt of any notice from any Person or Governmental Authority, and all of the reasonable costs and expenses of District/Village in connection therewith shall be deemed to be additional License Fee due from Wellington Athletics hereunder.

- 28.7 At any time within the twelve (12) months before the expiration or earlier termination of the Term, upon written request by District/Village, Wellington Athletics, at Wellington Athletics' sole cost and expense, shall cause a Phase I environmental audit (the "End-Term Audit") of the Property and the Improvements to be completed by a professional environmental consultant approved by the Village Representative. If practicable, such consultant shall be the same firm which completed the original Phase I Audit or its successor commissioned by the District/Village at the commencement of the Term. If the End-Term Audit indicates the presence of Hazardous Materials which were not present as indicated in the original Phase I Assessment it shall first be determined whether the presence of such contamination is due to the acts or negligence of Wellington Athletics, the District, the Village, or a third party. If it is determined that the presence of such contamination is due to the acts, omissions or negligence of Wellington Athletics and/or its Related Parties, Wellington Athletics shall pay or cause to be paid all reasonable costs associated with the required remediation and clean-up.

The respective rights and obligations of the District, the Village and Wellington Athletics under this Article shall survive the expiration or termination of this Agreement.

## ARTICLE 29 CASUALTY; CONDEMNATION.

- 29.1 In the event that the Property, or any portion thereof or any improvements thereon, shall be damaged or destroyed by fire or other casualty, or ordered to be demolished by the action of any public authority in consequence of a fire or other casualty, Wellington Athletics will, at District/Village's option, apply the insurance proceeds to repair or reconstruct the Project, or turn over the full amount of the insurance proceeds to Village, in which case Wellington Athletics will be relieved from its obligation to pay the remaining debt service on the bonds. In the event that the Property, or any portion thereof, is taken by condemnation proceedings or by exercise of any right of eminent domain, Village shall be entitled to the just compensation awarded for the land and improvements thereon, but Wellington Athletics shall be entitled to retain the amount awarded as business damages. Wellington Athletics will, at District/Village's option, apply the business damage proceeds to repair or reconstruct the Project, or turn over the full amount of the proceeds to Village, in which case Wellington Athletics will be relieved from its obligation to pay the remaining debt service on the bonds.
- 29.2 Subject to Wellington Athletics obligations upon termination as provided in Section 28.1 above, in case of any damage or destruction occurring in the last three (3) years of the Initial Term or any Renewal Term, to the extent of fifty percent (50%) or

more of the insurable value of the improvement(s), Wellington Athletics may, at its option, to be evidenced by notice in writing given to Village within ninety (90) days after the occurrence of such damage or destruction, elect to terminate this Agreement as of the date of said damage or destruction.

- 29.3 If this Agreement is not terminated as provided above, Wellington Athletics shall repair the damage to and promptly restore and rebuild the Project or portion of the Project damaged to the extent the collection of insurance proceeds is recoverable and attributable to such damage. The proceeds of the insurance carried by Wellington Athletics shall be delivered to Wellington Athletics provided it is used for the restoration of the Project.
- 29.4 In the event of a condemnation proceeding, Wellington Athletics shall have the right to seek and recover from the condemning authority such compensation as may be awarded or recoverable by Wellington Athletics on account of any and all damage to Wellington Athletics' business, the unamortized cost of Wellington Athletics' improvements and/or the loss of Wellington Athletics' interest, by reason of any resulting taking. The foregoing does not preclude District/Village from seeking compensation owed from the condemning authority as to its fee simple interest in the Property.
- 29.5 Neither Village nor District shall, at any time during the Term of this Agreement, commence any eminent domain or condemnation proceeding which would impact or affect the Park, or any part thereof.

