MEMORANDUM OF UNDERSTANDING BETWEEN FORSYTH COUNTY, GEORGIA AND THE GATHERING AT SOUTH FORSYTH, LLC RELATED TO THE PROPOSED GATHERING ARENA / MIXED-USE PROJECT

This Memorandum of Understanding ("***MOU***" or this "***Agreement***") is made and entered into as of [[_____]], 2024, between Forsyth County, Georgia, a duly formed political subdivision of the State of Georgia (the "***County***"), and The Gathering at South Forsyth, LLC, a duly formed limited liability company in the State of Georgia (the "***Principal Developer***"), collectively referred to herein as the "***Parties***." The MOU sets forth the principal understandings of the Parties and the actions planned by each regarding construction, development and lease of a new arena (the "***Arena***") and ancillary mixed-use development in the County.

W I T N E S S E T H:

A. The Constitution of the State of Georgia, approved by the voters of the State in November 1982, and effective July 1, 1983, provides in Article IX, Section 2, Paragraph 1 thereof that the governing authority of the County may adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government.

B. Pursuant to the authority vested in the County's Board of Commissioners (the "***Board***") by the Georgia Constitution, the Board has adopted the Forsyth County Economic Development Ordinance, Ordinance 130 (County Code, 220-256, *et. seq.,* the "***Economic Development Ordinance***").

C. The Economic Development Ordinance authorizes the County Manager (or his/her designee) to work collaboratively with businesses that have an interest in establishing or expanding their presence in Forsyth County and negotiate a range of economic development-based inducements to motivate those businesses to invest in the County. Consistent with the parameters set forth in the Economic Development Ordinance and other applicable law, such inducements may include:

- Construction of infrastructure that may include, but is not limited to: parking facilities, roads, sidewalks, and utilities.
- Acceleration of public hearing dates for rezonings, conditional use permits, variances, sketch plats and zoning condition amendments.
- Acceleration of the processes for plan reviews, inspections, and any other such processes to advance the development process.
- Consideration of partial waiver of fees imposed by the County.
- Inducements authorized by the Redevelopment Powers Act (O.C.G.A. § 36-44-1 *et seq*.).
- Inducements authorized by the Development Authorities Act (O.C.G.A. § 36-62-1 *et seq*.).

D. The Economic Development Ordinance also authorizes the County Manager to enter into contracts on behalf of the County, subject to formal ratification by the Board, assuring specific economic development incentives in exchange for a commitment by the incentivized business to meet mutually agreeable fiscal impact targets.

E. The Principal Developer is the current owner of Forsyth County tax parcels 043-022, 043-065, 043-066, 043-067, 043-068, 043-069, 043-070, 043-071, 043-072, 043-075, 043-076, 043-078, 043-079, 044-016, and 044-020 and is finalizing the purchase of Forsyth County tax parcel 044-004, all such parcels comprising [[102.72]] +/- acres, as more particularly shown on *Exhibit A* attached hereto and made a part hereof (the "***Property***").

F. The Principal Developer is proposing to invest over One Billion Dollars ($1,000,000,000.00) in the Property to build and open the first phase of an economic development project on the Property currently known as The Gathering at South Forsyth ("***The Gathering***").

G. The Principal Developer currently contemplates The Gathering to include the development and construction of a proposed arena and entertainment complex and mixed-use development including, but not limited to: 1.6 million square feet of office and retail space, 700,000 square feet of arena space, a Marquee (as hereinafter defined), two or three hotels with up to a total of 500 rooms, practice ice rink facility with ancillary use for community ice center which would be located on real property owned by the County and leased to the Principal Developer or its designee (the "***Practice Rink***"), 15,000 square-foot building for a fire station and a sheriff's precinct station, and a 1.2-mile connective trail along the Big Creek Greenway, all subject to change as development proceeds and economic conditions warrant (collectively, the "***Project***"). In addition, pending consideration and approval from the Board, a portion of the Property would be rezoned to allow up to 1,800 multifamily housing units (collectively, the "***Multi-Family Units***") and up to 150 single family residences within the Project. The Parties acknowledge and agree that the Principal Developer shall be permitted to construct up to 1,800 multi-family units at the Property. The site plan for the Project and revisions to the Ronald Reagan/Union Hill Overlay District necessary to facilitate the Project are attached and incorporated as *Exhibit B* (collectively, the "***Overlay Code***").

H. It is anticipated that the Multi-Family Units will be constructed in three (3) phases, as further depicted on, and in substantial accordance with, the phasing plan attached hereto as *Exhibit F* (the "***Phasing Plan***"), and such construction shall be based on the achievement of certain milestones to be further described in the definitive project documents; provided, however, that all of the Multi-Family Units shall be reflected on and contemplated in the Overlay Code. Notwithstanding the foregoing, however, with respect to the commencement of construction of the Arena, the Principal Developer shall be permitted to commence construction of the Arena in a later phase than as reflected on the Phasing Plan in the event receipt of a franchise from the NHL (as hereinafter defined) is delayed, it being acknowledged and agreed to by the County that the Principal Developer shall be permitted to commence construction of future phases (as set forth on the Phasing Plan) even if completion of the Arena has not occurred due to a delay in receipt of the NHL franchise as aforesaid; provided, however, that the Principal Developer shall not be permitted to commence construction on the six hundred (600) Multi-Family Units contemplated in Phase 4 of the Phasing Plan until such time as construction of the Arena has been completed.

I. The County acknowledges and agrees that it will work in good faith to expedite, and cause the expediting of, any review, permitting and approvals processes in connection with the Project.

J. The Principal Developer shall cause certain Multi-Family Units, in an amount equal to five percent (5%) of the aggregate Multi-Family Units constructed at the Project, to be made available for the use of Forsyth County Public Safety (sheriff and fire) staff and School District (as hereinafter defined) employees (such reserved units, the "***Reserved Units***"). The Reserved Units shall be designated by phase, with twenty (20) of the Multi-Family Units in Phase 1 of the Project being designated as Reserved Units, with thirty (30) of the Multi-Family Units in Phase 2 of the Project being designated as Reserved Units and with forty (40) of the Multi-Family Units in Phase 4 of the Project being designated as Reserved Units. With respect to the Reserved Units, (i) the rental rate for the Reserved Units shall be discounted to sixty percent (60%) of the fair market rental rate for such Reserved Unit, as reasonably determined by the Principal Developer and (ii) any security deposit assessed in connection with such Reserved Unit shall be waived and any application fee(s) charged shall be reduced. If any Reserved Unit is un-needed or is vacant for a continuous period of time to be further described in the Development Agreement, such Reserved Unit shall no longer be reserved as aforesaid and the Principal Developer shall be permitted to lease any such

Reserved Unit at one hundred percent (100%) of the fair market rental rate. Any qualified occupant of a Reserved Unit thereafter when no units are available shall be placed at the top of any waiting list.

K. After considerable discussion with the Principal Developer and extensive due diligence regarding the anticipated economic impact of the Project, the County recognizes the significant fiscal and civic benefit the Project is expected to provide to the County and its residents, and, as later detailed in this MOU, the County agrees to invest, subject to an affiliate of the Principal Developer being awarded a team (franchise) (the "***Team***") by the National Hockey League (the "***NHL***"), Two Hundred Twenty-Five Million Dollars ($225,000,000.00) in net funding towards the construction of the Arena and related amenities.

L. The purpose of this MOU is to identify the expectations of the Parties with respect to their respective obligations in bringing the phases of The Gathering to fruition.

I. THE ARENA

A. The Parties desire to construct and develop the Arena and related amenities in accordance with the preliminary basic program elements for the design and construction of the Arena (the "***Project Program Statement***") establishing the minimum criteria for the Arena attached hereto as Exhibit C. The Development Agreement (as defined below) will include a final Project Program Statement consistent with the standards described in Exhibit C. Any material deviation (which is not required by applicable law) below the minimum requirements set forth in the final Project Program Statement included in the Development Agreement shall require the approval of the County, which shall not be unreasonably withheld, delayed or conditioned.

B. The Parties intend that the Arena and its components will be constructed as a professional NHL facility capable of, at a minimum, multi-use indoor sports that will be competitive based on objective metrics with other comparably sized, professional NHL facilities with multi-use and indoor sports capabilities recently constructed nationally to accommodate professional hockey teams (the foregoing, the "***Minimum Standard***").

C. The Principal Developer shall design and construct (or cause to be designed and constructed) the Arena at a location on the Property determined by the Principal Developer.

D. Subject to legal, accounting and tax review, at a time mutually agreeable to the Parties, the Principal Developer will convey those portions of the Property for the Arena and related plaza(s) (as depicted on Exhibit D, collectively, the "***Arena Site***") and the Arena Parking Deck (as hereinafter defined) to the County or an authority designated by the County (the "***Authority***") at no cost to the County; provided, however, that the Principal Developer shall not be required to convey such portions of the Property until after the completion of any replatting and/or subdivision of the Property necessary or required to obtain separate parcel identification numbers for the Arena Site and the Arena Parking Deck (as hereinafter defined), as applicable.

E. The Principal Developer will design and construct (or cause to be designed and constructed) an attached parking deck with parking spaces at grade or above dedicated for Arena events (the "***Arena Parking Deck***"). The Arena Parking Deck may include below grade infrastructure for the Arena's loading dock and marshalling areas for events.

F. It is the intent of the Principal Developer and the County that (i) the County or the Authority own the Arena Site and Arena Parking Deck and (ii) the Arena Site and Arena Parking Deck will be exempt from all ad valorem and property taxes (together with any other taxes permitted under applicable law). The

County or the Authority will lease the Arena Site and Arena Parking Deck to the Principal Developer pursuant to the terms and conditions in the Arena Lease (hereinafter defined). The Parties agree the Principal Developer will not have a taxable leasehold interest in the Arena Site or the Arena Parking Deck; it will have a possessory interest/usufruct and be subject to certain use restrictions which are set forth in the Permitted Use provision in Article III below and as required by applicable law as more fully described in *Exhibit E*.

G. The Parties acknowledge that time is of the essence and thus engaged in good faith negotiations in connection with this MOU, and further acknowledge the need to engage expeditiously in negotiations in connection with definitive project documents related to the design, construction, maintenance and operation of the Arena and the Arena Parking Deck including, but not limited to (i) an arena lease **OR** operating agreement (the form and substance of which shall be mutually agreed between the Parties taking into account, amongst other things, the benefits of creating a usufruct) between the Principal Developer and the County with respect to the Principal Developer's use and operation of the Arena and the Arena Parking Deck (the "***Arena Lease***"), and (ii) a funding and development agreement with respect to the financing, construction, and development of the Arena by the Principal Developer and the design and construction of the Arena Parking Deck (the "***Development Agreement***"), such Arena Lease and Development Agreement to include the terms and conditions set forth in this MOU. Notwithstanding anything to the contrary contained herein, the Principal Developer and its designee will at all times have the exclusive right, power and authority to direct all aspects of the development and construction of the Arena Parking Deck and shall reasonably coordinate with the County the development and construction of the portion of the Arena Parking Deck which connects to the Arena.

II. ARENA CONSTRUCTION AND CONTRIBUTIONS

A. Upon execution of this MOU, the County acknowledges and approves the land use planner, construction manager, property manager, architectural firm, engineering firm and design firm previously hired by the Principal Developer in connection with the provision of certain pre-construction services related to land use, architectural, design, engineering, surveying, environmental, code compliance, ADA compliance and construction planning (collectively, the "***Pre-Construction Work***"). The costs incurred for the Pre-Construction Work shall be included in the Arena Budget described below.

B. The cost of constructing the Arena in accordance with the Project Program Statement, including pre-construction work, infrastructure, additional design, engineering, management, bond(s) or completion guarantees, and other hard and soft costs and the project contingency reserve, but excluding any interest expense which will be the separate obligation of each Party in addition to their obligations herein, is currently estimated to be no less than One Billion Fifty Million Dollars ($1,050,000,000.00) (the "***Arena Budget***"). The Parties acknowledge the Arena Budget does not include costs and expenses associated with the design and construction of the Arena Parking Deck.

C. The County will use prompt, good faith and diligent efforts to pursue the enactment of legislation (or multiple pieces of legislation): (i) increasing the hotel-motel taxes applicable to the Property from 5% to 8% (the "***Hotel Tax***") and (ii) authoring the utilization of redevelopment powers/the creation of tax allocation districts (the "***TAD Legislation***"*)*. The County will regularly apprise the Principal Developer of its progress towards the targeted legislation, and the Principal Developer shall assist and support the County's efforts as requested. In addition to the foregoing, if the TAD Legislation is passed, the County, at its sole discretion, may hold an election for the establishment of a Tax Allocation District ("***TAD***") whose boundaries shall include all of the Property and such other land, if any, included at the County's discretion.

