

ADD ON

Meeting Date
March 20, 2018



AGENDA	
Section	Unfinished Business
Item No.	V B

**AGENDA REPORT**  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

<b>SUBJECT:</b>	USSSA: Playing Fields Complex Use and Maintenance Agreement
<b>DEPT/OFFICE:</b>	Parks and County Attorney's Office

**Requested Action:**

Approve agreement subject to any non-substantial changes approved by the County Attorney and County Manager

**Summary Explanation & Background:**

Board has authorized expenditure of approximately \$5,000,000 for the installation of synthetic turf fields on the fields at the southernmost portion of Viera Regional Park. The attached agreement between the County, USSSA and the Viera Company provides that the County will provide for direct purchase and pay installation cost for the artificial AstroTurf to be installed on seven multisport fields. The County is taking advantage of favorable pricing available through USSSA and, in exchange, USSSA will oversee and manage the installation of the AstroTurf. USSSA has also agreed to maintain the synthetic turf fields at their cost with their specialized equipment.

The substantive deal points of the agreement are as follows:

1. USSSA will have field use-rights similar to current community youth sports organizations to use the athletic fields at Viera Regional Park. In exchange for agreeing to maintain the AstroTurf fields, USSSA will be able to use the fields a minimum of two weeks during Spring Break in March/April and ten other weekend dates to be scheduled in conjunction with other Rec. Partners on a master schedule managed by County Parks & Rec.
2. In exchange for this right, USSSA will provide the regular maintenance of the AstroTurf athletic fields using USSSA personnel and equipment provided by AstroTurf, limited to 40 hours per month as prescribed by AstroTurf and determined by facility use.
3. USSSA will also manage the construction of the new fields, utilizing the financial resources provided by the County including \$5 million bond proceeds supported by tourist development tax revenues. To take advantage of the County sales tax exemption, the turf will be directly purchased and installation services and costs will be paid by the County.

The agreement is undergoing review by the lawyers for USSSA and the Viera Company. Therefore, the CAO is seeking Board approval subject to any non-substantial changes approved by the County Attorney and County Manager.

**Fiscal Impact: Just over \$5,000,000 payable from Board approved Tourist Development Tax revenue.**

**Clerk to the Board Instruction:**

**Exhibits Attached:** Agreement ; **ADDITIONAL EXHIBITS TO BE PROVIDED**

**Contract / Agreement (if attached):** Yes  No

**County Manager's Office**

**Parks Department/County Attorneys office:**  
PR

Frank Abbate, County Manager

Scott Knox, County Attorney;   
Mary Ellen Donner, Parks director



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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Tammy.Rowe@brevardclerk.us

March 21, 2018

**MEMORANDUM**

**TO:** Scott Knox, County Attorney

**RE:** Item V.B., Playing Fields Complex Use and Maintenance Agreement with United States Specialty Sports Association, Inc. (USSSA)

The Board of County Commissioners, in regular session on March 20, 2018, approved Playing Fields Complex Use and Maintenance Agreement with USSSA, subject to any non-substantial changes approved by the County Attorney and County Manager, and the bond requirement being waived. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

Encl. (1)

cc: County Manager  
Parks and Recreation Director  
Finance  
Budget

## PLAYING FIELDS COMPLEX USE AND MAINTENANCE AGREEMENT

**THIS PLAYING FIELDS COMPLEX USE AND MAINTENANCE AGREEMENT** (hereafter referred to as this “**Agreement**”) **IS MADE THIS 22<sup>ND</sup> DAY OF MARCH**, 2018 by and between USSSA, LLC, a Florida limited liability company, through UNITED STATES SPECIALTY SPORTS ASSOCIATION INC., a Florida not-for-profit corporation, its Manager (hereafter referred to collectively as “USSSA”), BREVARD COUNTY, a political subdivision of the State of Florida, (hereafter referred to as “COUNTY”), and THE VIERA COMPANY, a Florida corporation (hereafter referred to as “VIERA COMPANY”), sometimes collectively referred to in this Agreement as “the Parties” and individually as a “Party.”

**NOW, THEREFORE, FOR VALUE RECEIVED** and in consideration of the promises, agreements, covenants and provisions set forth in this Agreement and exhibits to this Agreement (including the Glossary of Defined Terms set forth in Appendix A), the Parties agree as follows:

### ARTICLE 1 RIGHTS OF USE AND CONSIDERATION

**Section 1.1 Grant of Use Rights.** In consideration of and pursuant to the conditions, covenants, agreements, and subject to the scheduling provisions set forth in this Agreement in Section 1.1.3 below, COUNTY does hereby grant to USSSA a non-exclusive right of use to the seven Playing Fields shown on the attached Exhibit A, together with all existing or other improvements shown with the purple area outlined on Exhibit A and from time to time built or located within that outlined area (the “Improvements”), together with all appurtenances relating to any of the same (collectively, the “Playing Fields Complex”). In addition to the above use rights in the Playing Fields Complex granted by COUNTY to USSSA, COUNTY also grants to USSSA the following use rights:

1.1.1 Subject to the Playing Fields scheduling provisions in Section 1.1.3 below, USSSA will have non-exclusive rights to use the Playing Fields equivalent to existing youth sports organizations currently using the Playing Fields at Viera Regional Park, including:

1.1.1.1 the right to utilize all facilities located beneath the Playing Fields Complex, to include sprinkler systems, electrical cables, fiber optic cable and drainage facilities; and

1.1.1.2 uninterrupted access to and egress from the Playing Fields Complex and any other Improvements from time to time located on the Playing Fields Complex, except (a) as otherwise set forth in this Agreement or (b) on occasions when such ingress and egress access may be temporarily closed by COUNTY due to emergencies, natural disasters, Acts of God or the construction of improvements to the Playing Fields Complex.

1.1.2 As consideration for USSSA’s obligations set forth in Section 1.2 below, USSSA’s right of use shall include a minimum of two weeks during Spring Break in March/April of each year during the term of this Agreement and ten other weekend dates to be scheduled by the County in accordance with the scheduling provisions set forth in Section 1.1.3 below.

1.1.3 USSSA acknowledges that several community youth sports organizations are actively involved in using the existing Playing Fields for practice and games. USSSA further acknowledges its desire to work together with the COUNTY and these community youth sports

organizations to allow each field sport currently using the Playing Fields equivalent opportunities for utilization of the Playing Fields for practice and game time at the Playing Fields Complex or at USSSA's Stadium Complex located on Stadium Parkway, as provided below. Because the TVC Deed requires the Playing Fields Complex to be used as part of a public regional park, USSSA also acknowledges that as youth sports organizations expand or multiply, such expansion will require additional use of the Playing Fields Complex by such youth organizations. To that end, USSSA has agreed to abide by Playing Fields utilization schedules established by the COUNTY. USSSA and COUNTY agree that the youth sports organizations referenced in Addendum Exhibit 1 and any future youth sports organizations approved by the COUNTY as additional users of the Playing Fields Complex are hereby deemed third party beneficiaries of this Agreement with standing to enforce the COUNTY's utilization schedules. Should the utilization requirements of USSSA conflict with the utilization requirements of the youth sports organizations that will be using the Playing Fields Complex, the youth sports organization utilization will take priority unless reasonable alternate playing fields of comparable quality and location are made available by USSSA or the COUNTY to resolve the conflict. The COUNTY shall have the right to make the final determination as what constitutes a reasonable alternate playing field should such a conflict arise.

**Section 1.2 USSSA Consideration.** In exchange for the use rights granted to USSSA, as set forth in Section 1.1. above, USSSA agrees:

- 1.2.1. to manage and oversee the installation of the new AstroTurf Playing Fields in accordance with AstroTurf specifications;
- 1.2.2. to provide the regular Maintenance of the AstroTurf Playing Fields using USSSA personnel and equipment. Such Maintenance shall be provided by USSSA in accordance with AstroTurf specifications, provided such maintenance shall not exceed forty (40) hours per month when the Playing Fields are not scheduled to be in use.

**Section 1.3 COUNTY Consideration.** As consideration for this Agreement, the COUNTY agrees to directly purchase the AstroTurf that will be utilized to transform the existing natural grass fields into AstroTurf artificial turf fields in substantially the configuration and striping pattern shown on Exhibit A. The COUNTY's expense for the direct purchase of AstroTurf and installation will not exceed the amounts identified in the proposal set forth in Exhibit B, attached hereto.

**Section 1.4 General Use Standards.** The use of the Playing Fields Complex by the COUNTY, USSSA, any community recreation youth sports organization or other organization or entity shall:

- 1.4.1. at all times conform to the Deed Restrictions set forth in the TVC Deed, a copy of which is attached as Exhibit C to this Agreement;
- 1.4.2. be subject to the condition that the public shall have the right to use all areas where the Playing Fields are not being used for COUNTY-approved and scheduled events, whether sponsored by USSSA, community recreational youth sports organizations or the COUNTY.

## ARTICLE 2 TERM OF THE AGREEMENT

**Section 2.1 Term.** The term of this Agreement shall be referred to herein as the "Agreement Term." The initial term of the Agreement Term shall be ten (10) years commencing at 12:01 a.m. on March 20, 2018

(the "Commencement Date") and shall end; unless sooner terminated in accordance with the provisions of this Agreement, at 11:59 p.m. on March 31, 2028 (the Agreement Expiration Date) (said 10-year term being the "Primary Term").

**Section 2.2 Renewal Terms and Abandonment of Use.** Provided that this Agreement is then in full force and effect, no uncured USSSA Default then exists, and provided the COUNTY is satisfied that seven artificial turf Playing Fields are in a condition reasonably fit for use by USSSA sponsored and community youth sports organizations games and practices, the COUNTY may approve a USSSA request for an extension of the Agreement Term upon the same terms, conditions and provisions as this Agreement, excluding purchase and installation of new artificial turf unless otherwise agreed upon by the COUNTY. The COUNTY may approve such extensions for one or more additional periods of ten (10) years each after the expiration of the Primary Term or any extension thereof (each a "Renewal Term"). The term of each Renewal Term shall commence at 12:00 a.m. on the day immediately following the last day of the immediately expiring Primary Term or Renewal Term, as the case may be, and end at 12:00 a.m. ten (10) years later, to the extent applicable. USSSA's request to extend the Primary Term or any Renewal Term of this Agreement shall be exercisable by written notice from USSSA to COUNTY given no later than one (1) year prior to the expiration of the Primary Term, and in the case of a Renewal Term, one (1) year prior to the expiration of any such Renewal Term thereafter. The COUNTY shall approve or disapprove any ten (10) year Renewal Term within sixty (60) days after USSSA delivers written notice requesting such a renewal. If approval is not given, this Agreement shall terminate and USSSA's non-exclusive use shall end on the last day of the ten (10) year term in which the request for renewal was delivered. USSSA shall also provide the COUNTY with at least one (1) year's notice of its intent not to renew this Agreement or its intent to abandon its use of the Playing Fields Complex.

### **ARTICLE 3 PERMITTED USES**

**Section 3.1 Permitted Uses.** Subject to COUNTY prepared and approved annual schedules during the Agreement Term, USSSA shall have the right to use and occupy the Playing Fields Complex for the following purposes (individually, a "Permitted Use" and collectively, the "Permitted Uses"):

3.1.1. the operation of amateur soccer, football, lacrosse and other field sports and related activity including, without limitation, related presentation and broadcasting (or other transmission) of games; training; practices; exhibitions; All-Star Games; promotional activities and events; community and public relations activities; maintenance of the Playing Fields; and the exhibition of advertising, marketing of games and other events; ticket sales; fantasy camps; and any and all other activities which, from time to time, are customarily conducted by or are related to the operation of the business of an amateur sports complex.