#### ARTICLE 30 REPRESENTATIONS AND WARRANTIES OF DISTRICT.

- 30.1 District hereby represents and warrants to Wellington Athletics that (i) District has full power and authority to enter into this Agreement; (ii) District is the sole fee owner of the Property; (iii) to District's knowledge, the Property complies with all environmental laws and regulations, and all other federal, state, and local rules, regulations, laws, statutes, and ordinances; (iv) District has obtained all required consents and approvals in order to enter into this Agreement (including from all major title document holders); (v) there are no restrictions (including, without limitation, declarations, covenants, easements, ground leases, and/or mortgages) that would prohibit, interfere with, restrict, or otherwise impair Wellington Athletics' ability to use the Property for the uses permitted hereunder, and District shall not permit or suffer any such restrictions that would prohibit, interfere with, restrict, or otherwise impair Wellington Athletics' ability to use the Property for such uses; (vi) District has not received any notice of any actual or threatened action, litigation, or proceeding by any organization, person, individual, or governmental agency against the Property or District with respect to the Property; (vii) the Property is free and clear of any leases, tenancies, or claims of parties in possession; and (viii) this Agreement and the rights granted to Wellington Athletics hereunder shall not violate and are not inconsistent with any other agreement relating to the Property.



- 30.2 District shall have an affirmative obligation to timely provide Wellington Athletics with written notice in the event of any change with regard to the representations set forth above.

ARTICLE 31 REPRESENTATIONS AND WARRANTIES OF VILLAGE.

- 31.1 Village hereby represents and warrants to Wellington Athletics that (i) Village has full power and authority to enter into this Agreement; (ii) to Village's knowledge, the Property complies with all environmental laws and regulations, and all other federal, state, and local rules, regulations, laws, statutes, and ordinances; (iii) Village has obtained all required consents and approvals in order to enter into this Agreement (including from all major title document holders); (iv) there are no restrictions (including, without limitation, declarations, covenants, easements, ground leases, and/or mortgages) that would prohibit, interfere with, restrict, or otherwise impair Wellington Athletics' ability to use the Property for the uses permitted hereunder, and Village shall not permit or suffer any such restrictions that would prohibit, interfere with, restrict, or otherwise impair Wellington Athletics' ability to use the Property for such uses; (v) Village has not received any notice of any actual or threatened action, litigation, or proceeding by any organization, person, individual, or governmental agency against the Property or Village with respect to the Property; (vi) the Property is free and clear of any leases, tenancies, or claims of parties in possession; (vii) this Agreement and the rights granted to Wellington Athletics hereunder shall not violate and are not inconsistent with any other agreement relating to the Property; and (viii) as of the Notice to Proceed date, the Village will issued municipal bonds in the amount necessary to complete the Project.
- 31.2 Village shall have an affirmative obligation to immediately provide Wellington Athletics with written notice in the event of any change with regard to the representations set forth above.

ARTICLE 32. REPRESENTATIONS AND WARRANTIES OF WELLINGTON ATHLETICS.

- 32.1 Wellington Athletics represents and warrants that as of the expiration of the Equity Funding Period, Wellington Athletics will have access to sufficient funds to satisfy the equity requirements for the Project.
- 32.2 Wellington Athletics acknowledges that it has a Due Diligence Period to examine the Property, and other than for the Site Work and except as otherwise specifically set forth in this Agreement, hereby accepts the Property in its "AS-IS, WHERE-IS" condition and without any additional representations or warranties of any kind or nature whatsoever, express or implied, as to the Property, the condition thereof. Wellington Athletics assumes the sole responsibility for the condition of the Property in order that it may construct, operate, maintain and manage the improvements to be constructed by Wellington Athletics upon the Property; and

District/Village shall not be required at any time to make any repairs, replacements, changes (structural or otherwise), additions or alterations to the Property, the improvements and/or any other property of any kind demised by this Agreement.

- 32.3 Neither Wellington Athletics nor any person or entity that directly or indirectly owns any interest in it (other than any public shareholder) nor any of its executive officers, directors or managing members is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the U.S. Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the "Executive Order") signed on September 24, 2001 and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, (ii) that its activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Money Laundering Act"), and (iii) that throughout the Term of this Agreement, it shall comply with the Executive Order and with the Money Laundering Act.