D. The County's contribution to the Arena will be Two Hundred Twenty-Five Million Dollars ($225,000,000.00) for the Arena (the "***County Contribution***"). The County shall use its discretion to determine the appropriate source of funds for the County Contribution, which may include the proceeds of either a TAD/TIF bond issue or a revenue bond issue by the applicable governmental authority (in either case, the "***Bonds***"). The Bonds will be repaid solely from (i) (A) the ad valorem property taxes generated on the incremental value of the Property (assessed by both the County and Forsyth County Schools (the "***School District***")) if a TAD is established (the "***TAD Increment***") or (B) payments in lieu of taxes in the same amount ("***PILOT Payments***") if a TAD is not established, (ii) any additional amounts generated by the increased Hotel Tax, (iii) the Baseline Rent (hereinafter defined) and (iv) the Ticket Tax (other than the CapEx Portion thereof). The Parties acknowledge that, to the extent required by applicable law, the School District will need to approve the use of its portion of the TAD Increment as described in this Agreement (and the County shall cause the School District to act expeditiously). The Parties acknowledge and agree that (1) the County shall not be required to cause the Bonds to be issued until such time as the Principal Developer has provided proof reasonably acceptable to the County that the Principal Developer (and/or its affiliate) has obtained funding sufficient to construct the Arena, as determined by the then-current Arena Budget, less the County Contribution and (2) the County shall, subject to any requirements of the Principal Developer's lender, have discretion over the order in which the County Contribution is spent in relation to the overall Arena Budget.

E. The Principal Developer will attempt to obtain funding from the South Forsyth County Community Improvement District, which will be used towards the costs and expenses incurred by the Principal Developer and/or its affiliates and associated with the Project.

F. The Principal Developer will attempt to obtain funding from the State of Georgia which will be used towards the costs and expenses associated with the Project. Any amounts obtained up to One Hundred Million Dollars ($100,000,000.00) shall be retained by the Principal Developer and shall be used towards the costs and expenses incurred by the Principal Developer and/or its affiliates and associated with the Project. Any amounts obtained from the State of Georgia in excess of One Hundred Million Dollars ($100,000,000.00) shall be shared equally between the County and Principal Developer; provided, however, that any of the foregoing amounts so received by the County after the issuance of the Bonds shall be used by the County solely to prepay Bonds.

G. The Parties shall contribute capital towards completion of the Project pursuant to a payment schedule to be set forth in the Development Agreement under which (i) the Principal Developer shall pay for all architectural and other pre-construction costs, which shall be included as part of the Principal Developer pro-rata contribution to the Project and (ii) following commencement of construction, the Parties shall fund expenditures on a pro-rata basis based on the initial Arena Budget until the County Contribution has been expended.

H. The Principal Developer will bear the monetary risk related to cost overruns beyond the Arena Budget encountered during the construction of the Arena, including any cost overruns related to changes made to the Project Program Statement, but excluding cost overruns caused solely by (i) the material actions or inactions (as such terms shall be defined in the Development Agreement) of the County which costs shall be borne entirely by the responsible party, or (ii) delays in processing by or at the direction of the County, acting as owner or lessor of the Arena Site, Arena and/or the Arena Parking Deck (as opposed to the County's regulatory capacity) of the permits and approvals, including any regulatory permits or approvals or any other regulatory permits and approvals.

I. Upon execution of the definitive project documents, the Principal Developer and the County will, pursuant to terms and conditions set forth in the Development Agreement, make their pro rata

shares of funding available to a disbursement account to fund all work related to the completion of the Arena (the "***Construction Work***").

J. The Principal Developer shall provide directly or cause to be provided adequate assurances, either in the form of a completion guaranty or qualified surety, to the County for the completion of the Arena (subject to receipt of the County Contribution), pursuant to which such guarantor will guaranty the Principal Developer's obligation to complete the Construction Work, either by specific performance or by funding all costs accrued by the County if such parties choose to complete the Construction Work if the Principal Developer fails to do so.

K. All Construction Work shall be done in compliance with all applicable laws (including, but not limited to, the Americans with Disabilities Act). The Principal Developer shall provide monthly status reports to the County, in form and substance reasonably acceptable to the Principal Developer, evidencing the progress of the Construction Work and compliance of same in accordance with the minimum requirements set forth in the Project Program Statement.

III. ARENA LEASE TERMS AND OTHER CONDITIONS

A. The parties intend to negotiate and execute the Arena Lease for the use and operation of the Arena and the Arena Parking Deck by the Principal Developer and its designees for an initial term (the "***Initial Term***") commencing upon substantial completion of the Arena on the terms and conditions outlined herein and execution of the Arena Lease and expiring forty-nine (49) years (whether by express term or extensions) after the date of the first event held at the Arena ("***Operating Term Commencement Date***"), with three (3) 10-year renewal options that may be exercised by the Principal Developer commencing upon the expiration of the Initial Term. In the alternative, the Arena Lease shall be structured using applicable durations with renewal elections (exercisable at the sole discretion of the Principal Developer necessary) to allow the Arena to fully utilize applicable tax abatements.

B. The Arena shall be used only for the development, construction, operation, and maintenance of a live event venue for concert, sports, entertainment and other performance events, social and civic events, which events may also include, without limitation; movie premieres; e-sports competitions, vehicular competitive events and recreation and leisure events; convention and trade shows; and accessory uses associated with the efficient operation or conduct of any of the aforementioned permitted uses including, without limitation, restaurants; concessions; retail; movie set locations; live telecasts; filming of commercials and documentaries; children's activities; sports betting/gambling; game and video arcades and comparable family recreation centers; and public parking and all ancillary uses thereto (collectively, the "***Permitted Uses***"). Notwithstanding the foregoing, "Permitted Uses" shall expressly exclude uses, events or retail areas showcasing pornography or "adult" entertainment, or primarily dedicated to the sale of paraphernalia related to tobacco products, or illegal drugs (each, a "***Prohibited Use***").

C. The Principal Developer and its designee will at all times have the exclusive right, power, authority and obligation to direct all aspects of the operation, management, maintenance, supervision, and control of the Arena, Arena Parking Deck and the Arena Site, including without limitation all income or revenue producing activities at, adjacent, or related to or connected in any way to the Arena, Arena Parking Deck and the Arena Site and the right to retain all such income and revenue except for the Ticket Tax and ticket sales associated with a County Event (hereinafter defined). Except for the financial obligations to be undertaken by the County or as otherwise set forth in this MOU, the Principal Developer will be responsible, pursuant to the Arena Lease, for all costs associated with the Arena and Arena Parking Deck.

D. The Parties agree that sales and use taxes generated within the Project based on the existing sales and use tax rate will not be pledged to or used for the payment of Bonds, expenses associated with the construction of the Arena, or any other expense specifically related to the Project (collectively, the "***Project Expenses***"). The School District and the County will utilize sales and use taxes generated within the Project for general fund expenses at their discretion.

E. Notwithstanding Subsection III.D., the County supports the creation of a special taxing district (to the extent permitted by applicable law) that would (i) include the Project and (ii) assess a sales and use tax at a rate that is one percent (1%) above the existing sales and use tax rate (the "***Additional Sales Tax***"). The annual proceeds generated by the Additional Sales Tax shall, to the extent permitted by applicable law, be used to fund the Capital Improvement Fund (defined below). In this regard, the County shall adopt an ordinance (i) establishing the Property as a special service district pursuant to Ga. Const. Art. IX, Sec. II, Par. VI, (ii) authorizing a minimum 1% sales tax to be collected, and (iii) authorizing use of such sales tax revenues for the construction and maintenance of the Project, the special service district, and facilitation of tourism within the special service district. If the County or other appropriate governmental authority is not permitted to levy the Additional Sales Tax under applicable law, the County shall provide another method by which to fund the Capital Improvement Fund from funds generated within such special taxing district, in an amount equal to the estimated proceeds that would have been generated by the Additional Sales Tax as reasonably determined by the Principal Developer.

F. Additionally, the Parties will be required to establish a capital improvement fund to maintain the Arena and other portions of the Project, including, without limitation, the Practice Rink (the "***Capital Improvement Fund***"). The County shall deposit into the Capital Improvement Fund one hundred percent (100%) of the Additional Sales Tax and One and 00/100 Dollar ($1.00) of the Ticket Tax (such amount, the "***CapEx Portion***") collected by or on behalf of the County (or other applicable governmental authority), all to be further described in the definitive project documents. The Additional Sales Tax and CapEx Portion have intentionally been excluded from revenues available for debt service on the Bonds for purposes of funding the Capital Improvement Fund. Nothing in this Section III.F. shall prevent the County from levying a LOST, SPLOST, or TSPLOST or the Board of Education from levying a eLOST (the levies in this sentence collectively being referred to collectively as the "***Levies***"); provided, however that the County and/or Board of Education, as applicable, shall only be permitted to assess the Levies on the entire of Forsyth County (as opposed to on a targeted or limited basis) and the Levies shall not in any way prejudice, limit or prevent the levying of the Additional Sales Tax, Ticket Tax and or any other amount contemplated under Section III.E. to fund the Capital Improvement fund.

G. The Principal Developer shall be able to use the Capital Improvement Fund for (i) capital items, features, components and other elements of the Arena Site and the Arena Parking Deck not included in the construction of the Arena or the Arena Site or the Arena Parking Deck as constructed in accordance with the Development Agreement, and any capital repairs and replacements of any capital items, features, components and other elements, (ii) other improvements determined by the Principal Developer in good faith to be necessary to maintain the Project, including improvements necessary to maintain the Arena and the Arena Parking Deck at a standard comparable to the Minimum Standard and (iii) infrastructure and other common elements shared between, on the one hand, the Arena Site and/or the Arena Parking Deck and, on the other hand, improvements and developments owned by the Principal Developer or an affiliate thereof.

H. The County shall, upon prior written request to the Principal Developer, be provided with updates and summaries of the expenditures from the Capital Improvement Fund. In addition to the foregoing, the Principal Developer shall provide an annual accounting statement of the Capital Improvement Fund to the County in form and substance reasonably acceptable to the Principal Developer.

I. The County will require that the Principal Developer charge a per ticket surcharge in an amount equal to One and 50/100 Dollar ($1.50) for paid tickets at all events held at the Arena (the "***Ticket Tax***"), which the parties agree to implement upon ticketing at the Arena and which shall be deemed revenue of the County; provided, however, that in no event shall the Ticket Tax be charged on any tickets, parking vouchers, parking tickets, valet services or other amounts charged in connection with the Arena Parking Deck, it being expressly understood by the Parties that all amounts generated at or from the Arena Parking Deck shall be deemed the revenue of the Principal Developer.

J. The Principal Developer shall pay a Baseline Rent Payment (as defined below) on an annual basis during the Term in accordance with the following provisions:

(i) "***Baseline Rent Payment***" means an annual payment beginning on the Rent Commencement Date (as defined below) and thereafter payable throughout the Term, as determined and described below. Baseline Rent Payments shall be made on a calendar year basis, with the Baseline Rent Payment for the period beginning on the Rent Commencement Date and continuing through December 31 of such calendar year ("***First Rent Year***") being One Hundred Thousand Dollars ($100,000.00). Other than the First Lease Year (which shall include any partial calendar year between the date upon which the Arena Lease is executed and December 31st of such year), each twelve (12) month calendar period during the Term commencing on January 1st and ending on December 31st of such year shall be defined in the Arena Lease as a "***Lease Year***".

(ii) "***Escalator***" shall be the lesser of (x) two percent (2%), or (y) the positive (but not any negative) percentage change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for all Urban Consumers [(Forsyth County, Georgia Local Area)] ("***CPI***") for the applicable escalation period. The applicable escalation period shall be the preceding Lease Year. If publication of such Index is discontinued or is published less often than bi-monthly, or if the basis of calculating the Index is materially changed, the County, with the reasonable approval of Principal Developer, shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none is available, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

(iii) "***Rent Commencement Date***" means the first (1st) day of the first (1st) month of the sixth (6th) Lease Year of the Term.

(iv) On a quarterly basis during each Lease Year of the Term, Principal Developer shall remit the Baseline Rent Payment to the County in full, without deduction or offset. The County shall apply the Baseline Rent Payment to the repayment of the Bonds as long as they are outstanding. Following the repayment of the Bonds in their entirety, the County shall have the right to use the Baseline Rent Payments for any County related purpose in compliance with applicable laws.

K. The Principal Developer shall have the right to name, or contract with any person or entity on such terms as the Principal Developer may determine, with respect to the naming of the Arena, the Arena Parking Deck or any portion thereof; provided that (i) the term during which any such name shall apply shall expire no later than the end of the term of the Arena Lease (including any exercised renewal options) and (ii) such signage shall not include names containing slang, barbarisms or profanity; names that could be construed to encourage the use of beer by minors or the use of tobacco by persons of any age; or names that relate to illegal drugs or any sexually oriented business or enterprise.

L. The Principal Developer shall have control over all advertising, sponsorship and concession rights at the Arena and the Principal Developer shall not be required to solicit or obtain County approval for advertising signage at the Arena and on the Arena Site, as long as such signage shall: (i) not violate any applicable law, (ii) not cause unreasonable embarrassment to the County and (iii) not contain slang, barbarisms, profanity, directly encourage use of alcohol by minors or tobacco by anyone, or reference illegal drugs or sexually oriented businesses.

M. The Arena Lease shall contain insurance requirements to the extent mutually agreed upon by the County and the Principal Developer customary for a project of such type.

