

Final

**This Preliminary Project Development Agreement is subject to and contingent upon a judicial determination that the electronic bingo equipment that is to be placed within the Entertainment Facility is not illegal gambling equipment; that the electronic bingo equipment that is to be placed within the Entertainment Facility cannot be readily adaptable to become illegal gambling equipment; and that the electronic bingo equipment complies with the operational standards set forth in Amendment 506 to the Alabama Constitution.**

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**PRELIMINARY PROJECT DEVELOPMENT AGREEMENT**

dated as of \_\_\_\_\_, 2009

between

**ETOWAH COUNTY, ALABAMA**

and

**CBS SUPPLY, L.L.C.**

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**PRELIMINARY PROJECT DEVELOPMENT AGREEMENT**

This **PRELIMINARY PROJECT DEVELOPMENT AGREEMENT** dated as of the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Agreement”) is entered into by **ETOWAH COUNTY, ALABAMA**, a political subdivision of the State of Alabama (the “County”), and **CBS SUPPLY, L.L.C., an Alabama limited liability company** (the “Company”).

**RECITALS**

A. Pursuant to Amendment 506 to the Constitution of Alabama of 1901 (“Amendment 506”), the Etowah County Commission (the “Commission”), has the power to promulgate rules and regulations for the issuance of permits or licenses for the operation of bingo games within the County, subject to certain restrictions identified in Amendment 506.

B. On July 7, 2008, the Commission promulgated reasonable rules and regulations which are intended to balance the welfare of the citizens of the County with the implementation of Amendment 506.

C. The Commission has announced publicly that it will entertain competitive proposals from various developers desiring to work with the County in connection with the development of a multi-use commercial and entertainment development (the “Project”) which will include, without limitation, facilities for the operation of electronic bingo games in compliance with the Commission’s rules and regulations.

D. The County and the Company (collectively, the “Parties”) now wish to enter into this Agreement in order to memorialize the terms and conditions pursuant to which the Project will be financed, developed, constructed and operated and to prescribe each Party’s respective obligations in connection therewith.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto covenant, agree and bind themselves as follows:

**ARTICLE 1**

**DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATIONS**

**SECTION 1.1 Definitions**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in the Recital paragraphs above shall have the meanings assigned to them in such paragraphs. The terms defined in this Article have the meanings assigned to them in this Article. Singular terms shall include the plural as well as the singular, and vice versa. All defined terms shall include any and all amendments, modifications, replacements, supplements or substitutions thereof or thereto.

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(b) All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles. All references herein to “generally accepted accounting principles” refer to such principles as they existed on the date hereof.

(c) All references in this instrument to designated “Articles”, “Sections”, “paragraphs” and other subdivisions are to the designated Articles, Sections, paragraphs and subdivisions of this instrument as originally executed.

(d) The terms “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision, unless reference is made to such Article, Section, paragraph or other subdivision.

(e) The term “Person” shall include any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization and any government or any agency or political subdivision thereof.

“**Arena**” shall mean a 3,000-seat auditorium/concert hall to be constructed on the Project Site.

“**Assessments**” means the special assessments to be levied by the Improvement District on real property within the boundaries of the Project Site.

“**Bond Indenture**” means the trust indenture pursuant to which bonds are issued.

“**Debt**” means the Limited Obligation Economic Development Revenue Bonds issued by the Cooperative District or notes, loans or other forms of indebtedness issued by the Cooperative District to finance Project Infrastructure Costs, as set forth in Section 2.2(f) of this Agreement.

“**Commission**” means the Etowah County Commission, the governing body of the County.

“**Commitment Letter of Credit**” means the irrevocable standby letter of credit to secure the Company’s commitment to construct the Project Infrastructure, which is more particularly described in Section 3.5 of this Agreement.

“**Cooperative District**” means The Cooperative District of Etowah County to be formed as set forth in Section 2.2(e) of this Agreement.

“**Company**” means **CBS Supply, L.L.C., an Alabama limited liability company.**

“**County**” means Etowah County, a political subdivision of the State of Alabama.

“**Credit Provider**” means the financial institution selected to issue the Letter of Credit.

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“**Entertainment Facility**” means the building or buildings to be acquired and constructed on the Project Site, which will be operated pursuant to an electronic bingo permit issued in accordance with the Commission’s rules and regulations.

“**Entertainment Facility Site**” means the portion of the Project Site consisting of the footprint of the Entertainment Facility.