#### ARTICLE 33 MISCELLANEOUS.

- 33.1 No Contingent Fee. Wellington Athletics warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Wellington Athletics and its attorneys, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Wellington Athletics, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, District/Village shall have the right to terminate this Agreement without liability, at its discretion, and to recover the full amount of such fee, commission, percentage, gift, or consideration.
- 33.2 All Prior Agreements Superseded; Amendments. This Agreement and the Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement and/or the Contract Documents. Accordingly, it is agreed that no deviation from the terms hereof or therefor shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein or therein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
- 33.3 Notices. Whenever either party desires to give notice unto the other, it shall be given by written notice, sent by certified United States mail, with return receipt

requested, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph.

For the present, the parties designate the following as the respective places for giving of notice, to-wit:

As to Village:	<b>Village of Wellington</b> 12300 Forest Hill Boulevard Wellington, FL 33414 Attention: Jim Barnes, Village Manager Email: jbarnes@wellingtonfl.gov
With a copy to:	<b>Village of Wellington</b> 12300 Forest Hill Boulevard Wellington, FL 33414 Attention: Laurie Cohen, Village Attorney Email: lcohen@wellingtonfl.gov
As to District:	<b>Acme Improvement District</b> 12300 Forest Hill Boulevard Wellington, FL 33414 Attention: Jim Barnes, District Administrator Email: jbarnes@wellingtonfl.gov
With a copy to:	<b>Acme Improvement District</b> 12300 Forest Hill Boulevard Wellington, FL 33414 Attention: Laurie Cohen, District Attorney Email: lcohen@wellingtonfl.gov
As to Wellington Athletics:	<b>Wellington Athletics LLC</b> 3730 Pelican Bay Court Wellington, Florida 33414 Attention: Jonathan Bostic Email: jebostic1uf@gmail.com
With a copy to:	<b>Gunster, Yoakley &amp; Stewart, P.A.</b> 777 S. Flagler Drive West Palm Beach, FL 33401 Attention: S. Kaitlin Guerin, Esq. Email: kguerin@gunster.com

- 33.4 Interpretation. The parties hereto acknowledge and agree that the language used in this Agreement expresses their mutual intent, and no rule of strict construction shall apply to either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or

interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to the particular sentence, paragraph, Section, or Article where they appear, unless the context requires otherwise. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections and subparagraphs of such Section or Article, unless the reference is expressly made to a particular subsection or subparagraph of such Section or Article.

- 33.5 Applicable Law and Venue. This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to any contrary conflicts of law principle. Venue for all proceedings in connection herewith shall lie exclusively in Palm Beach County, Florida, and each party hereby waives whatever its respective rights may have been in the selection of venue.
- 33.6 Public Entity Crime Statement. Wellington Athletics acknowledges the existence of Chapter 287.133(2)(a), Florida Statutes (“Public Entity Crimes Act”), which provides, in part, that a person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to Village; may not submit a bid on a contract with Village for the construction or repair of a public building or public work; may not submit bids on leases of real property to Village; may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with Village; and may not transact business with Village in excess of the threshold amount provided in Chapter 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List. Violation of this Section by Wellington Athletics shall result in termination of this Agreement by Village without penalty.
- 33.7 Inspector General. Pursuant to Ordinance No. 2011-009, Palm Beach County has established the Office of the Inspector General, which is authorized to review Wellington contracts and records. Wellington Athletics shall fully cooperate with the Inspector General with respect to this Agreement and shall provide access to the records in the manner provided herein for Wellington to inspect such records. Failure to cooperate with the Inspector General, or interfering with or impeding any investigation of the Inspector General, shall be a violation of County Ordinance 2009-049 and shall be punishable pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.
- 33.8 Non-Discrimination. Wellington Athletics shall not unlawfully discriminate against any person in its operation and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Wellington Athletics shall affirmatively comply with all applicable provisions of the Americans with



Disabilities Act (ADA) in the course of providing any services under this Agreement, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Wellington Athletics shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruiting advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship) and accessibility. Wellington Athletics' decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, gender identity, gender expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

- 33.9 Sexual Abuse and Harassment. Wellington prohibits sexual abuse and harassment of any kind. Wellington Athletics agrees to remove from the Property anyone who engages in abusive or harassing conduct and to report such person(s) to the appropriate authorities.
- 33.10 Joint Preparation. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other by virtue of the fact that it may have been physically prepared by one party or its attorneys.
- 33.11 Severability. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Village or Wellington Athletics elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.
- 33.12 Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- 33.13 Drug-Free Workplace. Execution of this Agreement by Wellington Athletics shall serve as Wellington Athletics' certification that it either has or that it will establish a drug-free workplace consistent with Chapter 112.0455, Florida Statutes.
- 33.14 Conflicts. Neither Wellington Athletics nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Wellington Athletics' loyal and

conscientious exercise of judgment related to its performance under this Agreement.