N. The County and School District shall have the right to use the Arena rent free for the graduation ceremonies of any public high school located in the County ("***County Events***") during every year of the Term (and any renewal options, if applicable). The County shall coordinate the use of the Arena for the County Events and shall provide at least 360 days' prior written notice of the date of the County Events to the Principal Developer; provided, however, that regardless of such advance notice, such County Events shall not conflict in any way with any Arena events and if such conflict arises, the Arena events shall take precedence and the Principal Developer shall work with the County to reschedule such conflicted County Event. Unless agreed otherwise, the Principal Developer (or its sublicensed vendors) shall be responsible for staffing, managing, and operating the Arena during all County Events. The County shall reimburse the Principal Developer for all actual costs and expenses incurred in connection with or attributable to the use of the Arena and the Arena Parking Deck for a County Event. In those instances in which the County seeks to sell admission to any County Event, the County must use the Principal Developer's authorized ticket vendor to complete such sales, at the County's sole cost; provided, however, that the Ticket Tax will be added to any such tickets. The County will retain all net ticket revenues generated during any County Event ("net ticket revenues" to be more particularly defined in the Arena Lease). All other revenues shall be retained by the Principal Developer.

O. The Arena Lease shall also contain additional provisions, in form and substance reasonably similar to those set forth on *Exhibit E* attached hereto and incorporated herein.

P. The Parties agree that Principal Developer shall be entitled to all revenue generated from the Arena Site for all events held at the Arena and Arena Site and shall be entitled to all revenue generated at or from the Arena Parking Deck except for the Ticket Tax.

Q. The Arena Lease shall require, subject to approval by the NHL, that the Team not relocate so long as any Bonds remain outstanding other than in connection with a casualty, condemnation, act of terrorism or other event of force majeure (a "***Permitted Relocation***"). If the Team does relocate for a reason other than a Permitted Relocation, the County shall have equitable remedies against the Principal Developer and, if a court having jurisdiction refuses to enforce any such equitable remedies, the Principal Developer shall be required to pay off the outstanding Bonds.

IV. THE GATHERING

A. Principal Developer Obligations

i. Arena and the Project. The Principal Developer shall finance, develop and construct the Arena and the balance of the Project, subject to certain conditions set forth in this Agreement,

including the availability of financing for the Project, the continued economic viability and feasibility of the Project, the County Contribution, and the County's obligations, if any, related to the Arena Parking Deck. The Parties acknowledge and agree that certain of its commitments hereunder shall be subject to receipt of construction financing to complete construction of the Arena.

ii. Fire Station & Sheriff Station. The Principal Developer will donate sufficient land on the Property for a single building not to exceed 15,000 square feet to house a fire station and a sheriff's precinct station, and construct, on behalf of the County, a cold, black shell with utilities stubbed to the perimeter of the building pursuant to plans and specifications developed by the County and approved by the Principal Developer in its sole discretion.

iii. Trail System Connectivity. The Principal Developer will construct on or from the Property a 1.2-mile connective trail to the County's Big Creek Greenway trail system in locations developed in consultation with the County but subject to the Principal Developer's sole and final determination (the "***Trail System Connection Property***"). Title to the Trail System Connection Property shall be retained by the Principal Developer, subject to an easement for the benefit of the County that contains usual and customary maintenance obligations by the County and indemnification of the Principal Developer for public use of private property. It is the intent of the Principal Developer and the County that the Trail System Connection Property will be exempt from all ad valorem, inventory, and property taxes.

iv. CTAE Pathways. The Principal Developer will work in good faith with the School District to integrate CTAE pathways. This includes facilitating internship opportunities within the Principal Developer's programs, such as those focusing on sports management, hospitality, culinary arts, media, audio/visual, IT and event production.

B. **County Obligations**

i. Funding. The County shall timely fund the County Contribution towards the construction of the Arena.

ii. Sewer. Upon the payment of the applicable tap fees, the County shall guaranty availability of 1,390,000 gallons of sewage treatment capacity required for the Project.

iii. Water and Sewer Connections. The County shall be responsible for confirming that all water and sewer are available at the boundaries of the Property.

iv. Practice Rink. The County shall be responsible for promptly and diligently locating County-owned property suitable for the development and construction of the Practice Rink, which real property shall thereafter be leased to the Principal Developer. The Principal Developer shall use good faith efforts to work with the School District to develop a high school hockey league.

v. The County shall approve amendments to the Ronald Reagan/Union Hill Overlay District substantially in accordance with the Overlay Code attached as *Exhibit B.*

C. The County and Principal Developer shall cooperate and work with each other in an effort to obtain passage of the legislation described in this MOU.

D. Subject to any restrictions on revenue generated by sales and use taxes, hotel-motel taxes, or otherwise agreed to in this MOU, the Principal Developer will at all times have the exclusive right, power, authority and obligation to direct all aspects of the operation, management, maintenance, supervision, and control of the Project and the Arena Site, including without limitation all income or revenue producing activities at or related to or connected in any way to the Project and the right to retain all such income and revenue.

V. REPRESENTATIONS AND WARRANTIES

A. Representations of the County. The County hereby represents to the Principal Developer as follows:

i. The County is a duly formed political subdivision of the State of Georgia and has all requisite power and authority to own, lease, license and operate its properties and to carry on its business as now being conducted.

ii. The County has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the County, the performance by the County of its obligations hereunder, and the consummation of the transactions provided for hereby have been duly and validly authorized by all necessary action on the part of the County. This Agreement has been duly executed and delivered by the County and, subject to the due execution and delivery of same by the Principal Developer, constitutes the valid and binding agreement of the County, enforceable against the County in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

iii. The execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the terms and conditions hereunder do not or will not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration of any obligation under, (i) any term or provision of the organizational documents of the County, (ii) any judgment, decree or order of any governmental entity to which the County is a party or by which the County or any of its properties is bound or (iii) any law applicable to the County unless, in each case, such violation, conflict, breach, default, loss of benefit or accelerated obligation would not, either individually or in the aggregate, have a material adverse impact on the ability of the County to consummate the transactions contemplated hereby.

B. Representations and Warranties of the Principal Developer. The Principal Developer hereby represents and warrants to the County as follows:

i. The Principal Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia and has all

requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

ii. The Principal Developer has full limited liability company power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Principal Developer, the performance by the Principal Developer of its obligations hereunder, and the consummation of the transactions provided for hereby have been duly and validly authorized by all necessary limited liability company action on the part of the Principal Developer. This Agreement has been duly executed and delivered by the Principal Developer and constitutes the valid and binding agreements of the Principal Developer, enforceable against the Principal Developer in accordance with its terms, subject to applicable bankruptcy, insolvency and other similar laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

iii. The execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the terms and conditions hereunder do not or will not (as the case may be), with the passing of time or the giving of notice or both, violate or conflict with, constitute a breach of or default under, result in the loss of any benefit under, or permit the acceleration of any obligation under, (i) any term or provision of the charter documents of the Principal Developer, (ii) any judgment, decree or order of any governmental entity to which the Principal Developer is a party or by which the Principal Developer or any of its properties is bound or (iii) any law applicable to the Principal Developer unless, in each case, such violation, conflict, breach, default, loss of benefit or accelerated obligation would not, either individually or in the aggregate, have a material adverse impact on the ability of the Principal Developer to consummate the transactions contemplated hereby.

VI. COVENANTS

A. To the extent permitted by applicable law, the County will always cooperate in connection with the Principal Developer's efforts to pursue any necessary governmental approvals, variances and waivers that may be required for the financing and development of the Project.

B. The County agrees to expedite any requested consent, approval, permit or other request from the Principal Developer. The County shall also designate a single employee (and an alternate) to act as a single point of contract for the Principal Developer and as a project expeditor to assist with obtaining all required consents, approvals, permits or other requests for the Project.

C. The County shall timely fund the County Contribution toward the construction of the Arena and Arena Site and otherwise as expressly set forth herein.

D. The County shall use all reasonable efforts to secure all legislative, executive, and regulatory and budget allocations from applicable governmental authorities as are necessary to meet the County's obligations under this Agreement. The Principal Developer shall, at no out-of-pocket cost to itself and at the written request of the County, assist the County in seeking such funding and budget allocations.

E. The County's senior staff will provide the Board with information requested to facilitate the Board's good faith consideration of requested zoning changes.

F. The County agrees that Principal Developer shall have the right to construct a temporary Marquee when it begins to construct the Arena and that such temporary Marquee may remain until construction of the mixed-use development has begun and is sufficient to allow construction of a permanent Marquee.

G. The County and the Principal Developer will use all commercially reasonable efforts to finalize definitive project documents as expeditiously as possible that contain the basic terms herein and that are consistent herewith and which may include additional terms customary for similar transaction to the extent not inconsistent with this Agreement.

H. Upon the execution of this MOU, the Principal Developer shall have the right to commence construction with respect any and all portions of the Project, including, without limitation, the right to commence any vertical construction of all or any portion of the Project. The definitive project documents will describe the various agreements and covenants between the parties in more detail.

VII. INTENTIONALLY OMITTED

VIII. INTENTIONALLY OMITTED

IX. TERMINATION

A. Termination. This Agreement may be terminated under the following circumstances:

i. By the mutual written consent of the County and the Principal Developer;

ii. By the County, if (i) any of the representations or warranties of the Principal Developer set forth in Article V.B. shall not be true and correct in any material respect and the breach or breaches causing such representations or warranties not to be true and correct is not cured within forty-five (45) days after written notice thereof is delivered to the Principal Developer; (ii) a material covenant, agreement or obligation of the Principal Developer in this Agreement is breached and such breach is not cured within forty-five (45) days after written notice thereof is delivered to the Principal Developer; provided that the County shall not have the right to terminate this Agreement pursuant to this Section IX.A.ii. if the County is then in material violation or breach of any of its covenants, agreements, obligations, representations or warranties set forth in this Agreement;

iii. By the Principal Developer, if (i) any of the representations or warranties of the County set forth in Article V.A. shall not be true and correct in any material respect and the breach or breaches causing such representations or warranties not to be true and correct is not cured within forty-five (45) days after written notice thereof is delivered to the County; (ii) a material covenant, agreement or obligation of the County in this Agreement is breached and such breach is not cured within forty-five (45) days after written notice thereof is delivered to the County; provided that the Principal Developer shall not have the right to terminate this Agreement pursuant to this Section IX.A.iii.(i), (ii) if the Principal Developer is then in material violation or breach of any of its covenants, agreements, obligations,

representations or warranties set forth in this Agreement, or (iii) if development and construction the Project is determined to not be feasible prior to execution of definitive project documents or if the Project has not been rezoned to allow its development as described in Recital H;

B. Termination Procedure. If either Party determines that it wishes to terminate this Agreement pursuant to Article IX (as applicable), then such Party must deliver a written notice to the other Party to the effect that the notifying Party thereby terminates this Agreement. The notice must be in writing, must specify in reasonable detail the factual basis for the termination of this Agreement, and must be promptly delivered in accordance with Section X.P.

X. MISCELLANEOUS

A. General Approval Rights. Except where other procedures are specified in this Agreement, any consent or approval required to be obtained from the County shall not be unreasonably withheld, delayed, or conditioned.

B. Further Agreements. The Parties agree to use their good faith efforts to complete and execute, as soon as reasonably practicable following the execution of this Agreement, all definitive project documents necessary, appropriate or desirable to carry out the transactions agreed to by the Parties in this Agreement.

C. Additional Parties. Certain additional governmental parties, including, without limitation, the State of Georgia, and others, may be necessary parties to certain definitive project documents as contemplated by this Agreement to be entered into between the Parties. The Principal Developer expects to receive either a state sales tax exemption from, or a rebate of, all state sales taxes otherwise due or paid on the construction costs and materials for the Arena and Arena Site. The Parties recognize that any such participation will require, among other things, the approval of the separate governing bodies of any such additional party or parties. Such additional parties are not a party to this Agreement.

D. No Reliance. Each Party has entered into this Agreement upon the advice of advisors of their own choosing, and each Party warrants and represents that it is not relying on any statement or advice of or from the other Party or any advisor of the other Party. Each Party is entering into this Agreement freely and voluntarily and each desire to be bound by this Agreement. Each Party has been fully informed of the terms, conditions and effects of this Agreement.

E. No Third-Party Beneficiaries. All rights and obligations of each Party, express or implied, shall be only for the benefit of the Principal Developer and the County and their respective successors and permitted assigns (as expressly permitted in this Agreement), and such agreements shall not inure to the benefit of any other person, whomever, it being the intention of the undersigned Parties that no other person shall be or be deemed to be a third-party beneficiary of this Agreement.

F. Governing Law. THIS AGREEMENT SHALL BE INTERPRETED AND THE RIGHTS OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF GEORGIA APPLICABLE TO AN AGREEMENT EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE.

G. Venue for Actions. The venue for any legal action arising out of this Agreement will lie exclusively in the Superior Court of Forsyth County, Georgia.

H. Collaboration of the Parties. The Parties acknowledge that the successful long-term operation of the Project will require the mutual collaboration of the Parties and their representatives; in connection with finalization of the definitive project documents, the Parties agree to discuss in good faith and reasonably cooperate with any requested information related to Principal Developer's anticipated operations and financial projections and any studies or assessments generated by the County or third parties acting at the County's request.

I. Time of the Essence. Subject to the provisions hereof, the Parties recognize and agree that time is of the essence in finalizing the definitive project documents. Accordingly, the Parties hereby agree that they shall act expeditiously and in good faith to finalize the definitive project documents (which definitive project documents shall incorporate the terms of this Agreement) as soon as possible after the date of this Agreement, each Party recognizing that it is to the Parties' mutual benefit that the definitive project documents be finalized as soon as possible.