**Section 3.2 Prohibited Uses.** USSSA shall not use, or permit the use of, the Playing Fields Complex for any other or additional purpose that is not a Permitted Use without first obtaining the consent of COUNTY and VIERA COMPANY, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the Permitted Uses hereunder, USSSA agrees that it shall not conduct the following uses (collectively, the "Prohibited Uses"):

3.2.1 subject to the provisions of Article 6 as to Additional Improvements (but only during the performance of any such Additional Improvements), create, cause, maintain or permit any public or private nuisance in, on or about the Playing Fields Complex; or

3.2.2 use, allow or permit the Playing Fields Complex to be used for any purpose which violates any governmental law, ordinance or rule, the Deed Restrictions, or any recorded restrictive covenants that may be applicable to the Playing Fields Complex; or

3.2.3 use or allow the Playing Fields Complex to be used as (a) an adult-entertainment venue, (b) an industrial site, or (c) a waste disposal site;

3.2.4 use the Playing Fields Complex for any other use not approved by COUNTY or VIERA COMPANY.

The provisions of Sections 3.1 and 3.2 shall inure to the benefit of, and be enforceable by either COUNTY or its agents or VIERA COMPANY or its agents. No other Person, including any invitee, patron or guest of the Playing Fields Complex shall have any right to enforce the prohibitions as to the Prohibited Uses.

**Section 3.3 Compliance with Governmental Laws and Regulations.** USSSA shall, throughout the Agreement Term, within the time periods permitted by applicable governmental laws and regulations, comply or cause compliance with all governmental regulations applicable to the Playing Fields Complex, including but not limited to, any laws or regulations applicable to (a) the manner of use or the maintenance, repair or condition of the Playing Fields Complex or (b) any activities or operations conducted in or about the Playing Fields Complex.

**Section 3.4 Rights of USSSA to Charge Fees and Retain Revenues.** Subject to the terms of this Agreement, as well as the Permitted Uses and Prohibited Uses identified in Sections 3.1 and 3.2 above, USSSA shall be entitled to, and is hereby granted the right to charge fees solely for USSSA sponsored events scheduled for the Playing Fields Complex. USSSA may contract for, collect, receive and retain all gross income and revenues and other consideration of whatever kind or nature realized by, from or in connection with USSSA sponsored events scheduled for the Playing Fields Complex, including, without limitation, all gross revenues, royalties, license fees, concession fees and income and receipts of any nature, including, without limitation, those arising from:

3.4.1 all Advertising Rights, if any;

3.4.2 all Broadcast Rights, if any;

3.4.3 promotion of USSSA sponsored events at the Playing Fields Complex;

3.4.4 the sale of admission tickets, food, beverages, merchandise, programs and other goods and wares of any nature whatsoever from events held or sponsored by USSSA at the Playing Fields Complex; and

3.4.5 all Telecommunications Rights, if any;

provided, however, that USSSA shall not charge fees for the use of parking areas or other areas owned by the COUNTY and located within the Playing Fields Complex.

#### **ARTICLE 4 ADDITIONAL IMPROVEMENTS**

**Section 4.1 Additional Improvements.** Subject to the limitations and requirements contained elsewhere in this Agreement and the Deed Restrictions, and with the prior approval of the COUNTY and VIERA COMPANY, USSSA shall have the right at any time, in its discretion, and from time to time to construct additional or replacement improvements on the Playing Fields Complex ("Additional Improvements"), subject, however, in all cases to the terms, conditions and requirements of this Section 4.1 and the Deed Restrictions. For purposes of this Agreement, "Additional Improvements" collectively shall refer to

construction or installation of bleachers, scoreboards, goal posts or any similar structures. The performance of Additional Improvements shall, in all cases, comply with the following requirements and conditions:

**Section 4.2 Approval Process.** Any Additional Improvements shall be subject to the following procedures and requirements:

4.2.1 USSSA shall deliver all schematic design plans for the proposed Additional Improvements to the COUNTY and VIERA COMPANY at least sixty (60) days prior to the commencement of construction of any such Additional Improvements. Upon receipt from USSSA of any Additional Improvements Submission Matters regarding proposed Additional Improvements, the COUNTY Representative and VIERA COMPANY shall each review the same and shall promptly (but in any event within thirty (30) days after receipt) give USSSA notice (with a copy of such notice to be delivered to the other Party to this Agreement, be it COUNTY OR VIERA COMPANY) of the approval or non-approval by such responding party, which approval shall not be unreasonably withheld, conditioned or delayed, provided any non-approval shall set forth in reasonable detail the reasons for any such non-approval.

4.2.2 If the COUNTY Representative or VIERA COMPANY gives USSSA notice of non-approval of any of the Additional Improvements, USSSA shall have the right within fifteen (15) days after the date of such notice to resubmit any such Additional Improvements to the COUNTY Representative and VIERA COMPANY, modified as necessary in response to the COUNTY Representative and/or VIERA COMPANY's reasons for non-approval. All subsequent resubmissions of proposed Additional Improvements by USSSA must be made within fifteen (15) days after the date of notice of non-approval from the COUNTY Representative or VIERA COMPANY as to the prior resubmission. Any resubmission shall be reviewed by the COUNTY Representative and VIERA COMPANY within fifteen (15) days after the original Additional Improvements Submission Matter. Resubmissions will be required until the Additional Improvements are approved by the COUNTY and VIERA COMPANY.

4.2.3 Upon the approval by the COUNTY Representative and VIERA COMPANY of Work Submission Matters, USSSA may commence construction of such approved Additional Improvements and prosecute completion of such approved Additional Improvements without any further approval by COUNTY, the COUNTY Representative or VIERA COMPANY, subject to any inspections required by COUNTY or any other governmental approval upon the final completion of the Additional Improvements for the issuance of any applicable certificates of completion or otherwise or to close applicable permits for such Additional Improvements.

4.2.4 All Additional Improvements shall, once construction is commenced, be made with due diligence (subject to Excusable USSSA Delay) and shall be completed in accordance with the plans and specifications for such Additional Improvements approved by COUNTY and VIERA COMPANY and the provisions of this Agreement, in a good and workmanlike manner and in compliance with all applicable Governmental laws and regulations and the Deed Restrictions.

4.2.5 Any Additional Improvements shall, when completed and inspected (where required), be of such a character as not to reduce the utility of the Playing Fields Complex below the utility immediately before such Additional Improvements and shall not weaken or impair the quality of the Playing Fields Complex.

4.2.6 The cost of any Additional Improvements shall be paid by USSSA in a commercially reasonable manner so as to avoid having a Lien, if applicable, filed against the Playing Fields Complex, and to the extent a Lien is filed against the Playing Fields Complex relating to the Additional Improvements, USSSA shall cause such Lien to be released within 120 days of its filing.

4.2.7 Prior to the commencement of construction of any Additional Improvements, at all times during the performance of such Additional Improvements, and at all times thereafter that anyone other

than COUNTY or USSSA has an insurable interest in the Additional Improvements, all insurance required under Section 5.1 shall be in full force and effect as required thereunder.

**Section 4.3 No Substitute for Permitting Processes.** The review for compliance by COUNTY of any matter submitted to COUNTY pursuant to Section 4.1 shall not constitute a replacement or substitute for, or otherwise excuse USSSA from, all permitting or inspection processes of governmental authorities with jurisdiction over the Playing Fields Complex or the Additional Improvements.

**Section 4.4 Work Performed on Project-General Requirements.** USSSA shall not do or permit others to do any Additional Improvements, including site work and land alteration, unless USSSA shall have first procured all permits and authorizations then required by all Governmental Authorities with jurisdiction for the work being performed. All such Additional Improvements shall be constructed with due diligence in a good and workmanlike manner in accordance with applicable regulatory standards and standard construction practices for construction, repair, renewal, renovation, demolition, rebuilding, addition or alteration, as the case may be, of improvements similar to the Playing Fields Complex using qualified workers and subcontractors, and in compliance with the provisions of this Agreement. Should USSSA exercise its discretion to make Additional Improvements, the COUNTY will waive all County permit fees relating to the installation of those improvements.

**Section 4.5 COUNTY's Joinder in Permit Applications.** COUNTY agrees, with reasonable promptness after receipt of a written request therefor from USSSA and at USSSA's reasonable cost and expense, to execute, acknowledge and deliver (or to join with USSSA in the execution, acknowledgment and delivery of) in its capacity as the owner of the fee interest in the Playing Fields Complex, as necessary:

4.5.1 any and all applications for licenses, permits, transfers of permits, or other authorizations of any kind or character required of USSSA by any Governmental Authority with jurisdiction in connection with the construction, operation, alteration, repair or demolition of improvements, in accordance with this Agreement, of the Playing Fields Complex; and

4.5.2 for easements and/or rights-of-way for public utilities or similar public facilities over and across portions of the Playing Fields Complex, for a term not exceeding the then remaining Agreement Term, which may be useful and/or necessary in the proper economic and orderly development or operation of the Playing Fields Complex for the permitted uses specified in paragraph 3.1.

**Section 4.6 USSSA's Remedial Work.** USSSA shall be responsible for performing or causing to be performed, and for paying the cost of performing, any and all corrective or remedial actions required by applicable Governmental laws or regulations to be performed with respect to "USSSA's Remedial Work" which includes:

4.6.1 any Environmental Event caused by USSSA, or any of its agents, USSSA's contractors, or subcontractors at any time, or

4.6.2 any Hazardous Materials that are introduced to the Playing Fields Complex on or after the Commencement Date by USSSA.

USSSA shall promptly inform COUNTY and all applicable Governmental Authorities of any Environmental Event or Hazardous Materials discovered by USSSA (or any agent, contractor or subcontractor of USSSA) in, on or under the Playing Fields Complex and promptly shall furnish to COUNTY any and all reports and other information available to USSSA concerning the matter. USSSA shall thereafter promptly consult with COUNTY as to the steps to be taken to investigate and, if necessary, remedy such matter. USSSA shall select an independent environmental consultant to evaluate

the condition of the Playing Fields Complex and materials thereon and therein, at USSSA's cost and expense. If it is determined pursuant to such evaluation that remediation of the same is required by this Section 4.6, then USSSA shall perform USSSA's Remedial Work at its own cost and expense and with due diligence.

**Section 4.7 COUNTY's Remedial Work.** COUNTY shall be responsible for performing or causing to be performed, and for paying the cost of performing, "COUNTY's Remedial Work," which shall mean any and all corrective or remedial actions required by applicable Governmental laws or regulations to be performed with respect to:

4.7.1 any Environmental Event caused by COUNTY or any of its agents, contractors or subcontractors or

4.7.2 any Hazardous Materials that were introduced to the Playing Fields Complex before the Commencement Date (but excluding Hazardous Materials introduced by USSSA or its agents, contractors or subcontractors at any time).

COUNTY shall promptly inform USSSA and all applicable Governmental Authorities of any such Environmental Event or any Hazardous Materials discovered by COUNTY (or any agent contractor or subcontractor of COUNTY) in, on or under the Playing Fields Complex and promptly shall furnish to USSSA any and all reports and other information available to COUNTY concerning the matter. COUNTY shall thereafter promptly consult with USSSA as to the steps to be taken to investigate and, if necessary, remedy such matter. COUNTY shall select an independent environmental consultant to evaluate the condition of the Playing Fields Complex and materials thereon and therein, at COUNTY's cost and expense. If it is determined pursuant to such evaluation that remediation of the same is required by this Section 4.7, then COUNTY shall perform, or cause to be performed, COUNTY's Remedial Work at its own cost and expense and with due diligence.