- a. Wellington Athletics agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile expert witness against Village or District in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, that is adverse or prejudicial to the interests of Village in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement.
- b. In the event Wellington Athletics is permitted to utilize subcontractors to perform any services required by this Agreement, Wellington Athletics agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this Article.

33.15 Background Checks. Prior to hiring any employee, subcontractor, or consultant and prior to entering into any sublease or sublicense with any person or entity who will provide services at the Recreational Facility, Village may conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. Wellington Athletics and/or the individual or entity shall sign an authorization for Village to access criminal background information. The costs for the background checks shall be borne by Village.

33.16 Waiver of Jury Trial. THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY WITH RESPECT TO PROCEEDINGS IN CONNECTION WITH THIS AGREEMENT, THEIR RELATIONSHIP AS LANDLORD AND TENANT, WELLINGTON ATHLETICS' USE OR OCCUPANCY OF THE PROPERTY, AND/OR ANY CLAIM OF INJURY OR DAMAGE. THIS WAIVER FORMS AN INTEGRAL PART OF THE CONSIDERATION FOR EACH PARTY ENTERING INTO THE AGREEMENT AND CONSTITUTES A MATERIAL INDUCEMENT TO THEM.

33.17 Advice of Counsel. EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THE TRANSACTION GOVERNED BY THIS AGREEMENT, AND SPECIFICALLY WITH RESPECT TO THE TERMS OF SECTION 30.16, WHICH CONCERNS THE WAIVER OF EACH PARTY'S RIGHT TO TRIAL BY JURY.

33.18 Radon Gas. Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information

regarding radon and radon testing may be obtained from your county health department.

- 33.19 Business Day. If any date under this Agreement for performance of an obligation shall expire or occur on a date which is not a business day (that is, a day other than a Saturday, Sunday or any day on which banks doing business in Palm Beach County have the option or are required to close), the date for performance of such obligation or expiration of such contingency, as the case may be, shall automatically be extended until the immediately succeeding business day.
- 33.20 Lien Waiver. District/Village hereby waive any statutory or other form of landlord lien in any of Wellington Athletics' furnishings, fixtures, equipment, proceeds or other personal property.
- 33.21 Force Majeure. If any party is delayed, hindered or prevented from the performance of any act required under this Agreement by reason of a Force Majeure Event, then such party shall, to the extent practicable, use reasonable efforts to give notice and full particulars of Force Majeure in writing to the other parties no later than ten (10) business days after the occurrence of such event, and the performance of the act will be excused for the period of the delay, hindrance or prevention, and the period for the performance of any such act will be extended for a period equivalent to the period of such delay. For purposes hereof, "Force Majeure Event" means strikes; lock outs; labor or work force shortages or interruptions; inability or difficulty to procure materials or supplies; failure or insufficiency of electricity, water, sewer, gas or other utilities; governmental compulsory acquisitions, expropriations, seizures or requisitions; widespread material curtailment or unavailability of governmental services or functions; riots; terrorist acts or threats of terrorist acts; insurrection or civil commotion or disorder; Public Health Concerns (as defined below); acts of God or natural disaster, including without limitation, damaging storms, cyclones, typhoons, hurricanes, tornadoes, blizzards, earthquakes, volcanic activity, landslides, tidal waves, tsunamis, floods, or damage or destruction by lightning; explosions, fires or other destruction; armed conflict or war (whether declared or not); or any reason beyond a party's control. For purposes of this Agreement, "Public Health Concern" means any one or more of the following: epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including, but not limited to, governmentally mandated closure, quarantine, "stay-at-home", "shelter-in-place" or similar orders or restrictions. Notwithstanding anything to the contrary contained herein, the provisions of this section shall not operate to excuse Wellington Athletics from the prompt payment of the Annual License Fee, or any other payments required by the terms of this Agreement and shall not operate to extend the Term. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party and shall not be deemed a Force Majeure Event.