J. Representatives.

i. The Board will have the right and ability (to be confirmed in the applicable definitive project documents) to delegate to the County's senior staff, subject to applicable law and pursuant to the Board's delegation authority and limits of such delegation, certain of the County's approval rights and other responsibilities with regard to the development and operation of the Project (and other matters described in and contemplated by this Agreement). The Principal Developer will be entitled to rely on the authority of the County's senior staff (or, where indicated, the County Manager) for such purposes under this Agreement.

ii. During the term of this Agreement, the Principal Developer will designate an individual (the "***Principal Developer Representative***") who will have full authority to administer this Agreement on behalf of the Principal Developer. The initial Principal Developer Representative will be Frank Ferrara. The Principal Developer may designate a permanent or temporary replacement for the Principal Developer Representative by delivering a written notice to the County executed by the Principal Developer. If the Principal Developer assigns its rights under this Agreement to another entity (the "***Assignee***"), the Assignee will ensure that one or more of its senior executive officers possesses the authority to be exercised by the Principal Developer Representative. From and after the date of any assignment to the Assignee, the officer or officers designated by the Assignee will serve as the Principal Developer Representative. The County will be entitled to rely on the authority of the Principal Developer Representative for such purposes under this Agreement.

K. Limitation of Liability.

i. To the extent legally permissible, no Party shall be liable to any other Party for any special, punitive, or consequential damages.

ii. No member of the Board or any member of the County's staff shall have any individual liability with respect to the transactions contemplated herein except as provided by applicable law.

L. Obligations to Defend Validity of Agreement. If litigation is filed by a third party against the Principal Developer or the County in an effort to enjoin such Party's performance of this Agreement,

the Parties who are named as parties in such action will take all commercially reasonable steps to support and defend the validity and enforceability of this Agreement. The other Party may intervene in any such matter in which a Party has been named as a defendant. Each Party will be responsible for its own attorneys' fees and costs of litigation, if any.

M. Confidentiality/Georgia Open Records Laws.

i. The Principal Developer has familiarized itself with the Georgia Open Records Act (O.C.G.A. § 50-18-70, *et seq*.) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1, *et seq*.) (collectively, the "***Open Government Laws***") applicable to the issues of confidentiality and public information. The County will not advise the Principal Developer as to the nature or content of documents entitled to protection from disclosure under the Open Government Laws, as to the interpretation of such laws, or as to definition of "*confidential*" or "*proprietary*" as such terms are used under the Open Government Laws or other applicable provisions of law. However, the County will review and give reasonable (albeit non-binding) consideration to the Principal Developer's designation of any correspondence, emails, plans, business records or reports, exhibits, photographs, reports, printed material, tapes, electronic discs, and other graphic and visual aids submitted to the County during the negotiations, planning, development and operation of the Project as confidential or proprietary (the "***Confidential Material***"). The Principal Developer shall be solely responsible for clearly identifying and labeling as "Confidential" or "Proprietary" any such Confidential Material that it asserts is exempt from disclosure under Section 50-18-72 of the Open Government Laws or any other applicable law. However, the Principal Developer is advised that such designations on any such Confidential Material shall not be binding on the County or determinative of any issue relating to confidentiality. Blanket "Confidential" and "Proprietary" designations by the Principal Developer are strongly discouraged.

ii. In no event shall the County or any of its agents, representatives, consultants, directors, officers or employees be liable to the Principal Developer for the disclosure of all or a portion of any such Confidential Material or other information pursuant to a request under the Open Government Laws.

iii. If the County receives a request for public disclosure of all or any portion of any Confidential Material identified as "Confidential" or "Proprietary" by the Principal Developer in connection with Project, the County will notify the Principal Developer of the request in sufficient time to allow the Principal Developer to review such request and take whatever action it shall deem appropriate to protect any such Confidential Material; provided, however, the Principal Developer shall bear the sole responsibility for the costs and expenses of all such actions. Among others, the Principal Developer may seek a protective order or other appropriate remedy. If the County determines in good faith that the Confidential Material identified as "Confidential" or "Proprietary" is not exempt from disclosure under the Open Government Laws, then, unless otherwise ordered by a court of competent jurisdiction, the County will release the requested information. In the absence of a protective or other similar order rendered by a court of competent jurisdiction, the County shall make the final determination regarding whether the requested Confidential Material is to be disclosed or withheld.

iv. Subject to applicable law (including the Open Government Laws) and to the terms of this Section X.M.iv, each Party agrees that it will hold in confidence and not

disclose to any third party any and all information of the other Party that it obtains in connection with the financing, construction, development and operation of the Project and will not disclose, publish or make use of such information for any purpose other than as contemplated by this Agreement without the prior written consent of such Party. The obligation of the Parties under this Section X.M.iv will not (i) restrict a Party from making any information available to any of its advisers who have been advised of the confidential nature of such information and agree to maintain its confidentiality or (ii) apply to any information that is on the date hereof or hereafter becomes publicly known and in the public domain through means that do not involve a breach by any Party of this Agreement.

N. Successors and Assigns. The provisions hereof will inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Except as expressly provided herein, this Agreement may not be assigned without the prior written consent of the other Party, except that the Principal Developer may assign this Agreement to an affiliate, including any direct or indirect subsidiary.

O. Waiver. No term or condition of this Agreement will be deemed to have been waived, nor will there be any estoppel to enforce any provision of this Agreement, except by written instrument of the Party charged with such waiver or estoppel.

P. Notices. All notices and other communications required or contemplated hereunder will be in writing and will be (a) mailed by first-class mail, postage prepaid certified or registered with return receipt requested, or delivered by a reputable independent courier service, and will be deemed given two (2) business days after being deposited in an official U.S. mail depository (if mailed) or when received at the addresses of the Parties set forth below (if couriered), or at such other address furnished in writing to the other Parties or (b) sent by electronic mail and will be deemed given upon telephonic or electronic confirmation of receipt from the Party's principal addressee:

If to the County:

_____
_____
_____
Attn: _____
E-mail: _____

with a concurrent copy to:

_____
_____
_____
Attn: _____
E-mail: _____

If to the Principal Developer:

_____
_____
_____
Attn: _____

E-mail: _____

with a concurrent copy to:

_____
_____
_____
Attn: _____
E-mail: _____

Q. Delays or Omissions. Except as otherwise provided herein to the contrary, no delay or omission to exercise any right, power or remedy inuring to any Party upon any breach or default of any other Party under this Agreement will impair any such right, power or remedy of such Party nor will it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor will any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. All remedies either under this Agreement or by law or otherwise afforded to the Parties will be cumulative and not alternative.

R. No Joint Venture. Nothing contained in this Agreement or any other agreement between the Principal Developer and the County is intended by the Parties to create a partnership or joint venture between the Principal Developer and the County, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint any Party as an agent of the other for any purpose whatsoever. Except as is otherwise specifically and expressly set forth herein, no Party will in any way assume any of the liability of the other for acts of the other or obligations of the other Party. Except as is otherwise specifically and expressly set forth herein, each Party will be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

S. Titles and Subtitles. The titles of the articles, sections, paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

T. Interpretation. When used in this Agreement, the singular includes the plural and the plural the singular, and words used herein importing any particular gender shall include the other non-specified gender. The terms and conditions of this Agreement represent the result of negotiations between the County and the Principal Developer, each of which were represented and/or had the opportunity to be represented by independent counsel and neither of which has acted under compulsion or duress; consequently, the normal rule of construction that any ambiguity be resolved against the drafting party will not apply to the interpretation of this Agreement or of any exhibits, addenda or amendments hereto.

U. MOU. It was the objective of the County and the Principal Developer that this MOU express their mutual intention to establish a framework for more comprehensive future negotiations. It is the intent of the Parties that the terms and conditions as set forth in this MOU shall be binding on the Parties up to and until the execution and delivery of final definitive project documents or termination of the Agreement as set forth in Article IX above, subject to further tax, legal, and accounting review. Once the MOU is approved, the County will delegate authority to the County Attorney and County Manager to lead efforts to finalize definitive project documents, reporting back to the Board with updates as needed.

V. Severability. If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable the remainder of this Agreement shall not be affected thereby and all other conditions and provisions the remainder of this Agreement shall nevertheless remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law and to this end the provisions of this Agreement are declared to be severable; provided, however, that any such provision shall only be severable so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon any determination that a term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible so that transactions contemplated hereby are fulfilled to the greatest extent possible.

W. Compliance with Laws. The Parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations relating to their respective rights and obligations under this Agreement.

X. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Notwithstanding any law or presumption to the contrary, this Agreement may be executed electronically or by facsimile or "pdf" and each party has the right to rely upon an electronic, facsimile or "pdf" counterpart of this Agreement signed by the other party to the same extent as if such party had received an original counterpart.

Y. Entire Agreement; Amendment. This Agreement (including the recitals and exhibits attached hereto) constitutes the full and entire understanding and agreement between the Parties with regard to the subject matter hereof and thereof and supersede any prior or contemporaneous, written or oral agreements or discussions between the Parties. Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties.

Z. Estoppel Certificate. Within thirty (30) days after request by any Party (which request may be from time to time as often as reasonably required by a Party but not more than once every six (6) months), the non-requesting Party shall execute and deliver to the requesting Party, without charge, an estoppel certificate (the "***Estoppel Certificate***") related to the facts pertaining to this MOU in such form as the requesting Party may reasonably request and as reasonably approved by the non-requesting Party. Any such Estoppel Certificate may be conclusively relied upon by any lender, investor, or subtenant. If any Party fails to respond to such request within such thirty (30) day period, then the requesting Party may deliver a second notice to the other Party stating that the failure of the other Party to respond to such request within five (5) business days after receipt of such second request will result in a deemed approval with respect to the requested matters. The failure to deliver such statement within that five (5) business day period shall (with respect to third parties relying upon such Estoppel Certificate), without limiting any other remedy which the requesting party may have as a result of such failure, be conclusive upon the Party which fails to deliver such statement that this MOU is in force and effect with only such modifications as have been identified by the requesting Party, and that there are no outstanding defaults in the performance of the requesting Party.

AA. Liquor Licensing Within the Arena. Principal Developer or its affiliates (or their designated concessionaire) shall have the exclusive right to sell alcohol to the patrons of the Arena in the Arena. Principal Developer or its affiliates (or their designated concessionaire) may sell alcoholic beverages and permit others to sell alcoholic beverages in the Arena only in compliance with applicable state and local laws. Principal Developer or its affiliates (or their designated concessionaire) shall prepare, file and process all applications for renewals of the licenses and permits with the Georgia [State Liquor Board] and the

County shall work cooperatively with Principal Developer or its affiliates (or their designated concessionaire) in the application process. At the termination of the Arena Lease, Principal Developer or its affiliates (or their designated concessionaire) shall surrender all alcoholic beverage licenses for the Arena, it being acknowledged and agreed that such licenses are non-transferable. In addition, the County agrees to allow within the boundaries of the Property open containers and transport of alcoholic beverages on the premises. The County shall make any modifications to the Forsyth County Alcohol Ordinance necessary to facilitate this subsection.

[*Execution pages follow*][1]

[1] ret: Also add Exhibit(s)

EXHIBIT A

LEGAL DESCRIPTION

Legal Description of The Gathering at South Forsyth

All that tract or parcel of land lying and being in Land Lots 966, 967, 978 and 979 of the 2nd District, 1st Section, Forsyth County, Georgia, and being more particularly described as follows:

BEGINNING at a concrete monument found at the intersection of the southern right-of-way of Highway 400 (variable right-of-way) with the eastern right-of-way of Union Hill Road (variable right-of-way; Thence along said right-of-way of Highway 400 the following courses and distances: N01th 62 degrees 45 minutes 18 seconds East a distance of 594.71 feet to a concrete monument found; North 54 degrees 05 minutes 13 seconds East a distance of 293.98 feet to a concrete monument found; North 52 degrees 30 minutes 48 seconds East a distance of 128.51 feet to a l/2-inch rebar found on the Land Lot Line common to land lots 906 and 967; Thence leaving said right-of-way, along the Land Lot Line common to land lots 906 and 967, South 89 degrees 16 minutes 59 seconds East a distance of 394.22 feet to a 1-inch open top pipe found at the Land Lot Corner common to land lots 906, 907, 966 and 967; Thence along the Land Lot Line common to land lots 966 and 967 the following courses and distances: South 02 degrees 01 minutes 49 seconds West a distance of 1136.61 feet to a 5/8-inch rebar set; South 01 degrees 31 minutes 20 seconds West a distance of 44.59 feet to a 5/8-inch rebar set; South 01 degrees 00 minutes 50 seconds West a distance of 19.78 feet to a 5/8-inch rebar set; South 00 degrees 51 minutes 37 seconds West a distance of 253.10 feet to a 1/2-inch rebar found at the Land Lot Corner common to land lots 966, 967, 978 and 979; Thence along the Land Lot Line common to land lots 966 and 979, Notth 89 degrees 11 minutes 50 seconds East a distance of 28.69 feet to a 5/8-inch rebar set; Thence leaving said Land Lot Line, N01th 02 degrees 46 minutes 23 seconds East a distance of 11.81 feet to a 5/8-inch rebar set; Thence North 89 degrees 39 minutes 50 seconds East a distance of 92.58 feet to a concrete monument found on the northwestern right-of-way of Ronald Reagan Boulevard (variable right-of-way); Thence along said right-of-way the following courses and distances: along a curve to the left an arc length of 128.21 feet, said curve having a radius of 800.00 feet, with a chord distance of 128.07 feet, at South 24 degrees 00 minutes 17 seconds West, to a concrete monument found; South 25 degrees 09 minutes 24 seconds West a distance of 101.70 feet to a concrete monument found; South 18 degrees 39 minutes 49 seconds West a distance of 98.06 feet to a 5/8-inch rebar set; South 18 degrees 39 minutes 55 seconds West a distance of