**Section 4.8 Maintenance and Warranty Contracts.** COUNTY covenants and agrees that, without the prior consent of USSSA, COUNTY will not voluntarily, involuntarily, by operation of law or otherwise, sell, assign or transfer any Maintenance or Warranty Contracts relating to artificial turf to any Person other than USSSA. Further, COUNTY agrees that USSSA is a third-party beneficiary of any Maintenance and Warranty Contracts procured on the Playing Fields Complex Turf Improvements, systems or equipment, and hereby conveys, transfers and assigns to USSSA as of the Commencement Date the nonexclusive right to enforce any and all of the respective obligations of any Person under such Maintenance and Warranty Contracts during the Agreement Term, including, but not limited to, any and all representations and warranties thereunder. Each Party agrees that it will not amend, modify, terminate, cancel or surrender any such Maintenance and Warranty Contract without the consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Neither USSSA nor COUNTY shall have any obligation whatsoever to enforce such Maintenance and Warranty Contracts.

The right of USSSA to enforce the respective obligations of any Person under any Maintenance and Warranty Contract is independent of and separate from the rights of COUNTY to enforce the same and shall in no manner limit or reduce the rights of COUNTY to enforce the same. After the Commencement Date, COUNTY's sole right to enforce the Maintenance and Warranty Contracts and share in any recoveries thereunder shall be limited to the items covered by such Maintenance and other Warranty Contracts that constitute COUNTY's Expenses. The Parties agree that each will cooperate with the other in prosecuting any and all warranty and similar claims under any and all contracts or agreements with third parties for the design, construction, supply, alteration, improvement, maintenance or renewal of the artificial turf at the Playing Fields Complex (each, a "Warranty Claim"). All recoveries from any such Warranty Claims shall be applied, first, to the cost of collection, second, on a proportional basis to

COUNTY and USSSA to reimburse USSSA for the cost and expenses incurred in order to repair, restore, renew or replace any part of the artificial turf at the Playing Fields Complex as to which such Warranty Claim relates.

## **ARTICLE 5 INSURANCE AND INDEMNIFICATION**

**Section 5.1 Policies Required For Additional Improvements -Builder's All Risk Policy.** In the event the reasonably anticipated total cost of any Additional Improvements (calculated so as to include, but not be limited to, all sums payable under any Additional Improvements Construction Contracts related thereto) is equal to or exceeds Two Hundred Fifty Thousand Dollars (\$250,000.00), prior to the commencement of any Additional Improvements and at all times during the performance of such Additional Improvements, USSSA shall obtain, keep and maintain or cause to be obtained, kept and maintained, builder's "all risk" insurance policies (collectively, the "Builder's All Risk Policies") affording coverage of such Additional Improvements, whether permanent or temporary, and all Insured Materials and Equipment related thereto against loss or damage due to Insured Casualty Risks on commercially reasonable terms from time to time available with respect to similar work in Brevard County, Florida. The Builder's All Risk Policies shall be written on an occurrence basis and on a "replacement cost" basis, insuring one hundred percent (100%) of the insurable value of the cost of the Additional Improvements, using a completed value form (with permission to occupy upon completion of work or occupancy), naming USSSA as the insured and the COUNTY as loss payees, as their respective interests may appear. Any deductible under such policies shall not exceed One Hundred Fifty Thousand Dollars (\$ 150,000.00) per loss (provided however, that, in the case of demolition and debris removal coverage, USSSA shall carry coverage in not less than the full amount necessary to demolish the Additional Improvements and to remove all debris that may exist after the occurrence of any Insured Casualty Risks). The cost of any such Builder's All Risk Policies shall be considered a cost of the Additional Improvements.

**Section 5.2 Additional Policies Required by USSSA During the Agreement Term.**

Commencing on the Commencement Date, and at all times during the Agreement Term and continuing thereafter, USSSA shall, at its sole cost and expense, obtain, keep and maintain or cause to be obtained, kept and maintained, the following insurance policies:

**5.2.1. Commercial General Liability Policy.** USSSA shall provide a commercial general liability insurance policy ("USSSA's GL Policy"), written on an occurrence basis and limited to the Playing Fields Complex (or if not so limited, having a general aggregate limit that shall be site specific to the Playing Fields Complex ), naming USSSA as the named insured (with the effect that USSSA and its employees are covered) and the COUNTY as additional insureds, affording protection against liability arising out of personal injury, bodily injury and death and/or property damage occurring, in, upon or about the Playing Fields Complex or resulting from, or in connection with, the construction, use, operation or occupancy of the Playing Fields Complex and containing provisions for severability of interests. USSSA's GL Policy shall be written with limits of \$1,000,000 each occurrence and \$2,000,000 in the aggregate for bodily injury or death resulting there from and property damage; premises operations; and products completed hazard.

**5.2.2 Sexual Molestation Coverage.** Because USSSA's business involves the staging of playing events involving interaction with invitee playing teams comprised of adults or minors, USSSA shall also maintain a policy of Sexual Molestation Insurance with limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

**5.2.3 Workers' Compensation Policy.** USSSA shall provide a workers' compensation insurance policy and any and all other statutory forms of insurance now or hereafter prescribed by applicable law, providing statutory coverage under the laws of the State of Florida for all Persons

employed by USSSA in connection with the Playing Fields Complex and employers liability insurance policy (collectively, the "USSSA's Workers' Compensation Policy") affording protection of not less than One Million Dollars (\$1,000,000.00) for bodily injury by accident (each accident), not less than One Million Dollars (\$1,000,000.00) for bodily injury by disease (each employee) and not less than One Million Dollars (\$1,000,000.00) bodily injury by disease (policy limit).

**Section 5.3 INTENTIONALLY DELETED.**

**Section 5.4 Blanket or Master Policy.** Any one or more of the types of insurance coverages required in Section 5.1 (except for USSSA's GL Policy and the COUNTY's GL Policy, which shall have a general aggregate limit that shall be site-specific to the Playing Fields Complex) may be obtained, kept and maintained through a blanket or master policy which also insures other entities related to, associated or affiliated with USSSA, affiliates of USSSA, or any Manager thereof, provided that:

5.4.1 such blanket or master policy and the coverage effected thereby comply with all applicable requirements of this Agreement, and

5.4.2 the protection afforded under such blanket or master policy shall be no less than that which would have been afforded under a separate policy or policies relating only to the Playing Fields Complex. If any excess or umbrella liability insurance coverage required pursuant hereto is subject to an aggregate annual limit and is maintained through such blanket or master policy, and if such aggregate annual limit is impaired as a result of claims actually paid by more than fifty percent (50%), USSSA shall immediately give notice thereof to the COUNTY and, within ninety (90) days after discovery of such impairment, to the fullest extent reasonably possible, USSSA shall cause such limit to be restored by purchasing additional coverage.

**Section 5.5 Failure to Maintain Insurance.** If at any time and for any reason USSSA fails to provide, maintain, keep in force and effect, or deliver to the COUNTY, any of the insurance required under Section 5.1 and such failure continues for ten (10) days after notice thereof from the COUNTY to USSSA, the COUNTY may, but shall have no obligation to, procure single interest insurance for such risks covering USSSA (or, if no more expensive, the insurance required by this Agreement), and USSSA shall, within ten (10) days following the COUNTY's demand and notice, pay and reimburse the COUNTY.

**Section 5.6 Delivery of Evidence of Insurance.** With respect to each and every one of the insurance policies required to be obtained, kept or maintained under the terms of this Agreement, on or before the date on which each such policy is required to be first obtained and at least thirty (30) days before the expiration of any policy required hereunder previously obtained, USSSA shall deliver to the COUNTY evidence showing that such insurance is in full force and effect. Such evidence shall include certificates of insurance issued by a Responsible Officer of the issuer of such policies, or in the alternative, a Responsible Officer of an agent authorized to bind the named issuer, setting forth the name of the issuing company, the coverage, limits, deductibles, endorsements, term and termination provisions thereon. By no later than (a) thirty (30) days after the effective date of any insurance policy required under this Agreement, USSSA shall provide the COUNTY with reasonable evidence that premiums have either been paid or are payable in installments and (b) one hundred twenty (120) days after the effective date of any insurance policy required under this Agreement, USSSA shall provide the COUNTY with a copy of such insurance policy.

**Section 5.7 Proceeds of Insurance.** The Insurance Proceeds paid under any insurance policies required by Sections 5.1. and 5.2 shall be payable to:

5.7.1 Provided that no USSSA Default then exists, in the case of any particular insured Casualty resulting in damage involving a reasonably estimated cost equal to or less than Five Hundred Thousand Dollars (\$500,000.00) for which Insurance Proceeds are received by USSSA, USSSA shall be deemed to hold and expend such funds for repairs as trustee responsible for causing the damages to be repaired;

5.7.2 the COUNTY for deposit into an Insurance Fund designated for repair or restoration of material or structures covered by this Agreement, (a) in the case of any particular insured Casualty resulting in damage involving a reasonably estimated cost of repair in excess of Five Hundred Thousand Dollars (\$500,000.00) or (b) in the event a USSSA Default then exists, which Insurance Proceeds are to be held or disbursed for repair or replacement of the damaged material or structure; or

5.7.3 the COUNTY for deposit into the Insurance Fund with respect to (a) Insurance Proceeds for demolition and debris removal payable as a result of an insured Casualty that permits USSSA to terminate this Playing Fields Complex Agreement under the express provisions hereof and (b) Insurance Proceeds payable after any termination of this Agreement, provided that such Insurance Proceeds shall be disbursed for repair or restoration in accordance with the provisions of this Section.

In each of the circumstances described in the preceding subparagraphs 5.7.2 or 5.7.3 of this Section 5.7, the COUNTY shall (a) establish and maintain the Insurance Account for the sole purpose of serving as a segregated fund for the Insurance Proceeds (the "Insurance Fund") and (b) hold and disburse the Insurance Proceeds deposited into the Insurance Fund under this Playing Fields Complex Agreement, all in accordance with this Article 5. All funds in the Insurance Fund shall be held in escrow by COUNTY for application in accordance with the terms of this Playing Fields Complex Agreement and, upon USSSA request, COUNTY shall account to USSSA for the same.

### **Section 5.8 Indemnification.**

**Section 5.8.1 USSSA's Agreement to Indemnify.** USSSA shall, except as provided in Section 5.8.2, defend, protect, indemnify and hold COUNTY and its officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with any injury to or death of a Person or any damage to property (including loss of use) resulting from, arising out of or in connection with (a) USSSA's use or occupancy of the Playing Fields Complex on or after the Commencement Date or (b) the negligence or willful act of USSSA or USSSA's contractors, employees, officers, directors, agents, or invitees.

**5.8.2 USSSA's Exclusions.** Notwithstanding the provisions of Section 5.8.1, USSSA shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with: (a) any injury to or death of a Person or any damage to property (including loss of use) to the extent of the negligence or willful act of COUNTY, its employees, officers, directors, contractors, agents or invitees other than USSSA and USSSA invitees at USSSA scheduled or sponsored events; (b) COUNTY's violation of any provisions of this Playing Fields Complex Agreement or any applicable Governmental Rules or deed restriction or insurance policy, now or hereafter in effect and applicable to COUNTY; (c) the existence of any Hazardous Materials in, on or under the Playing Fields Complex prior to the Commencement Date, but the foregoing shall not apply to any Hazardous Materials that are introduced to the Playing Fields Complex by USSSA, or any of its employees, officers, directors, contractors, agents, or invitees; or (d)

any Environmental Event caused by COUNTY or any of its employees, officers, directors, contractors, agents or invitees.