“**Feasibility Study**” means one or more a detailed analyses of the Improvement Site and the Entertainment Facility’s market, as determined necessary by the Company in its sole and absolute discretion, to be performed by an experienced company or firm that conducts such analyses and chosen and paid for by the Company.

“**Force Majeure**” means a delay in a Party’s performance of its obligations hereunder caused by strikes, riots, failure of any other Party to satisfy its obligations hereunder, acts of God or the public enemy and other causes beyond the reasonable control of such Party. Force Majeure does not include delays that are within the reasonable control of the Party whose timely performance is to be excused, delays associated with economic or market conditions, or delays related to financial inability or insolvency of the Company.

“**Letter of Credit**” means the irrevocable direct pay letter of credit described in Section 2.3(a) of this Agreement.

“**Hotel**” means a first-class hotel branded or franchised hotel containing adequate rooms based upon the Feasibility Study to be performed by the Company, but in no case less than 200 rooms, and to be constructed on the Project Site.

“**Improvements**” means the capital improvements to be acquired, constructed and installed on the Project Site other than the Project Infrastructure, including the Entertainment Facility, the Hotel, the Arena and any other improvements constructed by the Company as set forth in the Master Plan described in Section 3.2 herein.

“**Improvement Costs**” means all costs associated with acquiring, financing, developing, constructing and installing the Improvements on the Project Site.

“**Improvement District**” means The Improvement District of Etowah County, which is to be formed pursuant to Section 2.2(d) of this Agreement.

“**Improvement Site**” means at least 65 acres of contiguous developable land within the Project Site consisting of the footprint of the Improvements, as determined by the Company in the Master Site Plan.

“**Master Site Plan**” means the initial site plan referred to in Section 3.2 of this Agreement, as the same may be amended from time to time.

“**Net Gaming Revenues**” means the total amount of money or value in any form received by the operator of the Entertainment Facility with respect to the play of bingo games, less the total amount of money or value in any form paid as prizes or winnings to the players of

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the bingo games played, but before deduction of any expenses incurred in operating the bingo games by the Entertainment Facility, including, without limitation thereto, depreciation or leasing costs of physical facilities and equipment, wages and other employment costs, utilities interest and taxes.

“**Operating Agreement**” means the operating agreement to be entered into by the County and the Company, as set forth in Section 4.2 of this Agreement.

“**Parties**” means the signatories to this Agreement.

“**Pledged Gaming Revenues**” means 2% of the annual Net Bingo Revenues generated within the Entertainment Facility.

“**Pledged Revenues**” means the Assessments, the Project License Fee Revenues and the Pledged Gaming Revenues.

“**Project**” means the Project Infrastructure, the Improvement Site and the Improvements.

“**Project Costs**” means the Project Infrastructure Costs and the Improvement Costs and all other costs associated with the construction, operation, development and financing (excluding interest paid on the Debt) of the Project.

“**Project Infrastructure**” means the public infrastructure facilities serving the Improvement Site which are financed by the Debt and will be acquired, constructed and installed on the Project Site, which are more particularly described in *Exhibit B*.

“**Project Infrastructure Costs**” means the cost of acquiring, financing, developing, constructing and installing the Project Infrastructure being financed with proceeds of the Debt (excluding interest paid on the Debt).

“**Project License Fee Revenues**” means the net revenues (after payment of the cost of collections) derived by the Cooperative District from the levy and collection of a license fee at the rate of 4% on the sale of Tangible Personal Property within the Project Site.

“**Project Site**” means the parcel of land consisting of approximately 675 acres and specifically described in *Exhibit A* hereof and any other land that, at the time and under the terms hereof, constitutes a part of the Project Site.

“**Tangible Personal Property**” means items kept in the regular and normal course of business that are made available for the general public to purchase from the Entertainment Facility at a profit.

“**Validation**” shall have the meaning specified in Section 2.3(f) of this Agreement.

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**ARTICLE 2**

**PURPOSE AND PLAN OF FINANCE**

**SECTION 2.1 Purpose**

The purpose of this Agreement is to evidence the agreement of the Parties in connection with the planning, design, development, financing, construction and operation of the Project including, without limitation, the Project Infrastructure, and to address certain other matters of mutual concern to the Parties hereto. The Parties hereby desire to cooperate with one another in order to cause the timely and efficient completion of the Project. This Agreement shall be interpreted in such a manner as may be most consistent with the foregoing purposes.