15.43 feet to a concrete monument found; South 61 degrees 23 minutes 40 seconds West a distance of 61.86 feet to a concrete monument found; South 18 degrees 17 minutes 38 seconds West a distance of 100.00 feet to a concrete monument found; South 19 degrees 51 minutes 38 seconds West a distance of 11.00 feet to a 5/8-inch rebar set; South 17 degrees 10 minutes 21 seconds East a distance of 50.22 feet to a 5/8-inch rebar set; South 18 degrees 05 minutes 59 seconds West a distance of 186.98 feet to a 5/8-inch rebar set; along a curve to the right an arc length of 96.35 feet, said curve having a radius of 753.00 feet, with a chord distance of 96.28 feet, at South 21 degrees 45 minutes 54 seconds West, to a 5/8-inch rebar set; North 66 degrees 02 minutes 49 seconds West a distance of 39.51 feet to a 5/8-inch rebar set; South 24 degrees 43 minutes 27 seconds West a distance of 17.88 feet to a 5/8-inch rebar set; South 64 degrees 30 minutes 16 seconds East a distance of 39.04 feet to a 5/8-inch rebar set; along a curve to the right an arc length of 78.34 feet, said curve having a radius of 753.00 feet, with a chord distance of 78.30 feet, at South 29 degrees 51 minutes 06 seconds West, to a 5/8-inch rebar set; South 45 degrees 22 minutes 08 seconds West a distance of 100.80 feet to a 5/8-inch rebar set; South 50 degrees 17 minutes 06 seconds West a distance of 40.66 feet to a 5/8-inch rebar set; South 41 degrees 18 minutes 49 seconds West a distance of 19.19 feet to a 5/8-inch rebar set; South 77 degrees 19 minutes 49 seconds West a distance of

32.09 feet to a 5/8-inch rebar set; South 52 degrees 24 minutes 20 seconds West, a distance of 14.29 feet to a 5/8-inch rebar set; South 52 degrees 21 minutes 43 seconds West a distance of 99.92 feet to a 5/8-inch rebar set; South 15 Degrees 04 minutes 51 seconds West a distance of 60.94 feet to a 5/8-inch rebar set; South 49 degrees 28 minutes 24 seconds West a distance of 25.10 feet to a 5/8-inch rebar set; along a curve to the right an arc length of 78.69 feet, said curve having a radius of 762.00 feet, with a chord distance of 78.66 feet at South 64 degrees 39 minutes 39 seconds West to a 5/8-inch rebar set; South 67 degrees 37 minutes 11 seconds West a distance of 4.72 feet to a 5/8-inch rebar set; South 73 degrees 53 minutes 49 seconds West a distance of 100.60 feet to a 5/8-inch rebar set; South 67 degrees 37 minutes 11 seconds West, a distance of 185.17 feet to a 5/8- inch rebar set; along a curve to the right an arc length of 37.85 feet, said curve having a radius of 1492.00 feet, with a chord distance of 37.85 feet at South 68 degrees 20 minutes 48 seconds West, to a 5/8-inch rebar set; South 76 degrees 59 minutes 39 seconds West, a distance of 14.75 to a 5/8-inch rebar set at the intersection of the eastern right-of-way of Union Hill Road and the northwestern right-of-way of Ronald Reagan Boulevard; Thence along said right-of-way of Union Hill Road the following courses and distances: North 72 degrees 34 minutes 01 seconds West a distance of 57.55 feet to a concrete monument found; North 30 degrees 24 minutes 40 seconds West a distance of 96.18 feet to a concrete monument found; North 68 degrees 33 minutes 41 seconds East a distance of 15.00 feet to a concrete monument found; North 21 degrees 26 minutes 19 seconds West a distance of 20.00 feet to a concrete monument found; South 68 degrees 33 minutes 41 seconds West a distance of 15.00 feet to a concrete monument found; North 21 degrees 26 minutes 19 seconds West a distance of 66.01 feet to a 5/8-inch rebar set; North 14 degrees 35 minutes 47 seconds West a distance of 100.71 feet to a 5/8-inch rebar set; North 21 degrees 26 minutes 14 seconds West a distance of 125.79 feet to a 5/8-inch rebar set; Thence leaving said right-of-way, South 89 degrees 34 minutes 22 seconds East a distance of 306.19 feet to a fence post found; Thence North 00 degrees 17 minutes 44 seconds East a distance of 265.69 feet to a 1/2-inch rebar found; Thence North 89 degrees 36 minutes 23 seconds West a distance of 420.46 feet to a 5/8-inch rebar set on the eastern right-of-way of Union Hill Road; Thence along said right-of-way the following courses and distances: North 13 degrees 35 minutes 30 seconds West a distance of 101.38 feet to a concrete monument found; along a curve to the right an arc length of 512.33 feet, said curve having a radius of 1740.00 feet, with a chord distance of 510.48, at North 09 degrees 35 minutes 09 seconds West, to a concrete monument found; South 88 degrees 50 minutes 57 seconds West a distance of 9.58 feet to a concrete monument found; North 00 degrees 11 minutes 13 seconds East a distance of 250.49 feet to a 5/8-inch rebar set; North 03 degrees 24 minutes 04 seconds East a distance of 198.20 feet to a concrete monument found; North 12 degrees 10 minutes 22 seconds East a distance of 204.15 feet to a concrete monument found; North 05 degrees 28 minutes 21 seconds East a distance of 176.84 feet to a 5/8-inch rebar set; North 20 degrees 46 minutes 52 seconds East a distance of 108.76 feet to a concrete monument found at the intersection of the southern right-of-way of Highway 400 (variable right-of-way) with the eastern right-of-way of Union Hill Road (variable right-of-way; said concrete monument found being the **TRUE POINT OF BEGINNING.**

Said tract of land contains 63.102 acres.

TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

All that tract or parcel of land lying and being in Land Lots 965, 966, 979 and 980 of the 2nd District, 1st Section, Forsyth County, Georgia, and being Parcels A2, D1, D2A, E, F1, F2, G1, G2, I1, I2, J1 and the Cemetery Parcel, shown on a certain Revised Final Plat for Ronald Reagan/Union Hill Overlay District, Phase I, recorded in Plat Book 169, page 122, Forsyth County, Georgia Records, said plat being incorporated herein and made a part hereof by reference.

TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 978 of the 2nd District, 1st Section, Forsyth County, Georgia, and being more particularly described as follows:

BEGINNING at an iron pin on the northeasterly right-of-way line of Union Hill Road (60 foot Right-of-Way) 576 feet northwesterly from its intersection with the southern line of Land Lot 978, thence;

North 21 degrees 13 minutes 56 seconds West, along said northeasterly right-of-way line of Union Hill Road a distance of 285.71 feet to a point, thence;

South 89 degrees 36 minutes 21 seconds East, leaving said right-of-way line and running a distance of 462.70 feet to a point, thence;

South 00 degrees 23 minutes 39 seconds West, a distance of 265.60 feet to a point, thence;

North 89 degrees 36 minutes 21 seconds West, a distance of 357.40 feet to an iron pin and the **POINT OF BEGINNING**, said tract containing 2.50 acres of land more or less.

As shown on that certain Survey for Barcelona Properties, Inc., dated August 15, 2001, prepared by Survey Services, Benny L. Bruner, Georgia Registered Land surveyor No. 1646.

LESS AND EXCEPT ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY CONVEYED BY THE FOLLOWING INSTRUMENTS:

1. Right of Way Limited Warranty Deed dated August 4, 2008, recorded in Deed Book 5199, page 418, Forsyth County, Georgia records.

2. Right of Way Limited Warranty Deed dated August 4, 2008, recorded in Deed Book 5199, page 420, Forsyth County, Georgia records.

EXHIBIT B

OVERLAY CODE

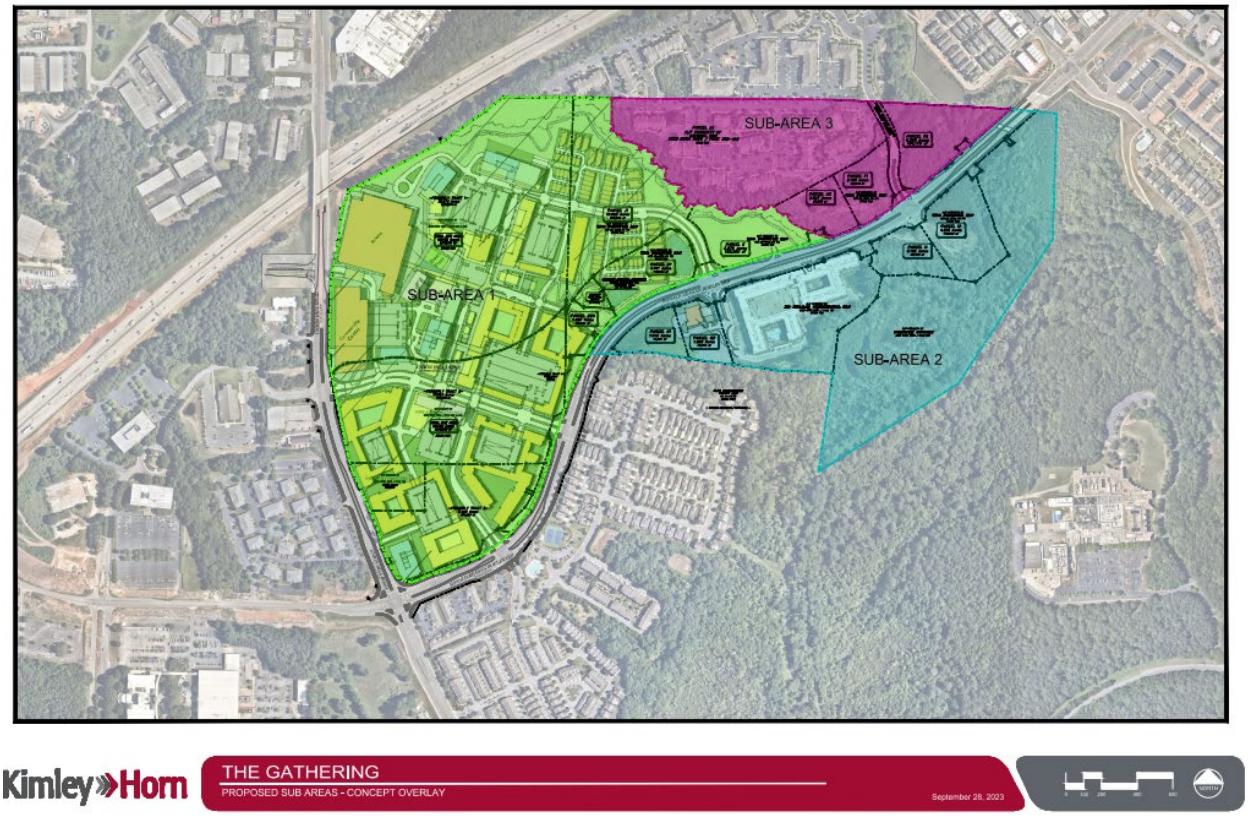

EXHIBIT C

PROJECT PROGRAM STATEMENT

(TO BE INSERTED FOLLOWING FINAL LEGAL REVIEW)