**5.8.3 COUNTY's Agreement to Indemnify.** To the extent allowed by law, COUNTY shall, except as provided in Section 5.8.4, defend, protect, indemnify and hold USSSA and its officers, directors, employees, and agents harmless from and against any and all liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses), arising from or in connection with any injury to or death of a Person or any damage to property resulting from, arising out of or in connection with (a) COUNTY authorized use or occupancy of the Playing Fields Complex prior to the Commencement Date or (b) the negligence or willful act of COUNTY or COUNTY's contractors, employees, officers, directors, agents or invitees. *The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28.*

**5.8.4 COUNTY's Exclusions.** Notwithstanding the provisions of Section 5.8.3, COUNTY shall not be liable for any liabilities, damages, suits, claims and judgments of any nature (including, without limitation, reasonable attorneys' fees and expenses) arising from or in connection with (a) any injury to or death of a Person or any damage to property to the extent of the negligence or willful act of USSSA, its employees, officers, directors, contractors, agents, or invitees; (b) USSSA's violation of any provisions of this Playing Fields Complex Agreement or any applicable Governmental Rules or deed restriction or insurance policy, now or hereafter in effect and applicable to USSSA; (c) any Hazardous Materials that are introduced to the Playing Fields Complex by USSSA or its agents, employees, officers or contractors on or after the Commencement Date, but the foregoing shall not apply to any Hazardous Materials that are introduced to the Playing Fields Complex by COUNTY, or any of its employees or officers directors, contractors, agents or invitees; or (d) any Environmental Event caused by USSSA or any of its employees, officers, or directors, contractors, agents, or invitees.

**5.8.5 Survival.** The indemnities contained in this Section 5.8 shall survive the expiration or earlier termination of this Playing Fields Complex Agreement, but only insofar as such indemnities relate to any liabilities, damages, suits, claims or judgements that arose prior to the expiration or earlier termination of this Playing Fields Complex Agreement.

## **ARTICLE 6 OWNERSHIP OF PLAYING FIELDS COMPLEX; ACCESS**

### **Section 6.1 Title to the Playing Fields Complex.**

**6.1.1 Ownership.** Title to the Playing Fields Complex including artificial turf improvements shall be and remain in COUNTY, but COUNTY's rights and powers are all subject to the terms and conditions of this Agreement. All removable trade fixtures, equipment (including field maintenance equipment), and other personal Property installed and used in the maintenance of the Playing Fields Complex by or on behalf of USSSA throughout the Agreement Term shall be and remain the property of USSSA at all times and shall not be considered part of the Playing Fields Complex except for the following items and all repairs to and replacements of, and substitutions therefor: (a) the Playing Fields Complex and any other improvements from time to time located on the Playing Fields Complex, as well as all fixtures attached thereto; and (b) the FF&E installed, affixed, attached or supplied by COUNTY at the time of the Commencement Date or during the Agreement Term.

## **ARTICLE 7 ASSIGNMENT**

**Section 7.1 Assignments of USSSA's Interest.** Except as otherwise permitted by this Article 7, USSSA may not (and USSSA agrees that it will not), voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation), sell, assign, or transfer its rights or obligations under this Agreement (hereafter sometimes referred to as a "Transfer"), without first obtaining the consent of COUNTY pursuant to this Article 7, which consent shall not be unreasonably withheld, delayed or conditioned provided the assignee or successor in interest is another not-for-profit sports organization. For purposes of this Agreement, the term "Transfer" shall also include any issuance or transfer of any securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of USSSA or any transfer of an equity or beneficial interest in USSSA that results in either (a) a change of the Controlling Person, if any, of USSSA, or (b) the creation of a Controlling Person of USSSA, where none existed before. Notwithstanding the foregoing, USSSA may assign this Agreement to a limited liability company owned by USSSA, provided that, in consideration of the terms and conditions of this Agreement, USSSA shall guaranty performance of this Agreement in the event of such an assignment.

## **Article 8 Default and Remedies**

### **Section 8.1 Events of Default.**

**8.1.1 USSSA Default.** The occurrence of any of the following shall be an "Event of Default" by USSSA or a "USSSA Default":

(a) The failure of USSSA to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement on USSSA's part to be kept, performed or observed if: (i) such failure is not remedied by USSSA within thirty (30) days after notice from COUNTY or VIERA COMPANY of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, USSSA fails to commence to cure such default within thirty (30) days after notice from COUNTY or VIERA COMPANY of such default or USSSA fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith. It is the intent of this subparagraph that, in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which USSSA is required to cure such default shall be extended for such additional period as may be reasonably necessary for the curing thereof with due diligence and in good faith; provided further, however, that if such default is not cured within ninety (90) days after notice from COUNTY or VIERA COMPANY of such default (notwithstanding USSSA's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default or a USSSA Default under this Playing Fields Complex Agreement;

(b) the (i) filing by USSSA of a voluntary petition in bankruptcy; or (ii) adjudication of USSSA as a bankrupt; or (iii) the filing of any petition or other pleading in any action seeking reorganization, rearrangement, adjustment, or composition of, or in respect of USSSA under the United States Bankruptcy Code or any other similar state or federal law dealing with creditors' rights generally, unless within sixty (60) days after such filing such proceeding is discharged; or (iv) appointment of a receiver, trustee or other similar official of USSSA or its Property;

(c) the failure of USSSA to perform an Insurance Covenant if such failure is not remedied within five (5) days after COUNTY gives notice to USSSA of such failure;

(d) any material representation or warranty confirmed or made in this Agreement by USSSA shall be found to have been incorrect in any material respect when made or deemed to have been made.

**8.1.2 COUNTY Default.** The occurrence of the following shall be an "Event of Default" by COUNTY or a "COUNTY Default":

(a) The failure of COUNTY to pay any of its monetary obligations, if any, under this Agreement when due and payable if such failure continues for fifteen (15) Business Days after USSSA gives notice to COUNTY that such amount was not paid when due;

(b) Any material representation or warranty confirmed or made in this Agreement by COUNTY shall be found to have been incorrect in any material respect when made or deemed to have been made;

(c) The failure of COUNTY to keep, observe or perform any of the terms, covenants or agreements contained in this Agreement on the COUNTY's part to be kept, performed or observed if: (i) such failure is not remedied by COUNTY within thirty (30) days after notice from USSSA of such default or (ii) in the case of any such default which cannot with due diligence and good faith be cured within thirty (30) days, COUNTY fails to commence to cure such default within thirty (30) days after notice from USSSA of such default or COUNTY fails to prosecute diligently the cure of such default to completion within such additional period as may be reasonably required to cure such default with diligence and in good faith; it being intended that in connection with any such default which is not susceptible of being cured with due diligence and in good faith within thirty (30) days, the time within which COUNTY is required to cure such default shall be extended for such additional period as may be necessary for the curing thereof with due diligence and in good faith; provided further, however, that if such default is not cured within ninety (90) days after notice from USSSA of such default (notwithstanding COUNTY's diligent prosecution of curative efforts), then such failure shall constitute an Event of Default under this Agreement.

**Section 8.2 COUNTY's and VIERA COMPANY'S Remedies.** Upon the occurrence of any USSSA Default, COUNTY or VIERA COMPANY may, in its sole discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement:

8.2.1 COUNTY or VIERA COMPANY may terminate this Agreement pursuant to this Section 8.

8.2.2 COUNTY may terminate USSSA's right of occupancy of all or any part of the Playing Fields Complex and reenter the Playing Fields Complex, without demand or notice of any kind to USSSA and without terminating this Agreement. USSSA shall be liable for and shall pay to COUNTY (a) the cost of removing and storing any of USSSA's or any other occupant's property left on the Playing Fields Complex after reentry, (c) the cost of any increase in insurance premiums caused by the termination of this Agreement and (e) any other sum of money or damages owed by USSSA to COUNTY at law, in equity or hereunder.

**Section 8.3 USSSA's Remedies.** Upon the occurrence of any COUNTY Default, USSSA may, at its sole discretion, have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided in this Agreement:

8.3.1 USSSA may terminate this Agreement pursuant to Section 8.4; and

8.3.2 USSSA may exercise any and all other remedies available to USSSA at law or in equity, but subject to any limitations thereon set forth in this Agreement.

**Section 8.4 Termination.** Upon the occurrence of a USSSA Default as described in Section 8.1.1 or a COUNTY Default as described in Section 8.1.2, the non-defaulting Parties, in addition to its other

remedies at law or in equity, shall have the right to give to the defaulting Party notice (a "Final Notice") of such non-defaulting Party's intention to terminate this Agreement after the expiration of a period of thirty (30) days from the date such Final Notice is delivered unless the Event of Default is cured, and upon expiration of such thirty (30) day period, if the Event of Default is not cured, this Agreement shall terminate without liability to the non-defaulting Parties. If, however, within such thirty (30) day period the defaulting Party cures such Event of Default, then this Agreement shall not terminate by reason of such Final Notice. Notwithstanding the foregoing, in the event there is an Action or Proceeding pending or commenced between the Parties with respect to the particular Event of Default covered by such Final Notice, the foregoing thirty (30) day period shall be tolled until a final non-appealable judgement or award, as the case may be, is entered with respect to such Action or Proceeding.

**Section 8.5 NO INDIRECT DAMAGES.**

**IN NO EVENT SHALL COUNTY, VIERA COMPANY, OR USSSA BE LIABLE UNDER ANY PROVISION OF THIS AGREEMENT FOR LOST PROFITS, INCLUDING LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM THE SOLE OR CONCURRENT NEGLIGENCE OF COUNTY, VIERA COMPANY, OR USSSA OR ANY OF THEIR AFFILIATES OR RELATED PARTIES. WITHOUT LIMITING THE FOREGOING, THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS OF COUNTY, VIERA COMPANY OR USSSA ARISING OUT OF THIRD PARTY CLAIMS AGAINST COUNTY, VIERA COMPANY OR USSSA FOR ANY OF THE FOREGOING.**

**ARTICLE 9  
DISPUTE RESOLUTION**

**Section 9.1 Settlement By Mutual Agreement.** In the event any dispute, controversy or claim between or among the Parties arises under this Agreement or is connected with or related in any way to this Agreement or any right, duty or obligation arising herefrom or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the effectiveness, validity, interpretation, implementation, termination, cancellation or enforcement of this Agreement, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this Section 9.1. In the event a Dispute or Controversy arises, each Party shall have the right to notify the other Parties that it has elected to implement the procedures set forth in this Section 9.1. Within fifteen (15) days after delivery of any such notice by one Party to the other Parties regarding a Dispute or Controversy, the representatives of each Party shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the representatives of the Parties for such purpose or should no such meeting take place within such fifteen (15) day period, then either Party may by notice to the other Parties submit the Dispute or Controversy to mediation in accordance with Section 9.1.1. Upon the receipt of notice of referral to mediation hereunder, the receiving Party shall be compelled to mediate the Dispute or Controversy in accordance with the terms of this Article 9 without regard to the justiciable character or executory nature of such Dispute or Controversy.

**Section 9.1.1 Mediation.** In the event of a Dispute or Controversy that cannot be resolved by the Parties, the Parties shall select a mediator satisfactory to all Parties and submit the Dispute or Controversy to mediation. If no resolution is reached at mediation, either Party may initiate legal action, if available, at their discretion.

**ARTICLE 10**  
**MISCELLANEOUS PROVISIONS**

**Section 10.1 Relationship of the Parties.** The relationship of each Party under this Agreement is that of independent parties, each acting in its own best interests and notwithstanding anything in this Agreement to the contrary, no partnership, joint venture or other business relationship is established or intended hereby among the Parties.

**Section 10.3 Representations Regarding Individual Capacity.**

**10.3.1 Power and Authority.** Each individual executing and delivering this Agreement on behalf of a Party hereto hereby represents to the other Party hereto that such individual has all requisite power and authority to execute and deliver the same and to bind such Party hereunder.

**10.3.2 USSSA's Representations.** As an inducement to COUNTY and VIERA COMPANY to enter into this Agreement, USSSA hereby represents and warrants to COUNTY and VIERA COMPANY, as of the Commencement Date, as follows:

(a) United States Specialty Sports Association Inc. is a tax exempt not for profit corporation duly formed, validly existing and in good standing under the laws of the State of Florida, with all necessary corporate power and authority to carry on its present business, to enter into this Agreement and to consummate the transactions herein contemplated.

(b) USSSA, LLC, is a Florida limited liability company duly formed, validly existing and in good standing under the laws of the State of Florida, with all necessary corporate power and authority to carry on its present business, to enter into this Agreement and to consummate the transactions herein contemplated.