- 33.22 Records and Audits. During the Term, and for a period of three (3) years following the expiration or termination of this Agreement, Wellington Athletics shall maintain books of account, receipt invoices, reports, and records in accordance with generally accepted accounting practices and standards (GAAP), and shall make such books and records available to the District/Village promptly upon written request therefor. The provisions hereof shall survive expiration or termination of this Agreement.
- 33.23 To the extent applicable, Wellington Athletics acknowledges that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes. Failure to comply with Chapter 119, Florida Statutes, if applicable, shall constitute a material default of this Agreement. IF WELLINGTON ATHLETICS HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 561-791-4118, or publicrecords@wellingtonfl.gov, or Clerk's Office, 12300 Forest Hill Blvd., Wellington, FL 33414.
- 33.24 Recording. Wellington Athletics may record a memorandum of this Agreement in the official public records of the county in which the Property is located to provide record notice of Tenant's possession of the Property.
- 33.25 Time of Essence. Subject to any extensions expressly provided with respect thereto, time is of the essence as to the performance of each and every of the provisions of this Agreement by the parties.
- 33.26 Brokerage. Each party represents and warrants to the other that it has not dealt with any broker or finder in connection with the transactions contemplated and each Party agrees to indemnify, defend and hold the other harmless of and from any and all manner of claims, including, but not limited to, reasonable attorneys' fees and expenses, incurred by the other party and arising out of any claim by any broker or finder if it is ultimately determined that the indemnifying party has breached the foregoing representation and warranty. The provisions of this Section shall survive the expiration or sooner termination of this Agreement.
- 33.27 No Third-Party Beneficiaries. Nothing in this Agreement shall confer upon any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.
- 33.28 Attorney's Fees and Expenses. In the event of any dispute between the parties, all expenses, including reasonable attorneys' fees and court costs at both the arbitration, trial and appellate levels, if any, incurred by the prevailing party, shall



be paid by the non-prevailing party. For purposes of this Section, attorney's fees shall be deemed to include, without limitation, any paraprofessional fees, investigative fees, administrative costs and other charges billed by the attorney to the prevailing party (including any fees and costs associated with collecting such amounts). The provisions of this Section shall survive the expiration or any sooner termination of this Agreement.

- 33.29 Invalidity of Provisions. If any provision of this Agreement or the application of it to any person or circumstances shall to any extent be finally determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 33.30 Estoppel. Each party shall, at any time and from time to time, so long as this Agreement shall remain in effect, within a reasonable time after receiving a written request from the other party, execute, acknowledge, and deliver the other party or any other person specified by such party, a written statement (which may be relied on by such person) (a) certifying that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications, that it is in full force and effect as modified, stating the modifications and if so requested, that the annexed copy of the Agreement is a true, correct and complete copy of the agreement) and (ii) the date to which the Annual License Fee and other charges have been paid, if any, and (b) stating (i) whether there has been written notice of any default, or any event that, with the giving of notice or the passage of time, or both, would constitute a default, by the other party in the performance of any covenant, agreement, obligation or condition contained in this Agreement, and (ii) whether, to its actual knowledge (but without independent inquiry), the other party is in default in the performance of any covenant, agreement, obligation, or condition contained in this Agreement and, if so, specifying in detail each such default.

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand this Agreement and all Contract Documents and attachments hereto and have caused this Agreement to be executed by their duly authorized officers on the date hereinabove first written.