EXHIBIT D

ARENA SITE DEPICTION

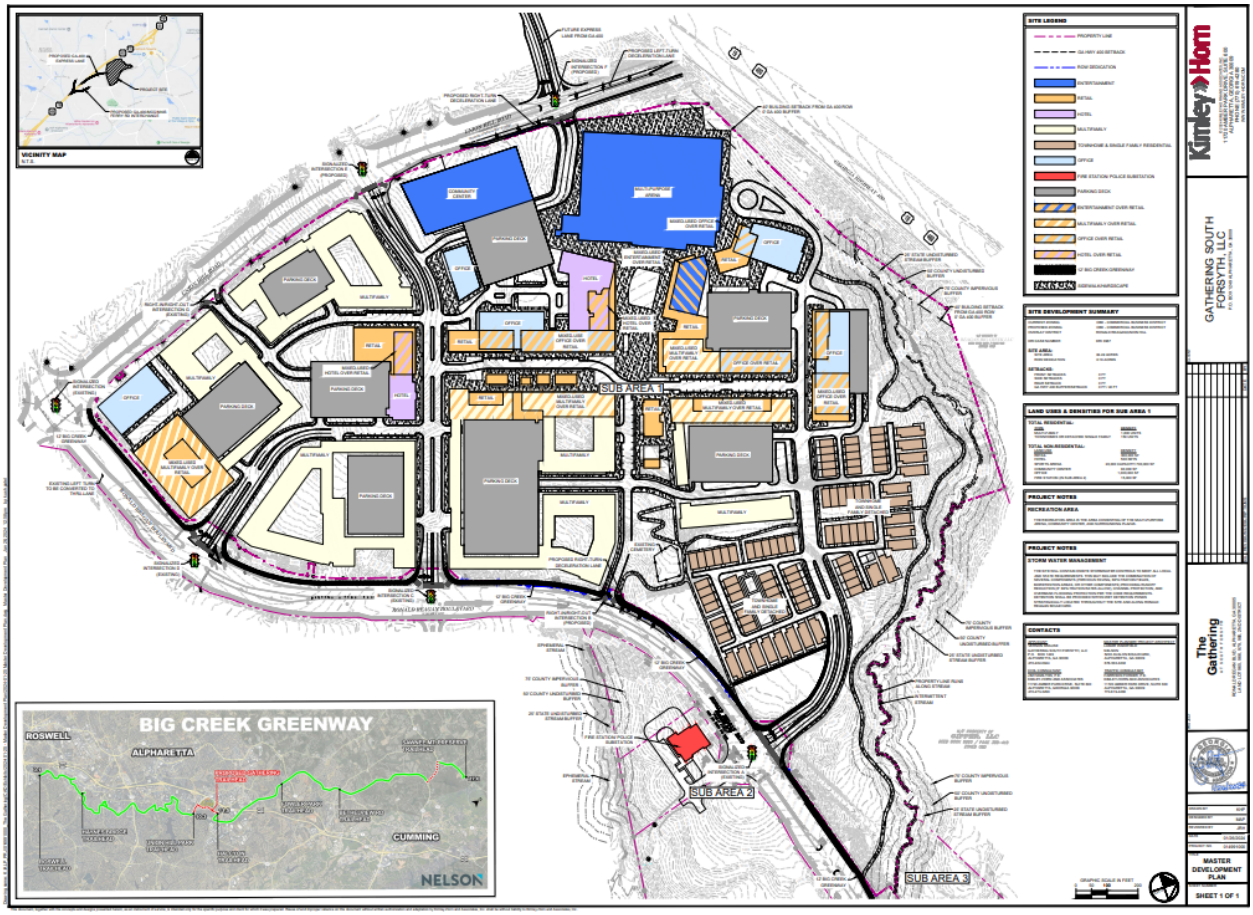

EXHIBIT E

ADDITIONAL ARENA LEASE PROVISIONS

1. **No Security Deposit.** The Arena Lease shall not contain any requirement for the posting of a security deposit.

2. **Concessions.** Principal Developer will have the right to choose its concession partners (if any) (including any contractors and/or subcontractors) and shall retain all revenues (other than taxes and assessments) and income from the sale of all food, beverages, and merchandise relating to the Arena, whether such sales are onsite, from other locations, on-line, or through other means or methods.

3. **Utilities.** Under the Arena Agreement, Principal Developer shall be solely responsible for and shall pay one hundred percent (100%) of all Utility Costs. "**Utility Costs**" means all charges for utilities used or consumed at or by the Premises (as defined in the Arena Lease) during both construction and operations, including, but not limited to, gas, electricity, water, sewer, storm water, garbage and recycling collection, and telecommunication services. For the avoidance of doubt, "Utility Costs" shall not include any capital costs associated with utility separation or providing utilities to the Arena Site and/or the Arena Parking Deck, as applicable, as set forth in Section IV(b) of the MOU. To the extent utilities are not separated as provided under Section IV.B of the MOU, the Parties will establish a proration or allocation of ongoing operation and maintenance costs associated with any utilities which are not separated and that are used in the construction and operation of the Premises through mutually agreeable terms in the Development Agreement and the Arena Lease.

4. **Agreements with Permitted Mortgages.** The Parties acknowledge that the Arena Lease may attach (i) a form of non-disturbance and attornment agreement to be entered into between the County and Principal Developer's lenders consistent with the provisions of Schedule 1 attached hereto ("**NDA**") and (ii) a form of estoppel certificate ("**Lender Estoppel Certificate**") from County and/or Authority, as applicable, in favor of Principal Developer's lenders and equity investors, each of which shall be in form and substance reasonably satisfactory to the County and/or Authority, as applicable, and Principal Developer's lenders. The Lender Estoppel Certificate shall contain certifications from the County and/or Authority, as applicable, (A) that there are no defaults under the Arena Lease by County and/or Authority, as applicable, or Principal Developer and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute a default by County and/or Authority, as applicable, or Principal Developer thereunder; (B) that all obligations of Principal Developer required to be performed to date under the Arena Lease have been performed; (C) that there are no counterclaims against the enforcement of any of County's and/or Authority's, as applicable, or Principal Developer's obligations under the Arena Lease**;** (D) that the lender satisfies the requirements of a Qualified Financial Institution under the Arena Lease]; (E) that the Arena Lease is unmodified and in full force and effect in accordance with its terms and has not been assigned, supplemented, modified, or otherwise amended; (F) confirming the effective date of the Arena Lease; (G) confirming the expiration date of the Arena Lease; (H) that County and/or Authority, as applicable, has not assigned, conveyed, transferred, sold, encumbered, or mortgaged its interest in the Arena Lease, the Arena, the Arena Site, the Arena Parking Deck or the Premises, that there are currently no mortgages, deeds of trust, or other security interests encumbering County's and/or Authority's, as applicable, fee

interest in the Premises, and that no third party has an option or preferential right to purchase all or any part of the Premises; (I) that County and/or Authority, as applicable, has not received from a governmental agency any written notice that County and/or Authority, as applicable, is in violation of any governmental law or regulation applicable to its interest in the Arena, including, without limitation, any environmental laws or the Americans with Disabilities Act; (J) that County and/or Authority, as applicable, has not received notice of any other Leasehold Mortgagee; and (K) that the lender has satisfied the requirements of a "Leasehold Mortgagee," as such term shall be defined in the Arena Lease, and is entitled to all of the rights, protections, and privileges afforded such Leasehold Mortgagee under the Arena Lease. Certifications (A) and (B) may be subject to customary "knowledge" limitations.

5. **Ownership of Arena Tenant Improvements, Surrender.** The Arena Tenant Improvements which are deemed "fixtures" (as defined under applicable laws) (but excluding any NHL team or other tenant, subtenant or licensee owned, leased or branded equipment or fixtures) will become the property of the County upon the termination of the Arena Lease without any further obligation on the part of the County

6. **Pursuit of NHL Franchise.** During the term of this MOU and the Arena Lease, Principal Developer shall use commercially reasonable efforts to pursue an NHL team to be the resident home team and play their home games at the Arena. The County will cooperate in good faith in such activities as reasonably requested by Principal Developer from time to time and as agreed to by the County, at Principal Developer's cost. As between the County and Principal Developer, Principal Developer (and not the County) will bear all costs of improvements to or enhancements of the Arena that may be required by the NHL or any other third party, as applicable, in connection with obtaining and maintaining such team.

7. **Mortgagee Protection Provisions**. The Arena Lease shall contain mortgagee protection provisions in the form of those in Schedule 1 attached hereto and incorporated herein by reference (collectively, the "***Mortgagee Protection Provisions***").

8. **Defaults**. The following events shall constitute an "Event of Default" of the Arena Lease:

a. With respect to any non-monetary obligations of either Party under the Arena Lease or any monetary obligation of a Party under the Arena Lease that is not a sum certain, a Party shall have failed to perform or comply in any material respect with such obligation and such failure shall have continued for thirty (30) days after notice thereof from the non-defaulting Party, or if the curing of such non-monetary default is reasonably feasible by the defaulting Party, but not within such 30-day period, the defaulting Party shall not have commenced the curing of such failure within such thirty (30) day period, or having so commenced, shall thereafter have failed or neglected to prosecute or complete the curing of such Event of Default with diligence and dispatch within ninety (90) days after the original notice thereof; or

b. Either a Party shall have made a general assignment for the benefit of creditors, or shall have admitted in writing its inability to pay its debts as they become due or shall have filed a petition in bankruptcy, or shall have been adjudicated bankrupt or insolvent, or shall have filed a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution

or similar relief under any present or future statute, law or regulation, or shall have filed an answer admitting, or shall have failed reasonably to contest, the material allegations of a petition filed against it in any such proceeding, or shall have sought or consented to or acquiesced in the appointment of any trustee, receiver or liquidator for such Party; or

c. Either (i) within ninety (90) days after the commencement of any proceeding against a Party or any trustee, receiver or liquidator of such Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law, rule or regulation, such proceeding shall not have been dismissed, or (ii) if, within ninety (90) days after the appointment without the consent or acquiescence of either a Party or any trustee, receiver or liquidator of such party or of any material part of its properties, such appointment shall not have been vacated; or

d. With respect to any monetary obligation of a Party under the Arena Lease that is a sum certain, such Party shall have failed to pay such amount within ten (10) business days after written notice thereof from the other Party.

9. **Remedies; Default Interest.** Upon the occurrence and during the continuance of any uncured Event of Default under the Arena Lease, lessor shall have customary remedies under the Arena Lease both at law and in equity, including eviction and termination remedies, provided that such remedies are subject to and must be exercised consistent with the Mortgagee Protection Provisions. In addition, upon the occurrence of any monetary default lessor shall also have the right to interest at three (3) points over the prime rate (subject to applicable usury laws then in effect in the State of Georgia) on amounts past-due.

EXHIBIT F

PHASING PLAN

Phase 1: Subject to this MOU:

600 multifamily units

200-300k SF- Office

300-400k SF- Retail

1.- Hotel 120-150 RMs

Sheriff/ Fire station

2 parking decks

1) No Certificates of Occupancy for Multi-Family Phase 1 shall be issued until Certificates of Occupancy are issued for the Phase 1 office, retail and hotel uses,
2) If NHL awards franchise prior to Phase II, arena shall begin vertical construction as part of Phase 1

Phase 2: Subject to this MOU, Phase 1 work shall be completed before phase 2 land use is allowed.

600 multifamily units

250-350k SF- Office

200-300k SF- Retail

2- hotels 250-350 RMs

18,500 seat Arena (and practice Arena)

1) Land Disturbance Permit for the arena and Multi-Family Phase II units must be issued concurrently,
2) No Certificates of Occupancy for Multi-Family Phase II units shall be issued until 50 percent of construction of the arena is completed

Phase 3: Subject to this MOU, Phase 2 work shall be completed before phase 3 land use is allowed.

200-300k SF -Office

Phase 4: Subject to this MOU, Phase 3 work shall be completed before phase 4 land use is allowed.

600 multifamily units

SCHEDULE 1

Mortgagee Protection Provisions

1.1 Right to Obtain Leasehold Mortgages. Notwithstanding anything to the contrary contained in the Arena Lease, Principal Developer shall have the right, without the County's consent, to execute and deliver one or more leasehold mortgages encumbering Principal Developer's leasehold interest in the Premises (as defined in the Arena Lease) (the "**Leasehold Estate**") at any time and from time to time provided that (A) no such leasehold mortgage shall encumber the County's fee interest in the Premises (the "**Fee Estate**"), (B) the proceeds from the debt secured by such leasehold mortgage will not be used for purposes other than the design, development, construction, financing, management, maintenance, repair, replacement, leasing, or operation of the Arena, the Arena Site and/or the Arena Parking Deck, and (C) each leasehold mortgagee must be a Qualified Financial Institution (each, upon satisfaction of such conditions and notice pursuant to Section 1.4, a "**Leasehold Mortgage**") and the holder thereof a "**Leasehold Mortgagee**." The County shall not be required to join in or subordinate the Fee Estate to any Leasehold Mortgage and no such Leasehold Mortgage shall extend to or affect the Fee Estate. Each Leasehold Mortgage shall provide that the Leasehold Mortgagee shall send to the County copies of all notices of default sent to Principal Developer in connection with the Leasehold Mortgage or the debt secured thereby, provided that the failure to provide any such notice shall not affect the validity of the notice as against Principal Developer. As used herein, the term "**Qualified Financial Institution**" shall mean an institution that, as of the closing date of the Leasehold Mortgage, is (a) a nationally chartered bank, national association, federal association bank, savings and loan association, investment bank, state chartered bank, non-bank entity whose primary business is commercial lending, pension fund, insurance company, or other institutional lender which is duly established and regularly in the business of financing the size and type of development contemplated by this MOU, or (b) any other entity that the County or its designee approves in writing.

1.2 Effect of a Leasehold Mortgage. Notwithstanding anything to the contrary in the Arena Lease, Principal Developer's making of a Leasehold Mortgage shall not be deemed to constitute an assignment of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, or in the exercise of its rights under the Arena Lease, be deemed to be an assignee or transferee or mortgagee in possession of the Leasehold Estate so as to require such Leasehold Mortgagee, as such, to assume or otherwise be obligated to perform any of Principal Developer's obligations under the Arena Lease except when, and then only for so long as, such Leasehold Mortgagee has acquired ownership and possession of the Leasehold Estate pursuant to a Foreclosure Event (defined below) or control of the Leasehold Estate through a receiver (as distinct from its rights under the Arena Lease to cure defaults or exercise Mortgagee's Cure Rights (defined below)). No Leasehold Mortgagee (or other Person acquiring the Leasehold Estate pursuant to a Foreclosure Event) shall have any liability beyond its interest in the Arena Lease nor shall Leasehold Mortgagee (or any person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) have recourse liability under the Arena Lease unless and until such time as it becomes the owner of the Leasehold Estate, but any such person shall otherwise be subject to all terms, conditions and remedies under the Arena Lease. Without further notice to or consent from the County, the County recognizes and agrees that a Leasehold Mortgagee may acquire directly, or may cause its assignee, nominee, or designee to acquire, the Leasehold Estate through a Foreclosure Event and such party shall enjoy all the rights and protections granted to Leasehold Mortgagee under the Arena Lease, subject to all terms and conditions of the Arena Lease except

as expressly modified herein, with the same force and effect as if such party were the Leasehold Mortgagee itself.