(c) Neither the execution and delivery of this Agreement by USSSA nor the performance by USSSA of its obligations hereunder will (i) violate any statute, regulation, rule, judgment, order, decree, stipulation, injunction, charge, or other restriction of any Governmental Authority, or court to which USSSA is subject or any provision of the charter or bylaws of USSSA or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any contract, agreement, license, sublicense, franchise, permit, indenture, agreement or mortgage for borrowed money, instrument of indebtedness, security interest, or other agreement to which USSSA is a party or by which USSSA or its assets are bound.

(d) All proceedings required to be taken by or on behalf of USSSA to authorize USSSA to execute and deliver this Agreement and to perform the covenants, obligations and agreements of USSSA hereunder have been duly taken. No consent to the execution and delivery of this Agreement by USSSA or the performance by USSSA of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been unconditionally given.

(e) This Agreement constitutes the valid and legally binding obligation of USSSA, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(f) To the best knowledge of USSSA, there is no action, suit, claim, proceeding or investigation pending or currently threatened against USSSA that questions the validity of this Agreement or the

transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs, or prospects of USSSA, financially or otherwise.

(g) That the public will continue to be allowed to utilize the Playing Fields Complex for such reasonable recreational purposes in all areas of the Playing Fields Complex where such public use does not conflict with USSSA events or community youth sports organization events as scheduled by the COUNTY.

**10.3.3 COUNTY's Representations.** As an inducement to USSSA to enter into this Agreement, COUNTY represents and warrants to USSSA, as of the Commencement Date, as follows:

(a) COUNTY is a political subdivision of the State of Florida with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. The execution and delivery hereof and the performance by COUNTY of its obligations hereunder will not violate or constitute an event of default under any material terms or material provisions of any agreement, document, instrument, judgment, order or decree to which COUNTY is a party or by which COUNTY or its assets are bound.

(b) COUNTY has caused all governmental proceedings required to be taken by or on behalf of COUNTY to authorize COUNTY to make and deliver this Agreement and to perform the covenants, obligations and agreements of COUNTY hereunder. No consent to the execution or delivery of this Agreement by COUNTY or the performance by COUNTY of its covenants, obligations and agreements hereunder is required from any board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority or other Person, other than any such consent which already has been unconditionally given.

(c) This Agreement constitutes the valid and legally binding obligation of the COUNTY, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity.

(d) To the best knowledge of the COUNTY, there is no action, suit, claim, proceeding or investigation pending or currently threatened against the COUNTY that questions the validity of this Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material adverse effect on the assets, conditions, affairs, or prospects of the COUNTY, financially or otherwise.

(e) That, for the portion of the Playing Fields Complex owned by Brevard County in fee simple, no ad valorem taxes will be assessed upon or due for such property.

(f) That the public will continue to be allowed to utilize the Playing Fields Complex for such reasonable recreational purposes in all areas of the Viera Regional Park where such public use does not conflict with USSSA events or community youth sports organization events scheduled by the COUNTY.

**Section 10.4 Notices.** All notices, consents, directions, approvals, instructions, requests and other communications given to a Party under this Agreement shall be given in writing to such Party at the addresses set forth below:

Notices to USSSA:

**United States Specialty Sports Association, Inc.  
5800 Stadium Pkwy  
Melbourne, FL 32940Attn.:  
Don DeDonatis III, President**

EMAIL: Donny.dedonatis@usssa.com

**With a copy to:**

**David H. Evaul**  
**2800 Dallas PKWY**  
**Suite 100**  
**Plano, TX 75093**  
**EMAIL: DHE300@UNIVESCO.COM**

Notices to COUNTY:

**Frank Abbate, County Manager, or any successor County Manager**  
**2725 Judge Fran Jamieson Way**  
**Melbourne, FL 32940**  
**Email: frank.abbate@brevardfl.gov**

Notices to VIERA COMPANY:

**The Viera Company**  
**7380 Murrell Road, Suite 201**  
**Melbourne, FL 32940**  
**Attn: Todd J. Pokrywa, Sr. Vice President**  
**Email: [todd.pokrywa@duda.com](mailto:todd.pokrywa@duda.com) and [vieralegal@duda.com](mailto:vieralegal@duda.com)**

Such notices shall be delivered in writing to the other Party to this Agreement and may be (i) sent by registered or certified U.S. Mail with return receipt requested, (ii) delivered personally (including delivery by private courier services) or (iii) sent by telecopy or email (with confirmation of delivery of such notice) to the Party entitled thereto. Such notices shall be deemed to be duly given or made (i) three (3) Business Days after posting if mailed as provided, (ii) when delivered by hand unless such day is not a Business Day, in which case such delivery shall be deemed to be made as of the next succeeding Business Day or (iii) in the case of telecopy or email (with confirmation of delivery of such notice), when sent, so long as it was received during normal Business Hours of the receiving Party on a Business Day and otherwise such delivery shall be deemed to be made as of the next succeeding Business Day.

**Section 10.5 Severability.** If any term or provision of this Agreement, or the application thereof to any Person or circumstances, shall to any extent be invalid or unenforceable in any jurisdiction, as to such jurisdiction, the remainder of this Agreement, or the application of such term or provision to the Persons or circumstances other than those as to which such term or provision is held invalid or unenforceable in such jurisdiction, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Parties to this Agreement hereby waive any provision of law that renders any provision thereof prohibited or unenforceable in any respect.

**Section 10.6 Entire Agreement, Amendment and Waiver.** This Agreement constitute the entire agreement of the Parties thereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter, provided, however, if any terms of the body of this Agreement conflict with the terms of Addendum A, the terms of Addendum A

shall control. Neither this Agreement nor any of the terms hereof, including, without limitation, this Section 10.6, may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

**Section 10.7 Incorporation of Exhibits.** All exhibits attached to this Agreement are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

**Section 10.8 Parties in Interest; Limitation on Rights of Others.** The terms of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided therein) any legal or equitable right, remedy or claim under or in respect of such instrument or any covenants, conditions or provisions contained therein or any standing or authority to enforce the terms and provisions of such instrument. Notwithstanding the foregoing, the COUNTY OR VIERA COMPANY shall be entitled to enforce the obligations of USSSA under this Agreement in the event a USSSA Default occurs and remains uncured.

**Section 10.9 Governing Law.** The provisions and obligations set forth in this Agreement shall be construed under and be governed by the laws of the State of Florida.

**Section 10.10 Attorneys' Fees.** In the event of any litigation, including appellate proceedings, or any mediation, arbitration or administrative Action or Proceeding arising out of this Agreement, each party shall bear the expense of its own attorneys, expert witnesses and its own costs, including court costs. This provision is separate and several and shall survive the expiration or earlier termination of this Agreement or the merger of this Agreement into any other instrument.

**Section 10:11 Public Records. IF THE USSSA OR VIERA COMPANY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO USSSA'S OR VIERA COMPANY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE COUNTY ATTORNEY'S OFFICE, 321-633-2090, [cathy.cummings@brevardfl.gov](mailto:cathy.cummings@brevardfl.gov); 2725 JUDGE FRAN JAMIESON WAY, MELBOURNE, FL. 32940**

**10.11.1 Compliance.** The USSSA and VIERA COMPANY must comply with public records laws, specifically to:

- (a) Keep and maintain any public records relating to this Agreement;
- (b) Upon request from the County's custodian of public records, USSSA or VIERA COMPANY shall provide the County with a copy of requested public records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Florida Statutes or as otherwise provided by law;
- (c) Neither USSSA nor TVC shall disclose exempt or confidential records that are exempt under the public records law for the duration of the Agreement term, unless disclosure is authorized by law and such records have not been transferred to the County.
- (d) Upon the expiration or termination of this Agreement, USSSA or TVC shall either transfer to the County, at no cost, all public records in possession of USSSA or shall keep and maintain public records relating to this Agreement. If the USSSA or TVC keeps and maintains public records upon completion of the contract, the USSSA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request

from the County's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**10.11.2. REQUEST FOR RECORDS; NONCOMPLIANCE.—**

(a) By law, a request to inspect or copy public records relating to this Agreement must be made directly to the public agency. If the County does not possess the requested records, the County must immediately notify USSSA or VIERA COMPANY of the request, and USSSA or TVC must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

(b) If a USSSA or VIERA COMPANY does not comply with the County's request for records, the public agency may enforce the foregoing provisions in this Section 10 by injunction or action for specific enforcement.

(c) If USSSA or VIERA COMPANY fails to provide the public records to the public agency within a reasonable time the noncompliant party may be subject to penalties under s. 119.10, Florida Statutes. In addition, should a court with jurisdiction determine that USSSA has not complied with the Public Records law or the terms of this Section 10, USSSA shall be liable for all attorneys' fees and costs incurred in the judicial proceeding giving rise to that court determination.

**Section 11. Company Consent/Viera Company and County Acknowledgment.** VIERA COMPANY is joining in the execution of this Agreement solely on the basis of its interest as holder of the Deed Restrictions and its desire to assure that the Deed Restrictions are complied with. By executing this Agreement through its duly designated officer; VIERA COMPANY hereby acknowledges its consent to and approval of the terms of this Agreement and affirms that so long as USSSA uses the Playing Fields Complex in accordance with the terms of this Agreement, including, without limitation, obtaining all required approvals for plans and specifications from COUNTY and/or VIERA COMPANY set forth in this Agreement, such use of the Playing Fields Complex shall be in compliance with the Deed Restrictions. By executing this Agreement, VIERA COMPANY does not waive any right under the TVC Deed or otherwise to enforce the Deed Restrictions to the extent that USSSA's use of the Playing Fields Complex is not in compliance with the terms of this Agreement.

VIERA COMPANY and COUNTY also acknowledge that under Condition 103 of Article III of that certain Fully Amended and Restated Development Order for Viera Development of Regional Impact dated October 10, 2017 and approved by COUNTY pursuant to COUNTY Resolution 17-205 (as may be amended from time to time, the "Amended Development Order"), VIERA COMPANY is required to provide no less than 307 acres of parks within the Viera Development of Regional Impact (the "DRI") west of Interstate 95, and as of the date of the Amended Development Order, VIERA COMPANY had provided 161.7 acres of parks west of Interstate 95, which included VIERA COMPANY'S conveyance of the Playing Fields to COUNTY pursuant to the TVC Deed. VIERA COMPANY and COUNTY hereby acknowledge and agree that the intended use of the Playing Fields Complex by USSSA in accordance with the terms of this Agreement shall not negate the COUNTY'S acceptance of VIERA COMPANY'S conveyance of the Playing Fields pursuant to the TVC Deed as a donation of parks pursuant to the Amended Development Order.

**Section 12. Mitigation of Traffic Impacts Related to Use of Playing Facilities.** The Parties acknowledge that during the Agreement Term, VIERA COMPANY has no responsibility for maintaining the parking areas serving the Playing Fields Complex. COUNTY, USSSA, and VIERA COMPANY, acknowledge and agree that during the Agreement Term, neither VIERA COMPANY, as master developer under the Amended Development Order, nor any affiliate or the corporate parent of VIERA COMPANY shall be responsible for mitigating any adverse impacts to the public or private roadway network or parking lots serving the Playing Fields Complex or any other public or private roadways

within the DRI, or any adverse impact to the service levels adopted by COUNTY for roadways within such network, due to traffic volumes attributable to the Permitted Uses or other actions at the Playing Fields Complex during the Agreement Term in connection with this Agreement or otherwise. Therefore, subsequent to the commencement of the Agreement Term on the Commencement Date, and notwithstanding any contrary provision in the Amended Development Order (including any subsequent amendments thereto) or any other document relating to the DRI, traffic volumes attributable to the Permitted Uses or other actions at the Playing Fields Complex during the Agreement Term in connection with this Agreement or otherwise shall be excluded from all "Level of Service" analyses and any traffic impact assessment results for the DRI, and shall not be considered in determining the traffic mitigation or the proportionate share payment required for any phase or sub-phase of the DRI.