**ACME IMPROVEMENT DISTRICT**

By:   
Anne Gerwig, Board President

**ATTEST:**

By: 

Chevelle D. Addie, District Secretary

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By: Laurie S. Cohen  
Laurie S. Cohen, District Attorney

**VILLAGE OF WELLINGTON, FLORIDA**

By: Anne Gerwig  
Anne Gerwig, Mayor

**ATTEST:**

By: Chevelle D. Addie  
Chevelle D. Addie, Village Clerk

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By: Laurie S. Cohen  
Laurie S. Cohen, Village Attorney

**WELLINGTON ATHLETICS LLC**

By: Jonathan Bostic  
Jonathan Bostic, Manager

**WITNESSES:**

By: Alexa Padilla  
Print Name: Alexa Padilla

**WITNESSES:**

By: Anne Alfaro  
Print Name: Anne Alfaro

**EXHIBIT A**

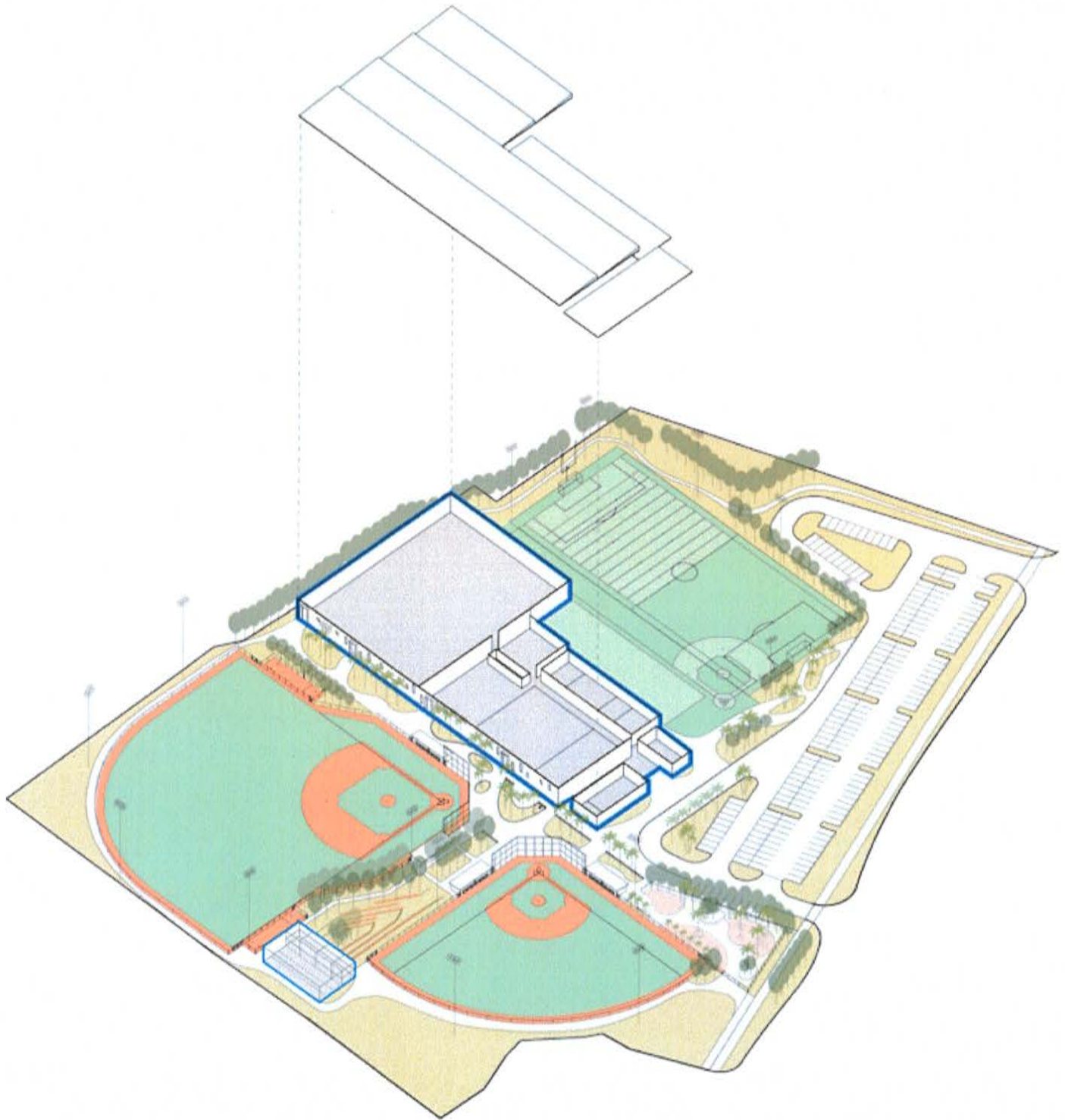
**LEGAL DESCRIPTION**

CIVIC SITE OF WELLINGTON COUNTRYPLACE – P.U.D., according to the plat thereof recorded in Plat Book 38, Page 190 and 191 of the Public Records of Palm Beach County, Florida.