1.3 Foreclosure; Further Assignment. Notwithstanding anything to the contrary in the Arena Lease, any Foreclosure Event, or any exercise of rights or remedies under any Leasehold Mortgage, shall not in itself constitute a violation of the Arena Lease or require the consent of the County; provided that Leasehold Mortgagee has delivered notice to the County, as required in Section 1.1 above. If a Leasehold Mortgagee or a successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof acquires Principal Developer's Leasehold Estate following a Foreclosure Event, or if a Leasehold Mortgagee or a successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof enters into a New Agreement (as defined below), such Leasehold Mortgagee or successor or assignee of a Leasehold Mortgagee, or an Affiliate thereof, successor, assign or Affiliate of Leasehold Mortgagee (any of the foregoing, a "**New Operator**") shall enjoy all of the rights and protections granted to Tenant under the Arena Lease, subject to all terms and conditions of the Arena Lease except as expressly modified herein, with the same force and effect as if such successor, assign or Affiliate were the Tenant itself and may thereafter assign or transfer the Arena Lease or such New Agreement without prior consent of the County, provided the assignee or transferee promptly notifies the County in writing of such assignment or transfer and expressly agrees in writing to assume and to perform all of the obligations under the Arena Lease or such New Agreement, as the case may be, from and after the effective date of such assignment or transfer, and provided the credit and operating experience of the assignee or transferee is reasonably acceptable to the County. No Leasehold Mortgagee (or person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) shall have any liability beyond its interest in the Arena Lease nor shall Leasehold Mortgagee (or person acquiring the Leasehold Estate pursuant to a Foreclosure Event under a Leasehold Mortgage) have recourse liability under the Arena Lease unless and until such time as it becomes the owner of the Leasehold Estate, but any such person shall otherwise be subject to all terms, conditions and remedies under the Arena Lease or the New Agreement, as applicable.

1.4 Notice of Leasehold Mortgages. Promptly after Principal Developer enters into any Leasehold Mortgage, Principal Developer shall cause the Leasehold Mortgagee thereunder to deliver to the County a true and correct copy of the Leasehold Mortgage together with written notification specifying the name and address of the Leasehold Mortgagee and agreement to provide notice of default as provided in Section 1.1. Such Leasehold Mortgagee shall be entitled to all the rights and protections of a Leasehold Mortgagee under the Arena Lease (as against both the County and any successor holder of the Fee Estate) from and after (and only from and after) such date as the County receives the foregoing materials. The County agrees to acknowledge to Development Authority and such Leasehold Mortgagee the County's receipt of any such materials and, following notification thereof, notice of any Assignment of such Leasehold Mortgage and to confirm that such Leasehold Mortgagee is or will be, upon closing of its financing or its acquisition of an existing Leasehold Mortgage, entitled to all of the rights and protections granted to Leasehold Mortgagee under the Arena Lease with the same force and effect as if such successor, assign or Affiliate were the Leasehold Mortgagee itself, in the Arena Lease, including after any premature termination of the Arena Lease. If the County has received notice of any Leasehold Mortgage, then such notice shall automatically bind the County's successors and assigns.

1.5 Modifications Required by Leasehold Mortgagee. If, in connection with obtaining, continuing, or renewing any financing for which the Leasehold Estate, represents collateral in whole or in part, the Leasehold Mortgagee requires any modifications of the Arena Lease as a condition to such financing, then

the County shall, at Principal Developer's or such Leasehold Mortgagee's request, promptly consider any such modifications in good faith.

1.6 Further Assurances. Upon request by Principal Developer or by any existing or prospective Leasehold Mortgagee, the County shall deliver to the requesting party such documents and agreements as the requesting party shall reasonably request to further effectuate the intentions of the Parties as set forth in the Arena Lease, including a separate written instrument in recordable form signed and acknowledged by the County setting forth and confirming, directly for the benefit of Leasehold Mortgagee and its successors and assigns, any or all rights of Leasehold Mortgagee; provided, however, that Principal Developer shall reimburse the County (but without any duplication) immediately upon demand therefor for any and all reasonable third-party costs or expenses actually incurred by the County in complying with this Section 1.6.

1.7 Protection of Leasehold Mortgagees. Notwithstanding anything to the contrary set forth in the Arena Lease, if, and only for so long as, any Leasehold Mortgage is in effect (and the County shall have been notified thereof as provided above), the following shall apply:

(A) Lease Impairments. Any Lease Impairment (as defined below) made without First Leasehold Mortgagee's prior written consent (or any deemed consent under its Leasehold Mortgage), which consent shall not be unreasonably withheld, conditioned or delayed, shall be null, void, and of no further force or effect, and shall not bind Principal Developer, Leasehold Mortgagee, or New Operator. For clarification, this Section 1.7(A) shall be inapplicable during any period that no Leasehold Mortgage is in effect. Further, for purposes of this Section 1.7(A), any condition upon First Leasehold Mortgagee's prior written consent that would have a material adverse effect on Leasehold Mortgagee is deemed to be unreasonable.

"Lease Impairment" means any (A) cancellation, amendment, modification, rejection, surrender (whether voluntary or otherwise), or termination of the Arena Lease (other than a termination or eviction by the County pursuant to the County's rights, if any, as expressly limited hereunder), including upon a casualty or condemnation affecting the Arena or the Premises, (B) consent, or affirmative acquiescence, by Principal Developer to a sale of any property, or interest in any property, under 11 U.S.C. § 363 or otherwise in any Bankruptcy Proceeding by the County, (C) exercise of any right of Principal Developer to treat the Arena Lease as terminated under 11 U.S.C. § 365(h)(1)(A)(i) or any comparable provision of law, or (D) subordination of the Arena Lease or the Leasehold Estate to any other estate or interest in the Arena or the Premises.

(B) Copies of Notices. If the County shall give any required notice to Principal Developer under the Arena Lease (as a prerequisite to exercise County's remedies thereunder), then the County shall at the same time and by the same means give a copy of such notice to any Leasehold Mortgagee. No required notice to Principal Developer (as a prerequisite to exercise the County's remedies thereunder), shall be effective unless and until such notice has been duly given to Leasehold Mortgagee, provided the County has received notice of such Leasehold Mortgagee pursuant to Section 1.4. No exercise of the County's rights and remedies under or termination of the Arena Lease shall be deemed to have occurred or arisen or be effective unless the County has given like notice to each Leasehold Mortgagee as this Section 1.7(B) requires. Any such required notice shall describe in reasonable detail the alleged Principal Developer default or other event allegedly entitling the County to exercise such rights or remedies.

(C) Principal Developer's Cure Period Expiration Notice. If Principal Developer is in default under the Arena Lease and the cure period applicable to Principal Developer expires without cure of Principal Developer's default, then the County shall promptly give notice of such fact to any Leasehold Mortgagee, which notice shall describe in reasonable detail Principal Developer's default (an "**Principal Developer's Cure Period Expiration Notice**").

(D) Right to Perform Covenants and Agreements. Any Leasehold Mortgagee shall have the right, but not the obligation, during the applicable cure period hereunder, to perform any obligation of Principal Developer under the Arena Lease and to remedy any default by Principal Developer. The County shall accept performance by or at the instigation of a Leasehold Mortgagee in fulfillment of Principal Developer's obligations, for the account of Principal Developer, and with the same force and effect as if performed by Principal Developer. No performance by or on behalf of such Leasehold Mortgagee shall cause it to become a "mortgagee in possession" or otherwise cause it to be deemed to be in possession of the Arena or bound by or liable under the Arena Lease.

(E) Notice of Default and Cure Rights. Upon receiving any notice of default, any Leasehold Mortgagee shall have the right within the same cure period granted to Principal Developer under the Arena Lease, plus the additional time provided for below within which to take (if any Leasehold Mortgagee so elects) whichever of the actions set forth below in the remainder of this Section 1.7 shall apply as to the default described in such notice of default (such actions, "**Mortgagee's Cure**"; and a Leasehold Mortgagee's rights to take such actions, including pursuit of an Enforcement Action (as defined below), collectively, "**Mortgagee's Cure Rights**").

"Enforcement Action" means, with respect to any Leasehold Mortgage and Leasehold Mortgagee, the occurrence of any of the following events: (A) any judicial or nonjudicial foreclosure proceeding, the exercise of any power of sale, the taking of a deed or assignment in lieu of foreclosure, the obtaining of a receiver, or the taking of any other enforcement action against the Leasehold Estate or any portion thereof, including the taking of possession or control of the Leasehold Estate or any portion thereof, (B) any acceleration of, or demand or action taken in order to collect, all or any indebtedness secured by all or any portion of the Leasehold Estate (other than giving of notices of default and statements of overdue amounts), (C) any exercise of any right or remedy available to Leasehold Mortgagee under any and all loan documents evidencing the debt secured by the Leasehold Estate (collectively, the "**Leasehold Loan Documents**"), at law, in equity, or otherwise with respect to any portion of the Leasehold Estate, other than the giving of notices of default and statements of overdue amounts, or (D) any active negotiation (including the exchange of written correspondence regarding the same and the scheduling and subsequent attending of negotiations, whether in person or via telephone) between Principal Developer and Leasehold Mortgagee with respect to a workout following any default by Principal Developer under the terms and conditions of the Leasehold Loan Documents; provided, however, that so long as Leasehold Mortgagee continues to diligently prosecute to completion Mortgagee's Cure, any Enforcement Action shall be deemed to continue until the earlier of completion of Mortgagee's Cure or 60 days following final non-appealable judgment of a court of competent jurisdiction or cessation of any of the events or activities identified in subclauses (A) through (D) above.

"**Foreclosure Event**" means an Enforcement Action in the category that is described in clause (A) of the definition of Enforcement Action.

(F) Monetary Defaults. In the case of a monetary default, any Leasehold Mortgagee shall be entitled (but not required) to cure such default within a cure period consisting of Principal Developer 's cure period under the Arena Lease extended through the date thirty (30) days after such Leasehold Mortgagee shall have received Principal Developer's Cure Period Expiration Notice as to such monetary default.

(G) Nonmonetary Defaults Curable Without Obtaining Possession. In the case of any nonmonetary default that any Leasehold Mortgagee is reasonably capable of curing without obtaining possession of the Arena (excluding in any event any nonmonetary default under the Arena Lease that is by its nature not susceptible to cure by a Leasehold Mortgagee, a "**Personal Default**"), such Leasehold Mortgagee, provided that all rent and additional rent shall continue to be paid timely during the pendency of such extended cure period, shall have the right (but not the obligation) to cure such nonmonetary default by taking the following actions: (1) Within a period consisting of Principal Developer's cure period for such nonmonetary default, extended through the date 30 days after receipt of Principal Developer's Cure Period Expiration Notice as to such default, such Leasehold Mortgagee shall provide written notice to the County of such Leasehold Mortgagee's intention to take all reasonable steps necessary to remedy such default (it being understood that such notice is a statement of intention and not an obligation); and (2) Duly commence the cure of such nonmonetary default within such extended period, and thereafter (during and after such extended period) diligently prosecute to completion the remedy of such default, but, subject to Force Majeure Events, in no event more than 60 days after Leasehold Mortgagee's receipt of Principal Developer's Cure Period Expiration Notice as to such default. (3) For the purposes of this Section 1.7(G), a nonmonetary default will not be deemed incapable of cure by a Leasehold Mortgagee simply because the timeline for performance of the underlying obligation has passed.

(H) Defaults Curable Only by Obtaining Possession and Personal Defaults. In the case of (i) a nonmonetary default that is not reasonably susceptible of being cured by such Leasehold Mortgagee without obtaining possession of the Arena or (ii) a Personal Default by Principal Developer, such Leasehold Mortgagee shall be entitled (but not required) to proceed as described in Sections 1.7(I) and 1.7(J) (provided that (x) rent and additional rent shall continue to be paid timely during the pendency of such extended cure period, and (y) with respect to any nonmonetary defaults outstanding under Section 1.7(G), such Leasehold Mortgagee shall be exercising its Mortgagee's Cure Rights thereunder).

(I) During Cure Period. At any time during the cure period (if any) that applies to Principal Developer, extended through the date that is 60 days after such Leasehold Mortgagee's receipt of Principal Developer's Cure Period Expiration Notice as to such nonmonetary default, or if no cure period applies to Principal Developer, then within 60 days after such Leasehold Mortgagee's receipt of notice of such default, such Leasehold Mortgage Proceedings affecting Principal Developer or any injunction, unless such stay or injunction is lifted) provided that from and after the institution of such proceedings, such Leasehold Mortgagee shall diligently prosecute the same to completion, to obtain possession of the Arena as mortgagee (including possession by a receiver), or acquire directly, or cause its assignee, nominee, or designee to acquire, the Leasehold Estate through a Foreclosure Event, or foreclose on its pledged collateral, as applicable (the obtaining of such possession or the completion of such acquisition, "**Control of the Arena**").