**SECTION 2.2 Plan of Finance for the Project**

The Parties understand and agree that:

(a) It is in the best interests of the Parties to collaborate in the planning, design, development, financing, construction and operation of the Project.

(b) The Project will be located on the Project Site. The Improvement Site will be sold to the Company for \$1,750,000.00 within ten (10) days after the Debt is issued, subject to prior termination in accordance with Section 7.2 of this Agreement. The County shall also grant the Company an option to purchase an additional fifty-five (55) acres of real property on the Project Site at a price per acre of \$26,923.08. The location of the option property shall be set forth on the Master Site Plan by the County and the term of the option shall be the projected completion date of the improvements to be placed on said option property as per the Master Site Plan.

(c) The Project will consist of the following, at a minimum: the Project Infrastructure; the Improvement Site; and the Improvements.

(d) Upon receipt of an application for incorporation of the Improvement District, pursuant to Chapter 99A of Title 11 of the Code of Alabama (1975), the Commission will take all such actions as shall be necessary to facilitate the formation of the Improvement District. The boundaries of the Improvement District will include the Project Site, and the members and directors of the Improvement District will be persons who are mutually acceptable to the County and the Company. The period for duration of the Improvement District will be equal to the term of the Debt. The activities of the Improvement District will be limited to the geographic area of the Project Site and any other location agreed to by the County located in Etowah County. Provided, however, for any real property added to the Improvement District which relates to or involves real estate proposed to be used by Company the Entertainment Facility, as set forth in Section 4.2(c) herein, both the County and the Company must agree as to the addition and location of the real property before added to the Improvement District.

(e) Upon receipt of an application for incorporation of the Cooperative District, pursuant to Chapter 99B of Title 11 of the Code of Alabama (1975), the Commission will take all such actions as shall be necessary to facilitate the formation of the Cooperative District. The

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directors of the Cooperative District will include one person who is a director of the Improvement District, one director who will be appointed by the Company and one director who will be appointed by the Commission. Both appointed directors shall be mutually acceptable to Company and County. The members of the Cooperative District will be the Improvement District and the County. The boundaries of the Cooperative District will be identical to the boundaries of the Improvement District and any other location agreed to by the County located in Etowah County. The period for duration of the Cooperative District will be equal to the term of the Debt. The activities of the Cooperative District will be limited to the geographic area of the Improvement District. Provided, however, for any real property added to the Cooperative District which relates to or involves real estate proposed to be used by Company the Entertainment Facility, as set forth in Section 4.2(c) herein, both the County and the Company must agree as to the addition and location of the real property before added to the Cooperative District

(f) The Parties will cause the Cooperative District to issue the Debt in such principal amount as shall be sufficient to pay for the Project Infrastructure Costs. These funds shall be available for the payment of Project Infrastructure Costs. If the Debt consists of bonds, the net proceeds of the bonds shall be deposited in a fund to be held and administered by the trustee for the bonds and shall be made available for requisition by the Company, subject to the County's approval, solely to pay Project Infrastructure Costs. Any bond Indenture shall provide, among other things, that the bonds may be refunded only with the consent of the County and that any additional bonds to be issued on a parity of lien with the bonds will require the consent of the County. The parties agree that the issuance of the Debt shall be subject to the conditions precedent set forth in Section 5.1 hereof.

(g) The Company will invest not less than \$200 million (which shall include the Project Infrastructure Costs) on Project Costs within two years after the Project Infrastructure is complete and ready for the construction of the Improvements thereon (the "Projected Completion Date"). These capital expenditures may be paid for out of the proceeds of equity or debt provided that any debt incurred for the Project shall not be secured by a mortgage on all or any portion of the Project without the prior written consent of the County, which shall not be unreasonably withheld. The Company shall make all reasonable and good faith efforts to invest 200 million in Project Costs, including Project Infrastructure Costs, by the Project Completion Date. However, should the Company be unable to reach this investment amount due to 1) circumstances set forth in the Master Site Plan or Feasibility Studies and agreed to by the Parties, 2) Force Majeure or 3) other causes not within the reasonable control of the Company, the Project Completion Date shall be extended so as to allow adequate time for completion or for modification of the investment amount, as applicable. The County shall have reasonable access to the Company's books and records in order to determine whether the \$200 million threshold investment has been made.