**Section 13. Counterparts.** This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Playing Fields Complex Agreement. All signatures need not be on the same counterpart.

**WHEREFORE**, the Parties have set their hands and seals this 22 day of March, 2018.

**USSSA, LLC**

**BREVARD COUNTY**

BY: [Signature]  
CEO of UNITED STATES SPECIALTY  
SPORTS ASSOCIATION INC., its Manager  
(2018)

BY: [Signature]  
Chairman  
(as approved by the Board on 3-20-18)

DATE: 3-22, 2018

DATE: 3-22-18, 2018

ATTEST: [Signature], Scott Ellis, Clerk to the Board

**THE VIERA COMPANY**

BY: [Signature]  
Todd J. Pokrywa, Sr. Vice President

DATE: March 22, 2018

**APPENDIX A  
TO  
PLAYING FIELDS COMPLEX AGREEMENT**

**GLOSSARY OF DEFINED TERMS**

“Amended and Restated Development Order” shall have the meaning given to it in Section 10 of the Playing Field Complex Agreement, and as may be amended from time to time.

"Agreement" means the Playing Fields Complex Use and Maintenance Agreement dated as of the Effective Date by and between COUNTY, USSSA, LLC and VIERA COMPANY as the same may be amended, supplemented, modified, renewed or extended from time to time with the consent of COUNTY, USSSA and VIERA COMPANY.

"Builder's All Risk Policies" shall have the meaning given to it in Section 5 of the Playing Fields Complex Agreement.

"Business Day" shall mean a day of the year that is not a Saturday, Sunday or Legal Holiday.

"Business Hours" means 9:00 a.m. through 5:00 p.m. (EST) on Business Days.

“County” means Brevard County, a political subdivision of the State of Florida.

"COUNTY Default" shall have the meaning given to it in Section 10 of this Agreement.

"COUNTY Representative" shall mean the County Manager or his/her designee.

"COUNTY's GL Policy" shall have the meaning given to it in Section 5 of this Agreement.

"COUNTY's Remedial Work" shall have the meaning given to it in Section 4.7 of this Agreement.

“Deed Restrictions” shall mean the restrictions upon the use of the Playing Fields Complex (along with other property in the Viera Regional Park not a part of the Playing Fields Complex) imposed by VIERA COMPANY in the TVC Deed, which, among other things, require that the use of the Playing Fields Complex be “limited and restricted to the development, construction and operation of a public regional park thereon, together with associated improvements, facilities, and uses directly relating thereto.”

"Demolition" means to raze the improvements that are part of the Playing Fields Complex (or relevant portion of such improvements), remove any rubble or debris resulting therefrom, and cause the Playing Fields Complex to be returned to a safe condition.

"Environmental Event" means (i) the spill, discharge, leakage, pumping, drainage, pouring, interment, emission, emptying, injecting, escaping, dumping, disposing, or migration of any kind of Hazardous Materials which causes a threat or actual injury to human health, the environment, plant or animal life, (ii) the occurrence of any Actions or Proceedings pursuant to any Environmental Laws arising out of any of the foregoing and (iii) any claims, demands, actions, causes of actions, remedial and/or abatement response, remedial investigations, feasibility studies, environmental studies, damages, judgments or settlements arising out of any of the foregoing.

"Equipment Agreements" means such Agreements as COUNTY may enter into prior to the Commencement Date.

"Event of Default" shall have the meaning given to it in Section 10.1 of this Agreement.

"FF&E" shall mean all furniture, fixtures, equipment, furnishings, machinery, and all other components and personal property owned by, or Agreement to, COUNTY that is from time to time located on the Playing Fields Complex, together with all additions, alterations and replacements thereof, (whether replaced by either Party) but excluding any personal property owned by USSSA or any of its Space USSSAs, licensees or invitees that may from time to time be brought onto the Playing Fields Complex or the improvements located thereon. FF&E shall include, but not be limited to, all furniture, fixtures, equipment, furnishings, machinery, displays, signage, scoreboards and other personal property installed, affixed, attached or supplied to the Playing Fields Complex by and any additions, changes or alterations thereto or replacements or substitutions therefore.

"Final Notice" shall have the meaning given to it in Section 8 of this Agreement.

"Force Majeure" means the occurrence of any of the following, for the period of time, if any, that the performance of a Party's material obligations under this Agreement is actually, materially, and reasonably delayed or prevented there by acts of God, lock-outs, acts of the public enemy, the confiscation or seizure by any government or public authority), insurrections, wars or war-like action (whether actual and pending or expected), arrests or other restraints of government (civil or military) blockades, embargoes, strikes, labor unrest or disputes, unavailability of labor or materials, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, wash-outs, explosions, civil disturbance or disobedience, riot, sabotage, terrorism, threats of sabotage or terrorism or any other cause, whether of the kind herein enumerated or otherwise, that is not within the reasonable anticipation or control of the Party claiming the right to delay performance on account of such occurrence and which, in any event, is not a result of the intentional act, negligence or willful misconduct of the Party claiming the right to delay performance on account of such occurrence.

"GL Policy" shall mean General Liability Policy.

"Governmental Authority" means any federal, state, local or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented under Governmental Rule or by agreement of the Parties with an interest in such dispute. For purposes of the use of this term, the COUNTY shall not be considered a Governmental Authority.

"Governmental Rule" means any statute, law, treaty, rule, code, ordinance, regulation, permit, interpretation, certificate or order of any Governmental Authority, or any judgment, decision, decree, injunction, writ, order or like action of any court, arbitrator or other Governmental Authority.

"Hazardous Materials" means (i) any substance, emission or material including, but not limited to, asbestos, now or hereafter defined as, listed as or specified in a Governmental Rule as a "regulated substance", "hazardous substance", "toxic substance", "pesticide", "hazardous waste", "hazardous material" or any similar or like classification or categorization under any Environmental Law including by reason of ignitability, corrosivity, reactivity, carcinogenicity or reproductive or other toxicity of any kind, (ii) any products or substances containing petroleum, asbestos, or polychlorinated biphenyls or (iii) any substance, emission or material determined to be hazardous or harmful.

"Improvements" shall have the meaning given to such term in Section 1 of the Agreement.

"Insurance Covenant" means all the covenants and agreements of USSSA with respect to insurance policies and coverages to be maintained by USSSA pursuant to and in accordance with Article 5 of this Agreement.

"Insurance Fund" shall have the meaning given to in Section 5 of this Agreement.

"Insured Casualty Risks" means physical loss or damage from fire, acts of God, flooding, earth movement (including, but not limited to, earthquake, landslide, subsidence and volcanic eruption), collapse, water damage, leakage from fire protection equipment or sprinkler systems, explosion (except steam boiler explosion), smoke, aircraft (including objects falling therefrom), motor vehicles, riot, riot attending a strike, civil commotion, sabotage, terrorism, vandalism, malicious mischief, theft, civil or military authority and all other perils (including resultant loss or damage arising from faulty materials, workmanship or design) except to the extent insurance against such perils is from time to time not available on commercially reasonable terms in Orlando, Florida.

"Insured Materials and Equipment" means all materials intended for incorporation into the Playing Fields Complex, whether stored on-site or off-site.

"Lien" means, with respect to any Property, any mortgage, lien, pledge, charge or security interest and with respect to the Playing Fields Complex, the term Lien shall also include any liens for taxes or assessments, builder, mechanic, warehouseman, materialman, contractor, workman, repairman or carrier lien or other similar liens, including, but not limited to, Mechanic's Liens and claims.

"Maintain" and "Maintenance" means all work (including all labor, supplies, materials and equipment) which is of a routine, regular, and predictable nature and reasonably necessary for Playing Fields surfaces, facilities, fixtures, equipment, or any other component of the Playing Fields Complex including Additional Improvements in order to preserve such items in clean and serviceable condition. Maintenance shall include, but not be limited to, the following: (i) preventative or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (ii) touch up painting; (iii) cleaning prior to, during and following all games and other events held at the Playing Fields Complex; (iv) grounds keeping and maintenance of the surface of the Playing Fields, including vacuuming or cleaning of synthetic fields and, where necessary, re-marking lines; (v) the labor required to perform repairs to the extent that such labor is performed by regular, on-site personnel acting in accordance with the standard duties for which such on-site personnel are regularly employed; and (vi) any other work of a routine, regular and generally predictable nature that is reasonably necessary to keep the Playing Fields Complex or Additional Improvements in a first class condition.

"Maintenance and Warranty Contracts" means the documents and subcontracts inuring to the benefit of the COUNTY for the construction, supply or installation of buildings, equipment, systems or FF&E relating to the Playing Fields Complex or the use of the Playing Fields Complex, including any roof warranties.

"Parties" shall have the meaning given to it in the first paragraph of this Agreement.

"Permitted Uses" shall have the meaning given to in Section 3.1 of this Agreement.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

"Playing Fields" shall mean the seven playing fields and related areas within the Playing Fields Complex designed for the playing of field sports including the synthetic turf, and all drainage and irrigation systems located upon or used for maintenance of the synthetic turf fields, as more particularly described in Exhibit "A" attached to this Agreement and incorporated herein by this reference.

"Playing Fields Complex " has the meaning set forth in Section 1.1 and any reference to the "Playing Fields Complex " shall include any part or portion thereof unless the context otherwise requires.

"Potential USSSA Default" includes either (i) any then-existing uncured breach by USSSA which, but for the passage of time (with or without notice thereof from COUNTY, if applicable), would constitute a USSSA Default under this Agreement or (ii) the then existence of any of the following: (i) the making by USSSA of any general assignment for the benefit of creditors until such assignment is rescinded; (ii) the filing by USSSA or against USSSA of a petition or proceeding to have USSSA adjudged a bankrupt or of a petition or proceeding for reorganization or arrangement under any law relating to bankruptcy until the same is dismissed; (iii) the appointment of a trustee or receiver to take possession of USSSA assets including this Agreement; (iv) or the attachment, execution or other judicial seizure of substantially all of USSSA Stadium Complex leasehold or USSSA personal property until such seizure is discharged.

"Primary Term" shall have the meaning given to it in Section 2.1 of this Agreement.

"Prohibited Uses" shall have the meaning given to it in Section 3.2 of this Agreement .

"Renewal Term" shall have the meaning given to it in Section 2.2 of this Agreement.

"Responsible Officer" means with respect to the subject matter of any certificate, representation or warranty of any Person contained in this Agreement, a vice president or higher corporate officer of such Person and, in the case of a partnership, an individual who is a general partner of such Person or such an officer of a general partner of such Person) who, in the normal performance of his operational responsibility, would have knowledge of such matter and the requirements with respect thereto.

"TVC Deed" shall mean that certain Special Warranty Deed from VIERA COMPANY to COUNTY dated May 10, 2007 and recorded on May 15, 2007 in Official Records Book 5778, Page 5333, of the Public Records of Brevard County, Florida, a copy of which is attached as Exhibit "C."

USSSA" shall have the meaning given to it in the first paragraph of this Agreement or any successor in interest or assignee pursuant to the requirements of Article 14 of this Agreement.

"USSSA Default" shall have the meaning given to it in Section 8.1.1 of this Agreement.

"USSSA's GL Policy" shall have the meaning given to it in Section 5.2.1 of this Agreement.

"USSSA's Remedial Work" shall have the meaning give to such term in Section 4.6 of the Agreement  
"Warranty Claim" shall have the meaning given it in Section 4.8 of this Agreement.