(1) *Further Cure After Control of Arena*. Upon obtaining Control of the Arena (whether before or after expiration of any otherwise applicable cure period), such Leasehold Mortgagee or, in the event the Leasehold Estate is acquired through a Foreclosure Event, such New Operator, shall then be entitled (but not

required) to proceed with reasonable diligence and reasonable continuity to cure such nonmonetary defaults as are then reasonably susceptible of being cured by such Leasehold Mortgage or New Operator (excluding Principal Developer's Personal Defaults, which Leasehold Mortgagee need not cure), within a reasonable time under the circumstances but, subject to Force Majeure Events, in no event more than 120 days after Leasehold Mortgagee obtains Control of the Arena.

(2) *Effect of Cure*. Upon the timely and proper cure of a default by such Leasehold Mortgagee or New Operator, as the case may be, in accordance with the Arena Lease, the Arena Lease shall continue in full force and effect as if no default(s) had occurred. Leasehold Mortgagee's exercise of Mortgagee's Cure Rights shall not be deemed an assumption of the Arena Lease in whole or in part.

(J) Forbearance by the County.

(1) So long as a Leasehold Mortgagee shall be diligently exercising its Mortgagee's Cure Rights, including the commencement and pursuit of an Enforcement Action which is timely commenced and completed within the applicable cure periods set forth above, the County shall not, to the extent permitted under the Arena Lease, (i) re-enter the Arena to cure the Principal Developer Event of Default, (ii) bring a proceeding on account of such default to (a) re-enter the Arena to cure the Principal Developer Event of Default, (b) dispossess Principal Developer or other occupants of the Arena, (c) terminate the Leasehold Estate, or (d) replace the management company, or (iii) accelerate payment of rent or additional rent or any other amounts payable by Principal Developer under the Arena Lease. Notwithstanding the foregoing, the County shall have the right at any time to re-enter the Arena, or bring a proceeding to so reenter the Arena, to cure the applicable Principal Developer Event of Default if the Leasehold Mortgagee that is exercising its Mortgagee's Cure Rights does not have Control of the Arena at such time; provided, however, that (1) the County gives prior written notice thereof to such Leasehold Mortgagee, and (2) no such cure by the County shall be deemed to diminish any of the Mortgagee's Cure Rights.

(2) Nothing in this Section 1 shall, however, be construed to either (i) extend the Term beyond the expiration of the Term that would have applied if no default had occurred or (ii) require any Leasehold Mortgagee to cure any Personal Default by Principal Developer as a condition to preserving the Arena Lease or to obtaining a New Agreement (but this shall not limit such Leasehold Mortgagee's obligation to seek to obtain Control of the Arena, and thereafter consummate a Foreclosure Event, by way of Mortgagee's Cure Rights, if such Leasehold Mortgagee desires to preclude the County from terminating the Arena Lease on account of a Personal Default of Principal Developer).

(3) Nothing in this Section 1 shall limit the obligations of Principal Developer under the Lease or preclude the County from exercising its rights to sue Principal Developer for damages, specific performance, or other equitable relief (excluding dispossession, termination, or engagement of new management company).

(K) Leasehold Mortgagee's Right to Enter Arena. The County and Principal Developer authorize each Leasehold Mortgagee to enter the Arena and the Premises as necessary to effect Mortgagee's Cure and take any action(s) reasonably necessary to effect Mortgagee's Cure without such action, in itself, being deemed to give Leasehold Mortgagee possession of the Arena or the Premises.

(L) Rights of New Operator Upon Acquiring Control. If any New Operator shall acquire the Leasehold Estate pursuant to a Foreclosure Event and shall continue to exercise Mortgagee's Cure Rights as to any remaining

defaults (other than Personal Defaults, which New Operator need not cure), then any Personal Defaults by Principal Developer shall no longer be deemed defaults and upon cure of all remaining defaults (other than Personal Defaults) the County shall recognize the rights of such New Operator hereunder as if such New Operator were Principal Developer.

(M) Interaction Between Agreement and Leasehold Mortgage. Principal Developer's default as mortgagor under a Leasehold Mortgage shall not constitute a default under the Arena Lease, except to the extent that Principal Developer's actions or failure to act in and of itself constitutes a breach of the Arena Lease. The exercise of any rights or remedies of a Leasehold Mortgagee under a Leasehold Mortgage, including the consummation of any Foreclosure Event, shall not constitute a default under the Arena Lease (except to the extent such actions otherwise constitute a breach of the Arena Lease).

1.8 First Leasehold Mortgagee's Right to a New Agreement.

(A) If the Arena Lease shall terminate by reason of a rejection in Principal Developer's bankruptcy, or option of Principal Developer to treat the Arena Lease as terminated under 11 U.S.C. § 365(h)(1)(A)(i), or any comparable provision of law, the County shall promptly give notice of such termination to any Leasehold Mortgagee of which the County has notice. The County shall, upon a Leasehold Mortgagee's request given within 30 days after such Leasehold Mortgagee's receipt of such notice, enter into a new lease of the Arena effective as of (or retroactively to) the date of the termination of the Arena Lease, for the remainder of the Term, as if no termination had occurred, with a New Operator on the same terms and provisions of the Arena Lease, including all rights, options, privileges, and obligations of Principal Developer under the Arena Lease, but excluding any requirements that have already been performed or no longer apply (a "**New Agreement**"), provided that the First Leasehold Mortgagee shall, at the time of execution and delivery of such New Agreement, (i) pay the County any and all rent, additional rent and other sums then due under the Arena Lease (determined as if the Arena Lease had not been terminated), and (ii) cure any nonmonetary defaults (other than Personal Defaults, which First Leasehold Mortgagee need not cure) under the Arena Lease (determined as if the Arena Lease had not been terminated) or, if such nonmonetary default is of a nature that it cannot with due diligence be cured upon such execution and delivery, then the First Leasehold Mortgagee shall (x) upon such execution and delivery, advise the County of its intention to take all steps necessary to remedy such nonmonetary default (other than Personal Defaults, which First Leasehold Mortgagee need not cure), and (y) promptly and duly commence the cure of such default and thereafter diligently prosecute to completion the remedy of such default, which completion must be achieved within a reasonable time under the circumstances (not to exceed 90 days), subject to Force Majeure Events. In no event, however, shall the New Operator be required to cure a Personal Default of Principal Developer as a condition to obtaining or retaining a New Agreement or otherwise. From the date the Arena Lease terminates until the date of execution and delivery of any such New Agreement (the "**New Agreement Delivery Date**"), the County may, at its option, perform the day-to-day operations, maintenance, and repair of the Arena and the Premises and all expenses incurred by the County shall be immediately due and payable by the New Operator as of the New Agreement Delivery Date; provided, however, the County shall not (1) operate the Arena or the Premises in an unreasonable manner, (2) take any affirmative action to cancel any sublease or accept any cancellation, termination, or surrender of a sublease, except due to such subtenant's default, or (3) lease any of the Arena or the Premises except to New Operator.

(B) The following additional provisions shall apply to any New Agreement:

(1) Form and Priority. Any New Agreement (or, at the County's option, a memorandum thereof) shall be in recordable form. Such New Agreement shall not be subject to any rights, liens, or interests other than permitted exceptions and other exceptions to title existing as of the date of such New Agreement which were not created by the County. The New Agreement shall be expressly made subject to any rights of Principal Developer prior to the termination of the Arena Lease.

(2) Adjustment for Net Income/Net Loss. On the New Agreement Delivery Date, if during the period from the termination date of the Arena Lease to the New Agreement Delivery Date the revenue derived from the Arena and actually received by the County (excluding from income the amount of any Baseline Rent Payment payable under the Arena Lease and actually received by the County exceeds the expenses actually incurred by the in connection with the Arena, then, on the New Agreement Delivery Date, the County shall pay to the New Operator the amount of such excess. Alternatively, if during such period the County's expenses exceed the County's revenues, then, on the New Agreement Delivery Date, the New Operator shall pay to the County the amount of such excess. In either event, the New Operator shall, on the New Agreement Delivery Date, pay to the County all sums required to be paid the County pursuant to the Arena Lease, and reimburse County for any sums expended (which are the obligation of the tenant under the Arena Lease) up to the New Agreement Delivery Date.

(3) Assignment of Certain Items. On the New Agreement Delivery Date, the County shall assign to New Operator all of the County's right, title and interest in and to all moneys (including security deposits, insurance proceeds, and condemnation awards), if any, then held by, or payable to, the County that Principal Developer (or Leasehold Mortgagee) would have been entitled to receive as of such date but for termination of the Arena Lease. On the New Agreement Delivery Date, the County shall also transfer to New Operator all subleases, service contracts, and net income collected by the County in connection with the operation of the Arena during the period between termination of the Arena Lease and the New Agreement Delivery Date.

(4) Preservation of Subleases. Between the date of the termination of the Arena Lease and the New Agreement Delivery Date, the County shall not take any affirmative action to cancel any sublease or accept any cancellation, termination, or surrender of a sublease (it being understood that the County shall not be obligated to take any action to keep any subleases in effect). Any sublease which was terminated upon the termination of the Arena Lease as a matter of law, shall, at New Operator's option, be reinstated upon execution of the New Agreement.

(5) Separate Instrument. The County hereby agrees, at the request of any Leasehold Mortgagee, to enter into a separate instrument (and memorandum thereof in recordable form) memorializing such Leasehold Mortgagee's rights under this Section 1.8.

1.9 Priority of Leasehold Mortgages. If there is more than one Leasehold Mortgage, then whenever the Arena Lease provides the holder of a Leasehold Mortgage with the right to consent or approve or exercise any right granted in the Arena Lease, the exercise or waiver of same by the first priority Leasehold Mortgagee (the "**First Leasehold Mortgagee**") shall control and be binding upon the holder(s) of all junior Leasehold Mortgages.

1.10 Liability of Leasehold Mortgagee. If a New Operator shall acquire Principal Developer's Leasehold Estate through a Foreclosure Event or a New Agreement shall be granted to a New Operator pursuant to Section

1.8, such New Operator shall be liable for the performance of all of Principal Developer's covenants under the Arena Lease or such New Agreement, as the case may be, from and after the effective date of such Foreclosure Event or New Agreement. If (A) the New Operator is a Leasehold Mortgagee or its assignee, nominee or designee, (B) such Leasehold Mortgagee, or its assignee, designee or nominee, as applicable, then assigns the Arena Lease or the New Agreement to a third party assignee, (C) such third party assignee delivers to the County an agreement under which such assignee assumes and agrees to perform all the terms, covenants, and conditions of the Arena Lease or such New Agreement, in form reasonably acceptable to the County and (D) the credit and operating history of the New Operator is reasonably acceptable to the County then Leasehold Mortgagee, or its assignee, designee, or nominee, as applicable, shall be automatically and entirely released and discharged from the performance, covenants, and obligations of the New Operator under the Arena Lease or the New Agreement, thereafter accruing.

1.11 Casualty and Condemnation Proceeds. If a casualty or a Condemnation Action shall occur with respect to all or any portion of the Arena and the Premises and restoration is to occur pursuant to the provisions of the Arena Lease, any insurance proceeds shall be handled in accordance with the Arena Lease. The County understands that Principal Developer may irrevocably appoint Leasehold Mortgagee as its representative to participate in any settlement regarding, and with regard to, the disposition and application of said insurance proceeds or Condemnation Awards, and, in such instance, the County will recognize and deal with Leasehold Mortgagee for such purposes. The County hereby acknowledges that no election by Principal Developer not to restore in the event of a casualty or Condemnation Action shall be effective unless Leasehold Mortgagee's consent has been granted to such election.

1.12 Mezzanine Lenders as Leasehold Mortgagees. The Parties agree that each lender under a Mezzanine Financing (as defined below) (each such lender, a "**Mezzanine Lender**") is intended to and shall be entitled to substantially the same protections and rights set forth in this Section 1 as provided to a Leasehold Mortgagee, modified as appropriate to reflect the nature of the limited liability company or limited partnership interest or stock pledge, as applicable, in favor of each such Mezzanine Lender, *mutatis mutandis*. If requested by Principal Developer in connection with a Mezzanine Financing, the Parties agree to negotiate, in good faith and with due diligence, an amendment to the Arena Lease or a separate agreement, containing commercially reasonable terms and conditions in order to specifically reflect such protections and rights set forth in this Schedule 1 as applicable to a Mezzanine Lender. As used herein, a "**Mezzanine Financing**" means a financing transaction which is secured by, inter alia, a pledge or collateral assignment of any or all of the limited liability company or limited Partnership interests or the corporate stock of Principal Developer (or any entity holding a direct or indirect interest in Principal Developer), as applicable, either together with or in lieu of a Leasehold Mortgage (provided that if the same lender holds both a Leasehold Mortgage and such a pledge or collateral assignment, such lender shall be a Leasehold Mortgagee, and such financing transaction shall be a Leasehold Mortgage, hereunder).