### **SECTION 2.3 Debt for Payment of Project Infrastructure Costs**

(a) **Security and Source of Payment for the Debt.** If necessary, Debt may be issued by the Cooperative District. The final form of the Debt will be mutually agreed upon by the County and the Company. If the Debt is in the form of bonds, these bonds will either be privately placed with an "accredited institutional investor", as such term is defined in Regulation D of the Securities Act of 1933, or if the Commission and Company grants prior written approval, sold to the public; provided, however, that if the bonds are sold publicly, the bonds shall be secured by an irrevocable direct pay letter of credit (the "Letter of Credit") issued by a financial

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institution satisfactory to the County in its reasonable discretion (the “Credit Provider”). All such costs associated with the bonds or Letter of Credit shall be considered Project Costs as defined herein and Bingo Expenses as defined in the Resolution Promulgating Rules and Regulations for the Operation of Charitable Machine Bingo in Etowah County. If the bonds are secured by a Letter of Credit, then the Company will be responsible for procuring the Letter of Credit and paying all fees reasonably required to obtain such Letter of Credit. The security and source of payment for the Debt, including the bonds and any reimbursement to the Credit Provider for draws on the Letter of Credit, will consist solely of the Pledged Revenues.

(b) **Amortization of Debt.** The principal of the Debt shall be paid in accordance with a principal amortization schedule which shall be subject to approval by the Cooperative District, the Company and the County. If, and to the extent, the Project License Fee Revenues and the Pledged Gaming Revenues exceed the amount of scheduled principal and interest payable on the Debt in a particular calendar year, then such excess Project License Fee Revenues and Pledged Gaming Revenues shall be used to pay the Debt and redeem outstanding bonds annually in inverse order of their maturity.

(c) **Assessments by Improvement District.** The County and the Company will cause the Improvement District to levy the Assessments on real property within the Improvement District in an amount equal to the principal of and interest payable on the Debt in each year for a period of time equal to the term of the Debt, and the County agrees to do all things reasonably necessary to facilitate the levy and collection of such Assessments; provided, that the County will not be directly responsible for the collection or distribution of the Assessments. Assessments shall be levied in an amount sufficient to pay debt service on the Debt (and any obligations to refinance the Debt) and to pay the costs of operating and maintaining Project Infrastructure financed with the Debt. The amount of Assessments payable in each year will be reduced by the aggregate amount of Project License Fee Revenues and Pledged Gaming Revenues collected in such year.

(d) **Project License Fee Revenues.** The County and the Company will cause the Cooperative District to levy within the Cooperative District a license fee at the rate of four percent (4%) on the sale of Tangible Personal Property within the Cooperative District (the “Project License Fee”). All Project License Fee Revenues will be collected by the Cooperative District and shall be used as provided in Section 2.3(a) and shall continue to be levied at least as long as the Debt is outstanding. After the Debt has been fully paid, the Project License Fee shall continue to be levied at the discretion of the Cooperative District subject to applicable Alabama law.

(e) **Pledged Gaming Revenues.** The County and the Company agree that an amount equal to two percent (2%) of the yearly Net Gaming Revenues generated within the Project (the “Pledged Gaming Revenues”) will be used to pay and to secure the payment of the principal of and interest on the Debt for so long as the Debt remains outstanding. After the Debt has been fully paid, such gaming revenues may be retained by the Company.

(f) **Validation Proceedings.** The Parties agree that the issuance of the Debt by the Cooperative District shall be contingent upon receipt of (i) a final non-appealable order of validation with respect to the Debt entered by the Circuit Court of Etowah County pursuant to Title 11, Chapter 81, Article 7 (Section 11-81-220, *et seq.*) of the Code of Alabama (1975) (the

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“Validation Order”) and (ii) receipt of a final, non-appealable order in the case of *Entrekin v. Coosa Entertainment Group, et al*, CV-2008-900249, affirming the legality of conducting electronic bingo in Etowah County pursuant to the then applicable rules and regulations of the Commission. The Parties agree that the issuance of the Debt and the use of the proceeds thereof for the payment of Project Infrastructure Costs shall be consistent with the Validation Order and pleadings and documents presented to the Court in connection therewith.