**EXHIBIT B**



## CONCEPTUAL PLAN



**EXHIBIT C**  
**PROGRAM SCHEDULE**

**Village of Wellington's Use of Park:**

Wellington Athletics agrees to make the following facilities available at no cost to the Village of Wellington in accordance with the following schedule:

1. The Village shall have access to and use of the multi-use field, including for public open play, at all times unless otherwise reserved by Wellington Athletics for a special event, which event shall be coordinated in advance with the Village.
2. The Village shall have access to and use of one (1) full indoor basketball court (two (2) practice courts) on Monday thru Thursday from 6:00 pm to 10:00 pm. The Village may have access to one (1) full indoor basketball court (two (2) practice courts) on Friday, Saturday and Sunday subject to Wellington Athletics' use of the indoor basketball courts.
3. The Village shall have access to and use of the baseball field and softball field on Saturday and Sunday from 1:00 p.m. until sundown unless otherwise reserved by Wellington Athletics for a special event, which event shall be coordinated in advance with the Village.

\*Special events may include, but not be limited to, camps, tournaments, or other programs hosted by Wellington Athletics that are not a part of its daily operations.

**EXHIBIT D**

## **PROJECT SCHEDULE**

<b>Equity Funding Period</b> (Wellington Athletics)	90 days beginning one (1) day after Effective Date (subject to extension for additional 30 days)
<b>Due Diligence Period</b> (Wellington Athletics/Village)	90 days beginning one (1) day after Effective Date
<b>Development Approvals Application</b> (Wellington Athletics)	To be submitted to Village within 90 days of expiration of Equity Funding Period or Due Diligence Period, whichever is later
<b>Public Financing Period</b> (Village)	180 days beginning one (1) day after expiration of Due Diligence Period
<b>Procedures for Payment</b> (Wellington Athletics/Village)	To be established during Public Financing Period.
<b>Building Permit Application</b> (Wellington Athletics)	To be submitted to Village within One Hundred Eighty (180) days of repayment of Upfront Design Costs.
<b>Site Work</b> (District/Village)	To begin within Thirty (30) days after receipt of Building Permits
<b>Notice to Proceed</b> (Village)	To be provided within Seven (7) days of completion of Site Work
<b>Performance Bond</b> (Contractor)	To be submitted to Village at least Ten (10) days prior to Construction Commencement
<b>Construction Commencement</b> (Wellington Athletics)	To begin within Thirty (30) days of receipt of Notice to Proceed
<b>Construction Completion</b> (Wellington Athletics)	No later than Fourteen (14) months after Construction Commencement