## **ADDENDUM A TO PLAYING FIELDS COMPLEX USE AND MAINTENANCE AGREEMENT**

The following agreements, terms, and conditions are deemed additional consideration for the Playing Fields Complex Use and Maintenance Agreement entered into by the COUNTY, USSSA and VIERA COMPANY (the "Agreement"), and all capitalized terms not defined below shall have the meaning given to such term in the Agreement:

1. USSSA shall restrict utilization of the Playing Fields for games and practice to the hours between 8:00AM and 11:00PM.
2. USSSA shall be responsible for providing all reasonable security and safety protocols and personnel required to operate all USSSA amateur athletic sports tournaments and other USSSA sponsored events utilizing the Playing Fields Complex.
3. At all times during the Agreement Term, USSSA and its invitees shall be responsible for abiding by all noise, lighting and other applicable ordinances, laws and restrictions on uses of the land comprising the Playing Fields Complex.
4. No building, fixture or other structure shall be placed or constructed on the Playing Fields Complex without the written consent or approval of the COUNTY and VIERA COMPANY in accordance with the requirements of the Agreement. The COUNTY and VIERA COMPANY agree that such approval will not be unreasonably withheld,
5. The COUNTY and VIERA COMPANY shall each respectively not be responsible for any financial losses, economic losses or damages to USSSA that are not caused by the respective actions of COUNTY or its agents, or by the respective actions of VIERA COMPANY or its agents. During the Agreement Term, USSSA agrees to provide notice of any potential claim arising out of an injury or use of the Playing Fields Complex to the COUNTY and VIERA COMPANY within five (5) business days of USSSA's receiving notice of such a claim or injury.
6. USSSA agrees to provide background checks on all employees of USSSA who are reasonably expected to come into contact with minors who will be using the Playing Fields Complex during events sponsored or scheduled by USSSA. USSSA further agrees that any employee with criminal record involving a conviction for abuse or molestation of a child will be prohibited from participating in any company function or capacity on the Playing Fields Complex where that employee will be acting within the scope of his or her employment as an employee of USSSA.



FIELD RENDERING  
SCALE: 1:1.5

COLOR  
RENDERING

VIERA REGIONAL PARK  
MELBOURNE

tabbles®  
**EXHIBIT**  
A






**BREVARD COUNTY PARKS & RECREATION**

**2725 Judge Fran Jamieson Way  
Vienna FL 32940**

2015 Aerial



**EXHIBIT**  
    B



# VIERA REGIONAL PARK

# FIELD IMPROVEMENTS





The first name in turf...and all that's artificial

February 20, 2018

Project: Viera Regional Park  
Location: Melbourne, FL  
Scope of Work: Synthetic Base & Turf

AstroTurf Corporation appreciates the opportunity to provide you with a proposal to construct a new synthetic turf field complex at Viera Regional Park in Melbourne, Florida.

AstroTurf Corporation proposes the following scope of work:

#### Sitework

- Provide and install silt fence and inlet protection
- Provide and install construction entrance into field areas
- Excavate field areas with on-site disposal (strip organics only and build fields up)
- Demo and dispose of (1) set of field goal posts
- Surveying will be provided for construction layout purposes only

#### Drainage Base Construction

- ASBA Certified Field Builder on staff
- Grade subgrade utilizing laser guided equipment
- Provide and install 6" x 12" concrete curb with nailer board for turf attachment
- Provide and install 10" perforated HDPE collector line on North, West, and South fields
- Provide and install 8" perforated HDPE collector line on East field
- Provide and install outfall piping from each field and tie into existing drainage structures and/or daylight into existing drainage collection areas
- Provide and install Mirafi 140N over sub grade and in trenches
- Provide and install 1" x 6" flat pipe on 25' centers
- Provide and install 4" of #57 stone laser grade and compact
- Provide and install 1" of #89 stone laser grade and compact
- All base work must be fully accessible at one mobilization, if not additional mobilization charges may apply

#### Sports Equipment and Amenities

- Provide and install 3,150 linear feet of 6' chain-link fence
- Provide and install concrete sidewalks
- Provide and install (2) sets of new field goal posts on South field



2680 Abutment Road, Dalton, GA 30721  
TF. (800) 723-TURF (8873) help@astroturf.com



**Synthetic Turf**

- Samples, submittal information, and shop drawings as required
- AstroTurf® Installation of selected AstroTurf® Synthetic Turf System (see schedule below) by manufacturer-certified crews
- Inlaid markings for the sports of Soccer and (2) Mini Soccer on North, West and East Fields
- Inlaid markings for the sports of Football, Soccer, and Men's LAX on South Fields
- All seams and inlays to be installed using cold glue
- An infill of Ambient Rubber and Silica Sand at the manufacturer-approved weights and ratios for the selected AstroTurf® Synthetic Turf System
- Provide and install a ZCAP (layer of ZeoFill over the performance infill)
- (1) G-max test per field at completion
- (1) field groomer – SMG TCA1400
- AstroTurf's Standard (8) Year Warranty
- Cleanup and disposal of our debris into dumpsters
- Pricing is based on standard color palette

**North Fields – Field #1 and #2**

*AstroTurf Rootzone 3D3 Blend 52- 2" Bionic*  
Approximately 164,500 square feet

**West Fields – Field #3 and #4**

*AstroTurf Rootzone 3D3 Blend 52- 2" Bionic*  
Approximately 161,000 square feet

**East Field – Field #5**

*AstroTurf Rootzone 3D3 Blend 52- 2" Bionic*  
Approximately 80,500 square feet

**South Fields – Field #6 and #7**

*AstroTurf Rootzone 3D3 Blend HD 52- 1.5" Bionic over AstroTurf Flex (Enplast) pad*  
Approximately 174,800 square feet



Thank you for the opportunity to provide this budgetary proposal. We look forward to working with you!

Estimated By:  
Justin Lefler  
[jlefler@astroturf.com](mailto:jlefler@astroturf.com)  
(336) 238-9060

Submitted By:  
Steve Coleman  
[Scoleman@astroturf.com](mailto:Scoleman@astroturf.com)  
(813) 777-7677

### Exclusions

- Bonds and/or bond cost (Add 1.5% for bonding)
- Any layout, certification, testing, or inspection costs, other than those associated with visual base inspection
- Design/construction drawings and/or permitting for SWPPP
- Engineered plans
- Fees and/or permits of any kind
- Field Maintenance and/ or Equipment
- Infiltration testing
- Field equipment/goals other than those specified in scope of work
- Any and/or all synthetic track surfacing
- All brick and/or masonry work
- Provision or installation of any scoreboards, clocks, etc.
- Exclude excavation, disposal or replacement of any unstable/unsuitable soils
- Repair to existing concrete or asphalt paving
- Locating, relocation, removal, and/or repair of any existing utilities
- Supply and/or Installation of electrical lines
- Liquidated damages surcharges
- Building permits or site inspection fees
- Rock/difficult excavation or trenching unable to be performed utilizing a 12,000 lb excavator
- Anything not specifically included in stated scope of work

Our proposal is submitted based on our assumption that all owner-approved net payments will be received within (30) days of the approval date, and that final payment will be released to us within thirty (30) days of the completion of all final punch list items.

RESERVATION OF EASEMENTS

GRANTOR hereby excepts herefrom and reserves unto itself and its assigns and successors-in-interest or title, and, to any extent required, Grantee by acceptance of this conveyance hereby gives and grants unto Grantor, and its assigns and successors-in-interest or title, the following non-exclusive easements:

1. A fifteen-foot (15') wide landscaping, drainage and utility easement along and contiguous with the westerly boundary of the Property; and
2. A fifteen-foot (15') wide landscaping, drainage and utility easement along and contiguous with the northern boundary of the Property.

The above-mentioned easements reserved hereby encumbering the above-described portion of the Property (hereinafter referred to as the "Easement Parcels") shall include a non-exclusive easement for ingress and egress over, upon and across the Easement Parcels, together with the right to install, maintain, repair, replace and relocate utilities in, over, under, upon and across the Easement Parcels, so as to provide access to and from the Easement Parcels for the full use and benefit thereof. The easement rights reserved herein shall also include, without limitation, the rights in favor of Grantor (but not the obligation) to plant, mow, cultivate, relocate, irrigate, maintain and care for all landscaping and related aesthetic features, and the right to construct, maintain, relocate and repair any and all utilities, underground drainage facilities, screening walls, berms, irrigation facilities and related improvements within the Easement Parcels.

The easements reserved with respect to the Easement Parcels are non-exclusive, and Grantee, its assigns and successors-in-interest and/or title, shall have the non-exclusive right to use, pass and repass over and upon the Easement Parcels, to install, maintain, repair, replace, remove and/or relocate utilities in, over, under, upon and/or across the Easement Parcels or any part thereof, provided, however, that any utilities installed, repaired, replaced and/or relocated in, over, under, upon or across the Easement Parcels shall be so installed, repaired, replaced and/or relocated only in accordance with plans and specifications approved in advance and in writing by Grantor. Each party shall use the rights granted and reserved by this instrument with respect to the Easement Parcels with due regard for the rights of the other party to use and enjoy the Easement Parcels. Neither Grantor nor Grantee shall use the Easement Parcels in such a way as to impair the right of the other party to use the Easement Parcels and neither party shall obstruct passage thereon.

RESTRICTIVE COVENANTS

Grantor owns and holds the fee simple title to certain real property adjacent or in proximity to the Property. Accordingly, Grantor has, and will continue to have, a substantial interest in the manner of development and use of the Property and all portions thereof, as well as the kind, character and nature of improvements to be constructed from time to time upon any portion of the Property. By acceptance of this conveyance, Grantee, for itself, its assigns and successors in interest and/or title, agrees that the Property shall be developed, used, maintained



and improved in accordance with the following restrictive covenants which shall run with the land:

1. The use of the Property shall be limited and restricted to the development, construction and operation of a public regional park thereon together with associated improvements, facilities and uses directly relating thereto.
2. The Property and all buildings, structures, parking areas, landscaping, grounds and other improvements constructed or installed thereon, and from time to time existing on the Property, shall be continuously maintained in a safe, clean, attractive and good condition.
3. No part of any building, structure, parking area or other improvement (other than landscaping and related facilities) shall be constructed, installed or placed on any portion of the Property within twenty-five feet (25') of any property line.
4. No camping and no overnight parking of buses, campers, motor homes, boats, or trailers, shall be permitted or allowed on the Property or any portion thereof, except in connection with periodic special events.
5. No maintenance vehicles, refuse trucks, school buses, or other governmental vehicles (other than passenger vehicles and utility pick-up trucks) may be parked upon any portion of the Property, other than those that are transporting passengers for activities or events then transpiring or occurring on the Property.
6. All storage, refuse and waste areas and "dumpster" type containers shall be located in an enclosure or shall be otherwise screened from view from all public roads and adjacent and contiguous properties by means of a decorative wall, berm, opaque landscape screen, or a combination thereof.
7. All utility lines and facilities located or installed within the boundaries of the Property shall be located and installed underground or concealed under or within a building or other on-site improvement; provided, however, that the foregoing restrictions shall not be deemed to prohibit the following:
  - (1) Temporary electric power and telephone service poles and waterlines which are incident to the construction of permanent improvements or to conducting periodic special events; provided the same are removed immediately following completion of construction of such permanent improvements or the conclusion of such special events;
  - (2) Above ground electric transformers, meters and similar ground-mounted apparatus; and
  - (3) Permanent exterior light fixtures and related poles complying with all applicable ordinances and governmental rules and regulations;

8. No billboards or advertising signs shall be erected or placed upon any portion of the Property and no flashing, moving or portable signs shall be permitted on any portion of the Property.
9. Without the prior written consent of Grantor, no antenna or tower for transmission or reception of radio or television signals, or any other form of electromagnetic radiation, shall be erected, used or maintained on any portion of the Property outside of any building, whether attached to an improvement or otherwise.
10. Except during the construction of improvements, no materials, supplies or equipment shall be stored on any portion of the Property except inside a building or structure, or behind a landscaped visual screen. Stored materials, supplies and equipment shall, at all times, be screened from adjacent or neighboring properties and from public rights-of-way adjacent or contiguous to the Property.
11. No construction, installation or alteration (prior, during or subsequent to the initial construction) of any building, structure, area landscaping or other improvement on the Property shall commence prior to submittal to and approval by Grantor of the architectural style, materials, methods and exterior design (including points of ingress and egress to and from the Property) proposed to be constructed, installed or altered on the Property, which approval shall not be unreasonably withheld or delayed by Grantor. Approvals or denials will be in the reasonable discretion of Grantor and may be made on the basis of compliance with the Viera Regional Park Architectural Standards attached hereto as Exhibit "E" to that certain Special Warranty Deed from Grantor to Grantee recorded in Official Records Book 4866, Page 0221, Public Records of Brevard County, Florida, and incorporated herein by reference. Grantor's approval of any building, structure, landscaping or other improvement on the Property in letter form executed by the president or any vice president of Grantor shall be binding upon Grantor.
12. No construction, installation or alteration (prior, during or subsequent to the initial construction) of any stormwater drainage, attenuation, and/or treatment facilities and improvements on the Property shall commence prior to submittal to and approval by Grantor of the design of the proposed work, which approval shall not be unreasonably withheld or delayed by Grantor. Approvals or denials will be in the reasonable discretion of Grantor based on compatibility with the community surface water drainage and management system for the Viera Development of Regional Impact. Notwithstanding the foregoing, in no event shall the post-development discharge of surface water from the Property exceed a rate of 0.10 cubic feet/second/acre for a 25 year, 24 hour design storm event. Grantor's approval of any stormwater drainage facility or other stormwater improvement on the Property in letter form executed by the president or any vice president of Grantor shall be binding upon Grantor.