(g) **Stamp Tax Not Encumbered.** The Parties understand and acknowledge that the County shall be permitted to levy fees and charges for the conduct of electronic bingo within the County at such rate or rates as the Commission may determine from time to time in its sole discretion; provided, however, the County agrees, to the extent permitted by law, that the aggregate rate of all such fees and charges be \$1,000 per End User Bingo Equipment as defined in the Resolution Promulgating Rules and Regulations for the Operation of Charitable Electronic Bingo in Etowah County. The County may increase the stamp tax described herein annually based on the annual percentage increase of the Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average published by the Bureau of Labor Statistics of the United States Department of Labor, or if such index is revised or discontinued, such other government index or computation with which it is replaced shall be used, together with any applicable conversion factor, in order to obtain substantially the same results that would be obtained if the Consumer Price Index had not been revised or discontinued. Provided, however, such annual percentage increase shall not be greater than 3% in any one year. Such fees and charges shall be uniformly applied and shall be promulgated and published in the rules and regulations of the County. The County shall be entitled to retain such revenues for its general fund, subject to the provisions of Section 3.1(a) and (b) below.

**SECTION 2.4 Purchase of Project Site**

Subject to the terms and conditions hereof, the County shall acquire title to the Project Site at the County’s expense. Contemporaneously with the issuance of the Debt, the County shall execute and deliver to the Company a statutory warranty deed to the Improvement Site. The Company shall accept the Improvement Site “as is” and “with all faults” without representation or warranty by the County as to the condition of the Improvement Site or the adequacy of the Improvement Site for the Company’s intended use.

**ARTICLE 3**

**ACQUISITION AND CONSTRUCTION OF THE PROJECT**

**SECTION 3.1 Construction of the Project Infrastructure**

The County and the Company agree to undertake and complete the following activities to facilitate the construction of the Project:

(a) **Sanitary Sewers.** The Company shall cause sanitary sewers to be installed to the perimeter of the Improvement Site at such locations and with such capacity as shall be reasonably necessary to operate the Project and as are mutually agreeable to the Parties; provided that the County shall reimburse the Company for such expense, but solely out of revenues to be collected by the County from the levy of the

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fees and charges described in Section 2.3(g) above. The Company shall pay for the costs of acquiring, constructing, installing and maintaining all sewer lines on the Improvement Site itself, which costs shall be included within the Project Infrastructure Costs for which the proceeds of the Debt may be applied.

(b) **Water Service.** The Company, at its expense, shall cause one or more water main extension lines to be installed to the perimeter of the Improvement Site at such locations and with such capacity shall be reasonably necessary to operate the Project and as mutually agreed upon by the Parties; provided that the County shall reimburse the Company for such expense, but solely out of revenues to be collected by the County from the levy of the fees and charges described in Section 2.3(g) above. The Company shall pay for the cost of acquiring, constructing, installing and maintaining all water lines on the Improvement Site itself, which costs shall be included within Project Infrastructure Costs for which the proceeds of the Debt may be applied.

(c) **Utility Service.** The Company, at its expense, shall be responsible for providing all utility services, other than those described in paragraphs (a) and (b) of this Section, up to the boundary of the Improvement Site as shall be necessary to meet the Company's construction requirements as mutually agreed to by the Parties. Any such costs shall not be reimbursed by the County but shall be deemed Project Infrastructure Costs for which the proceeds of the Debt may be applied.

(d) **Interstate Highway.** The Company, at its expense shall cause to be constructed an I-59 interchange at the Pleasant Valley Road overpass, unless state or federal funds shall be procured by the Company or County for such interchange, or a part thereof. Any such costs shall not be reimbursed by the County but shall be deemed Project Infrastructure Costs.

(e) **Fire Station.** The Company, at its expense, shall cause to be constructed a fire station which is adequate to provide fire protection to the Project as mutually agreed to by the Parties. Any such costs shall not be reimbursed by the County but shall be deemed Project Infrastructure Costs for which the proceeds of the Debt may be applied.

(f) **Timing of Work.** Subject to Section 3.2(a) below, the timing and order of construction described in this Section 3.1 shall be determined by the County, in its reasonable discretion, after receiving the input and written approval of the Company, and taking into account the Master Site Plan approved by the parties.

(g) **Right of County to Proceed with Project Infrastructure Work.** If in the reasonable judgment of the County, the Company, or its contractor, is not proceeding to complete the Project Infrastructure in a timely manner, the County shall provide the Company with written notice specifying in detail the nature of the unacceptable delay. The Company shall have ninety (90) days in which to cure said delay. If the Company does not cure within the ninety-day period, then the County shall have the option to directly contract to have said work performed and shall be entitled to requisition Bond proceeds for the payment of such costs. The Company shall cause any contractors to post a bond as set forth in Section 3.6(b).