## **EXHIBIT E**

## SITE WORK

### SOUTH SHORE PARK DEMOLITION PROJECT

Item No.	Item Description	Estimated Quantity	Unit of Measure	Unit Price	Total for Item
General Conditions and Requirements					
1	Mobilization	1	LS	\$ 15,000.00	\$ 15,000.00
2	Permit Fees (Owner Controlled Allowance @ 2% Construction Cost)	1	LS	\$ 19,486.51	\$ 19,486.51
3	Demobilization	1	LS	\$ 15,000.00	\$ 15,000.00
		Subtotal General Conditions:			\$ 49,486.51
Concrete					
4	Demolish Existing Concrete Slab on Grade and Concrete Sidewalk	1885	SY	\$ 10.00	\$ 18,848.89
5	Demolish Existing Concrete Slabs at Bleachers	307	SY	\$ 20.00	\$ 6,133.33
Parking Lot					
7	Asphalt Demolish	12182	SY	\$ 10.00	\$ 121,818.89
8	Planters & Medians Demolish	458	SY	\$ 20.00	\$ 9,162.22
Fencing					
9	Demolish Existing 4' Tall Chain Link Fencing	4159	LF	\$ 10.00	\$ 41,590.00
10	Demolish Existing 6' Tall Chain Link Fencing	436	LF	\$ 10.00	\$ 4,360.00
11	Demolish Existing Baseball Backstop Fencing	900	LF	\$ 10.00	\$ 9,000.00
Structure					
12	Demolish Existing One Story Building	7653	SF	\$ 13.00	\$ 99,489.00
Basketball Courts					
13	Two (2) Basketball Courts Demolish	1301	SY	\$ 10.00	\$ 13,011.11
Miscellaneous					
14	Light Poles Demolish	26	EA	\$ 750.00	\$ 19,500.00
15	Score Boards Demolish	5	EA	\$ 750.00	\$ 3,750.00
16	Aluminum Sheds (12'x24') Demolish	3	EA	\$ 1,500.00	\$ 4,500.00
17	Concrete Dugouts Demolish	6	EA	\$ 1,000.00	\$ 6,000.00
18	Batting Cages (Including Foundations) Demolish	6	EA	\$ 750.00	\$ 4,500.00
19	Drinking Fountains Demolish	1	EA	\$ 500.00	\$ 500.00
20	Foul Posts Demolish	6	EA	\$ 250.00	\$ 1,500.00
21	Miscellaneous Traffic Signs Demolish	1	LS	\$ 2,500.00	\$ 2,500.00
22	Bleachers Demolish	6	EA	\$ 500.00	\$ 3,000.00
23	Covered Concrete Structure (Pole Barn) Demolish	22	SY	\$ 25.00	\$ 550.00
24	Irrigation System Demolish	1	LS	\$ 10,000.00	\$ 10,000.00
25	Large Trees Demolish	25	EA	\$ 250.00	\$ 6,250.00
26	Miscellaneous Small Trees and Shrubs Demolish	1	LS	\$ 10,000.00	\$ 10,000.00
Electrical					
27	Electrical Panels (Including Light Equipment) Demolish	10	EA	\$ 500.00	\$ 5,000.00
28	Two Utility Poles, 3 Transformers, 410 ft Overhead lines Demolish	1	LS	\$ 50,000.00	\$ 50,000.00
Underground Utilities					
29	Sewer, Water, & Stormwater (10 Catch Basins) Demolish	1	LS	\$ 25,000.00	\$ 25,000.00
30	Grease Trap Demolish	1	LS	\$ 2,500.00	\$ 2,500.00
Site Prep					
31	Site Grading/Prep	69862	SY	\$ 1.00	\$ 69,862.00
Muck Removal					
32	Muck Removal and Haul	14200	CY	\$ 20.00	\$ 284,000.00
33	Imported Fill to Replace Muck Removal	14200	CY	\$ 10.00	\$ 142,000.00
			Subtotal Cost:		\$ 974,325.44
Contingency					
34	Contingency (20% of Construction Cost, Items 4 - 33)	1	LS	\$ 194,865.09	\$ 194,865.09
		Subtotal Contingency:			\$ 194,865.09
			Total (NO Contingencies)		\$ 1,023,811.95
			Total (with Contingencies)		\$ 1,218,677.04

Site Area (ft2): #####  
Demolition/Site Prep Unit Cost (\$/ft2): \$ 1.94



**SCHEDULE 14.8**  
**PROHIBITED USES**

Without limiting the generality of the other provisions of the Agreement, the following uses of the Property shall not be permitted:

- (a) Any unlawful or illegal business, including, without limitation, games of chance or reward.
- (b) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building or disposal in any receptacles designed therefor).
- (c) Any use that would constitute a material breach of the covenants described in the Agreement.
- (d) Any cultivation, sale, display, promotion, dispensing or distributing of medical marijuana, including equipment used in conjunction therewith, or promotional and advertising materials, including brochures and merchandise.
- (e) Any sale, display or promotion of goods or merchandise that contain or feature sexually explicit language or content.
- (f) Any use for political purposes.