The foregoing restrictive covenants are intended to constitute covenants running with the Property, and each part thereof, in all respects binding upon Grantee and all assigns and successors in interest and/or title of Grantee with respect to the Property and each part thereof.

The restrictive covenants shall be binding and in full force and effect for a period of twenty (20) years from the day of recordation of this instrument in the Public Records of Brevard County, Florida, after which time said restrictive covenant shall be automatically extended for two (2) twenty (20) year periods unless sooner terminated by written instrument executed by Grantor. Grantor shall have the right, but not the duty, to enforce the above-mentioned restrictive covenants by actions or proceedings at law and/or in equity against any person or entity violating, or attempting to violate, any of the above-mentioned restrictive covenants, the permissible actions or proceedings to include, but not be limited to, actions for mandatory injunctive relief, prohibitory injunctive relief, and/or damages. In connection with any action or proceeding brought by Grantor to enforce any of the above-mentioned restrictive covenants, Grantor shall be entitled to recover all costs incurred in connection therewith, including reasonable attorneys' fees at or before the trial level and in any appellate proceeding. The right to enforce the restrictive covenants set forth hereinabove shall be limited to Grantor and any persons or entities to which such right of enforcement is specifically assigned by written instrument recorded in the Public Records of Brevard County, Florida. A successor-in-title of Grantor shall not, by virtue of such status alone, have the right to enforce the restrictive covenants set forth hereinabove unless the instrument or instruments by which title is conveyed to such successor-in-title specifically assigns such right to enforce said restrictive covenants.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name, and its corporate seal to be hereto affixed, by its proper officer thereunto duly authorized, on the day and year first above written.

Marianne B. Mattox  
Print Name: Marianne B. Mattox

Laura H. Seguna  
Print Name: Laura H. Seguna

THE VIERA COMPANY, a Florida corporation

By: [Signature]  
Name: Stephen L. Johnson  
Title: President

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this <sup>7<sup>th</sup></sup> 10<sup>th</sup> day of May, 2007, by Stephen L. Johnson, as President of THE VIERA COMPANY, a Florida corporation on behalf of said corporation. Said person is personally known to me.

Laura H. Seguna  
Print Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

LAURA H. SEGUNA  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # DD587742  
EXPIRES 10/3/2010  
BONDED THRU 1-688-NOTARY1

**Exhibit "A"**

**LEGAL DESCRIPTION** (PER SCHEDULE "A-1" TITLE COMMITMENT NO.000084/048059 SHOWN IN SURVEYOR'S NOTE #3(A))

A PARCEL OF LAND IN SECTION 4, TOWNSHIP 26 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF TRACT A, VERA REGIONAL PARK ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 52, PAGE 91, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AS THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED AND RUN N14°30'59"W ALONG THE WESTERLY LINE OF A 30 FOOT GAS TRANSMISSION EASEMENT, A DISTANCE OF 514.65 FEET; THENCE S89°11'20"W PARALLEL AND 500 FEET NORTH OF (AS MEASURED PERPENDICULARLY) TO THE NORTH LINE OF SAID TRACT A, A DISTANCE OF 549.06 FEET; THENCE S00°48'40"E A DISTANCE OF 500.00 FEET TO THE NORTH LINE OF SAID TRACT A; THENCE N89°11'20"E ALONG THE NORTH LINE OF SAID TRACT A, A DISTANCE OF 671.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

PERMITTED EXCEPTIONS

- (1) Amended and Restated Viera Development Order, as approved by that certain Resolution 04-200 and as evidenced by that certain Notice of Amendment to Development Order for a Development of Regional Impact known as The Viera Development of Regional Impact recorded September 10, 2004, in Official Records Book 5357, Page 8824, Public Records of Brevard County, Florida.
- (2) Agreement Covering Water Service between The Viera Company and the City of Cocoa, Florida, dated August 26, 1988, as amended by that certain Amendment #1 To Agreement To Provide Water Service dated June 13, 1989, and as further amended by that certain Second Amendment to Agreement dated May 27, 1994, as recorded in Official Records Book 3404, Page 0953, Public Records of Brevard County, Florida and re recorded in Official Records Book 3407, Page 3452, Public Records of Brevard County, Florida.
- (3) Easement Grant in favor of Florida Gas Transmission Company, dated December 20, 1967, recorded in Official Records Book 999, at page 871, as amended by Amendment of Easement Grant, dated March 26, 1996, recorded in Official Records Book 3559, at page 4353, Public Records of Brevard County, Florida; and existing pipeline and related facilities encroachments, if any, relating to such Easement Grant.
- (4) Zoning, restrictions, reservations, prohibitions and other requirements imposed by governmental authorities.
- (5) Taxes and assessments for the year of closing and subsequent years.

V0070418v1

**CLOSING STATEMENT**

**DEAN MEAD  
8240 Devereux Drive, Suite 100  
Melbourne, Florida 32940**

**DONOR:** THE VIERA COMPANY, a Florida corporation

**DONEE:** BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida

**DATE:** May 10, 2007

**PROPERTY:** Addition of the property as described on Exhibit "A", attached hereto, to Central Viera Regional Park Site, Brevard County, Florida.

<b>A. <u>COSTS</u></b>	<b><u>CHARGE DONEE</u></b>	<b><u>CHARGE DONOR</u></b>
1. Recording Corrective Deed Deed (8 pgs.)		70.20
2. Recording Special Warranty Deed (7 pgs.)	61.00	
3. Documentary stamps on Special Warranty Warranty Deed	0.70	
4. Owner's title insurance premium (\$893,000.00 coverage amount requested by Donee)	4,540.00	
5. Estimated 2007 taxes allocable to Property from 1/1/07 through date of recording of Special Warranty Deed	<u>          </u>	<u>1,596.00</u>
<b>TOTAL</b>	<b>\$4,601.70</b>	<b>\$1,666.20</b>
 <b>B. <u>RECEIPTS</u></b>		
1. Total due from Donee		\$4,601.70
2. Total due from Donor		<u>1,666.20</u>
<b>TOTAL</b>		<b>\$6,267.90</b>

C. DISBURSEMENTS

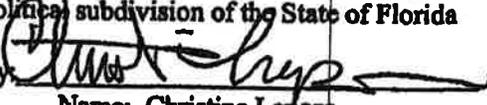
1. Brevard County Clerk of the Circuit Court - recording fees and documentary stamps	\$131.90
2. Brevard County Tax Collector - escrow for payment of 2007 taxes	1,596.00
3. Dean, Mead, et al - owner's title insurance premium	<u>4,540.00</u>
<b>TOTAL</b>	<b>\$6,267.90</b>

D. MISCELLANEOUS

1. The Property is being transferred to an exempt organization under Section 196.199 Florida Statutes, and the procedures specified in Section 196.295, Florida Statutes, shall be followed. Donor shall pay to the Brevard County Tax Collector, in escrow, an amount equal to the estimated taxes on the Property allocable to the period commencing January 1, 2007, through the date of recordation of the Special Warranty Deed transferring title to the Property to Donee. However, Donor objects to the property tax estimate provided by the Brevard County Property Appraiser (specifically based on the Property's 2007 agricultural classification having been removed/denied). Donor makes the prorated 2007 property tax payment indicated on this Closing Statement under protest and specifically reserves its right to (1) confer with the property appraiser regarding the correctness of the assessment, (2) petition the value adjustment board to reduce the assessment, and/or (3) submit a claim for the refund of any overpayment.
2. The donation and conveyance effectuated by the Special Warranty Deed is for no consideration and is exempt from the imposition of documentary stamp taxes pursuant to Rule 12B-4.014(2) and other provisions of the Florida Administrative Code.
3. The Closing Agent assumes no responsibility for the accuracy of the information furnished to it and upon which the prorations and figures shown in this Closing Statement were based.
4. This Closing Statement has been examined and approved by Donee and Donor as of the date hereof, and the Closing Agent is hereby authorized and directed by Donee and Donor to make disbursements and close the subject transaction on the basis hereof.

DONEE

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA, a  
Political subdivision of the State of Florida

By: 

Name: Christine Lepore  
Title: Assistant County Attorney

DONOR

THE VIERA COMPANY,  
a Florida corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

C. DISBURSEMENTS

1. Brevard County Clerk of the Circuit Court - recording fees and documentary stamps	\$131.90
2. Brevard County Tax Collector - escrow for payment of 2007 taxes	1,596.00
3. Dean, Mead, et al - owner's title insurance premium	<u>4,540.00</u>
<b>TOTAL</b>	<b>\$6,267.90</b>

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4. This Closing Statement has been examined and approved by Donee and Donor as of the date hereof, and the Closing Agent is hereby authorized and directed by Donee and Donor to make disbursements and close the subject transaction on the basis hereof.

DONEE

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA, a  
Political subdivision of the State of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DONOR

THE VIERA COMPANY,  
a Florida corporation

By: Jay A. Denton  
Name: JAY A. DENTON  
Title: VICE PRESIDENT

**Exhibit "A"**

**LEGAL DESCRIPTION** (PER SCHEDULE "A-1" TITLE COMMITMENT NO.000084/049059 SHOWN IN SURVEYOR'S NOTE (A).)

A PARCEL OF LAND IN SECTION 4, TOWNSHIP 26 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF TRACT A, VIERA REGIONAL PARK ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 52, PAGE 91, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AS THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED AND RUN N14°30'59"W ALONG THE WESTERLY LINE OF A 30 FOOT GAS TRANSMISSION EASEMENT, A DISTANCE OF 514.65 FEET; THENCE S89°11'20"W PARALLEL AND 500 FEET NORTH OF (AS MEASURED PERPENDICULARLY) TO THE NORTH LINE OF SAID TRACT A, A DISTANCE OF 549.08 FEET; THENCE S00°48'40"E A DISTANCE OF 500.00 FEET TO THE NORTH LINE OF SAID TRACT A; THENCE N89°11'20"E ALONG THE NORTH LINE OF SAID TRACT A, A DISTANCE OF 671.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.00 ACRE MORE OR LESS. SUBJECT TO ANY EASEMENTS, COVENANTS RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD THAT HAVE NOT BEEN PROVIDED TO THIS SURVEYOR.