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(h) **Reimbursement and Limitations on Costs.** All such costs associated with the Project Infrastructure and this Article 3 shall be considered Bingo Expenses as defined in the Resolution Promulgating Rules and Regulations for the Operation of Charitable Electronic Bingo in Etowah County. Notwithstanding the foregoing, the parties hereto agree that the Company is not required to expend more than \$20,000,000 on all costs associated with the I-59 Interchange and the Project Infrastructure set forth in this Article 3. Any agreement to expend more than \$20,000,000 on the I-59 Interchange and the Project Infrastructure shall be in the sole discretion of the Company.

### **SECTION 3.2 Master Site Plan**

(a) The Parties recognize and agree that the Company will pay the costs of producing a Master Site Plan and Feasibility Study for the Project, which shall describe the general concept of the Project. The Master Site Plan shall be based on the Feasibility Study and approved by the Commission and the Company, although the Parties acknowledge that in the course of development, changes relating to the Project may have to be made from time to time. Changes in the Master Site Plan will be subject to the prior written approval of the Commission and the Company, which approval shall not be unreasonably withheld. The Parties recognize and agree that the County will pay the costs of producing a Master Site Plan for the real property located on the Project Site but not included in the Improvement Site. The County agrees that it shall allow no use of this real property which would compete or impair the Company's use and operation of the Improvements.

(b) The County makes no warranty, either express or implied, or offers any assurances that the Project including, without limitation, the Project Infrastructure, will be suitable for the Company's purposes or needs or that the proceeds of the Debt will be sufficient to pay all Project Infrastructure Costs. In the event the proceeds of the Debt are insufficient to pay in full all Project Infrastructure Costs, the Company shall be obligated to complete the Project Infrastructure at its own expense.

### **SECTION 3.3 Completion of the Project**

Completion of the Project Infrastructure shall be deemed to have occurred when all of the items on Exhibit B which is attached hereto and incorporated herein by reference have been designed, constructed and completed.

### **SECTION 3.4 Deficiency to be Borne by the Company**

The Company acknowledges that the County, the Cooperative District and the Improvement District will have no funds of their own available for the Project other than the proceeds of the Debt. Accordingly, if the total cost of acquiring, developing and equipping the Project (including, without limitation, the Project Infrastructure) exceeds the amount of the proceeds of the Debt, the Company shall bear such excess costs. Provided, however, all such costs associated with the Project Infrastructure and this Article 3 shall be considered Machine Bingo Expenses as defined in the Resolution Promulgating Rules and Regulations for the Operation of Charitable Machine Bingo in Etowah County.

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**SECTION 3.5 Security for the Company's Obligations to Complete Project Infrastructure**

(a) Prior to the commencement of operation of any temporary electronic bingo facility, the Company shall furnish to the County an irrevocable standby letter of credit or surety bond (the "Commitment Letter of Credit") in the amount of \$20 million, in form and substance and from a provider reasonably satisfactory to the County, in order to secure the Company's obligation to construct the Project Infrastructure and the I-59 Interchange described herein.

(b) Provided, however, the amount of the Commitment Letter of Credit may be reduced, upon consent of the County which shall not be unreasonably withheld, upon the following occurrences: (i) The parties understand that the Feasibility Study has not been performed on the Project Site so as to determine the type, size and scope of the Project Infrastructure and I-59 Interchange described herein. Once the Feasibility Study is completed, if it is determined that the costs of the Project Infrastructure and I-59 Interchange are less than \$20 million then the Commitment Letter of Credit shall be reduced to reflect the costs set forth in the Feasibility Study; or (ii) the Commitment Letter of Credit shall be reduced, at least annually, by the dollar amount of the value of the Project Infrastructure and I-59 Interchange constructed.

(c) Upon the declaration of an event of default of the Debt, the County may draw on such Commitment Letter of Credit up to the full face amount thereof, and apply the funds received towards (i) any damages suffered by the County by reason of any breach or default hereunder on the part of the Company, or (ii) the costs of completion of the Project Infrastructure (it being understood and agreed that the County has the right, but not the obligation, to complete such Project Infrastructure). The obligation of the Company to maintain the Commitment Letter of Credit shall include a requirement that the County provide notice of termination or non-renewal thereof. If the Company has not put in place a satisfactory replacement standby letter of credit meeting the requirements hereof within at least twenty (20) days prior to the termination or expiration of the then current Commitment Letter of Credit, then the Company shall be in default of this Agreement and the County shall be entitled to draw upon the Commitment Letter of Credit in full regardless of any amounts owing hereunder at the time of such event, and shall be entitled to hold such funds as additional security to ensure the Company's prompt and timely compliance with its obligations hereunder.

(d) The County's rights and powers to draw on the Commitment Letter of Credit and the Company's obligation to maintain the Commitment Letter of Credit shall terminate upon (i) the termination of this Agreement by the County pursuant to Section 5.2(a) herein, (ii) upon the completion of the Project Infrastructure and I-59 Interchange or (iii) upon the issuance of the Letter of Credit pursuant to Section 2.3(a) herein.

**SECTION 3.6 Construction of the Improvements**

(a) The Cooperative District shall not be required to issue the Debt unless the Company has demonstrated to the County's satisfaction that (i) the Company has a binding commitment from a branded or franchised hotel operator to manage the Hotel and (ii) the Company has a binding commitment from a company approved by the County to sell or lease a minimum of 3,000 electronic bingo equipment for use in the Entertainment Facility for so long as the Debt will be outstanding. Construction on the Entertainment Facility and the Hotel shall

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commence within 90 days after the completion of the Project Infrastructure in a form that allows for the construction of the Improvements. The Company agrees to use its best efforts to substantially complete the Entertainment Facility and the Hotel within two years, subject to Force Majeure.

(b) Except as otherwise provided in this Agreement, the Company shall control the details of the work on the Project; provided, however, that the Company shall post or cause its contractor to post a performance bond and a labor and materialmen's payment bond with good and sufficient surety issued by a company qualified to issue such bonds in the State of Alabama with an A.M. Best rating of A or above and in an amount sufficient to ensure completion of the construction of the Project with the Company as obligee of the bonds and the County, Cooperative District and Improvement District as additional obligees thereunder. Such bonds shall be obtained from such companies in such amounts as shall be approved in advance by the County. A copy of said bonds shall be furnished to the County prior to commencement of the construction of each element of the Project. In the event the general contractor defaults in the performance of its construction contract, the Company agrees to take appropriate action to enforce said bonds or otherwise cause the work to be timely completed at no cost to the County.

#### **ARTICLE 4**

### **OWNERSHIP AND USE OF THE PROJECT**

#### **SECTION 4.1 Ownership of the Project**

(a) The Cooperative District or other appropriate governmental entity shall own all Project Infrastructure included within the Project so long as the Debt is outstanding.

(b) The County shall own the Project Site, excluding the Improvement Site. The Company shall own the Improvement Site, the Entertainment Facility and all Improvements constructed on the Project Site.

(c) The Company shall have the right to assign its rights and obligations under this Agreement only to an affiliate of the Company subject to the County's approval, which approval shall not be unreasonably withheld.

(d) Neither party shall have the right to collaterally assign as security, its rights under this Agreement without the prior written consent of the other party and the Cooperative District, which may not be unreasonably withheld. Any assignee of the Company must be approved through the standard and customary background check performed by the County as related to the operation of electronic bingo games.

(e) In the event that ad valorem taxes with respect to the Improvements should ever be abated, then:

(i) The County and the Company shall cause the Improvements to be appraised and the amount of tax calculated as though the Improvements were subject to ad valorem tax;

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(ii) The Company shall make payments in lieu of taxes in an amount which is equal to the ad valorem taxes that would have been payable on the Improvements if they had been subject to tax; and

(iii) All amounts payable under this paragraph (e) shall be paid directly to the County on or before December 31 of each calendar year.

#### **SECTION 4.2 Exclusive Use**

(a) The Entertainment Facility shall be operated pursuant to an operating agreement (the "Operating Agreement") with the County.

(b) The use of the Entertainment Facility by the Company shall be exclusive, subject to the Rules and Regulations of the County adopted by resolution of the Etowah County Commission on July 7, 2008, (the "County Regulations"), and as amended in accordance with Section 15 of the County Regulations. The County Regulations are hereby incorporated by reference in this Agreement in their entirety. The County agrees that it will not permit any person, public or private, other than those agreed to by the Company in writing, which consent being in the sole and complete discretion of the Company, to conduct electronic bingo within the Cooperative District for a period of 30 years from the date the Entertainment Facility opens for business.

(c) The parties to this Agreement acknowledge that the Entertainment Facility and Improvements may be located on real property that is not contiguous with the Project Site. Therefore, it is understood that the Cooperative District might include property that is not contiguous with the Project Site. Should the Entertainment Facility or Improvements not be located on the Project Site, but within the Cooperative District, the provisions of this Agreement shall, as necessary, be amended with the mutual agreement of the parties so as to accommodate. Provided, however, any such amendment would not include an amendment of the obligation of the Company to construct the Project Infrastructure as identified in the Master Site Plan and to post the Commitment Letter of Credit securing the Project Infrastructure.

#### **SECTION 4.3 Environmental Matters**

The Company shall comply and shall cause its affiliates and sublessees to comply in all material respects with all federal, state, local and other statutes, ordinances, judgments, rulings and regulations relating to environmental pollution or environmental regulation or control and shall cause the Project to be operated and maintained in accordance with all such statutes, ordinances, judgments, rulings and regulations. The County, agrees not to take any action in violation of federal, state, local and other statutes, ordinances, judgments, rulings and regulations relating to environmental pollution or environmental regulation or control. The Company shall indemnify, defend and hold the County and the Cooperative District harmless from and against, and shall reimburse the Cooperative District and the County for, any fines, charges, liabilities, reasonable expenses, and reasonable fees of environmental professionals, and reasonable attorneys' fees incurred by the Cooperative District or the County in the event the Improvement Site is hereafter determined to be in violation of any applicable environmental law by the Company or its affiliates and sublessees. This indemnification shall survive in the event title to the Project Site is ever transferred by the Company.

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**ARTICLE 5**

**CONDITIONS TO ISSUANCE OF DEBT; TERMINATION**

**SECTION 5.1 Conditions Precedent to Bond Closing**

Prior to or contemporaneously with the issuance of the Debt, each of the following conditions shall have been fully satisfied:

(a) The Cooperative District shall be irrevocably committed to issue the Debt (net of costs of closing or issuance) and all financing documents relating thereto shall be satisfactory to and the enforceability of which shall be confirmed by opinions of counsel to the Company.

(b) The County shall have acquired a fee simple interest in the Project Site, subject only to matters of record and other encumbrances satisfactory to the Cooperative District, the Improvement District and the Company in their discretion.

(c) The Company and the Cooperative District shall have obtained approvals and information as is appropriate to ensure that the Project will comply with all applicable laws, regulations and requirements including, without limitation, zoning laws and environmental laws, regulations and requirements.

(d) Final non-appealable orders approving, among other things, the issuance of the Debt, shall have been entered as contemplated by Section 2.3(f) hereof.

(e) The County shall be satisfied that the Company has obtained an unconditional commitment from a branded or franchised hotel to construct a first-class hotel and that such construction shall have commenced or shall be scheduled to commence within 180 days after the completion of the Project Infrastructure.

(f) The Company shall have certified to the County that the Improvement Site does not have any condition that is unacceptable to the Company.

(g) The Company shall have caused the Commitment Letter of Credit to be issued as provided under Section 3.5.

(h) The County shall be satisfied that the Company has obtained an unconditional commitment from a company approved by the County that such company will sell or lease a minimum of 3,000 electronic bingo equipment for use in the Entertainment Facility for so long as the Debt will be outstanding.

(i) The County shall be satisfied that the Company has obtained an unconditional commitment from a company approved by the County that such company shall certify the electronic bingo equipment in a manner and in accordance with court-approved standards and any applicable state or federal laws.

(j) The County and the Company will have acquired all necessary federal, state and local approvals to construct the I-59 Interchange.

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(k) A determination by the Company that the total costs of the I-59 Interchange and the Project Infrastructure does not exceed \$20,000,000.

**SECTION 5.2 Termination**

(a) This Agreement may be terminated by the County only if, within a reasonable time the minimum of such being 36 months, each of the foregoing contingencies to the issuance of the Debt is not satisfied or waived. The County must provide the Company with ninety (90) days written notice of its intention to terminate this Agreement as set forth herein and provide the Company a reasonable time to cure any such failure of the foregoing contingencies. The Commitment Letter of Credit will be refunded in full to Company if termination is exercised pursuant to this Section 5.2.

(b) If (i) the Contingencies set forth in Section 5.1 are not met or waived by mutual agreement of the parties within 36 months; (ii) and the County is approached by another person or entity that has contracted, in writing, with the County to construct the Project with terms identical to those set forth in this Agreement; (iii) said third party is willing to waive all outstanding contingencies set forth in Section 5.1; and (iv) said third party has passed all background searches and approvals required by the County or the Etowah County Sheriff, then the Company must waive all outstanding contingencies within 180 days of receiving written notice that items (b)(i) through (iv) have been satisfied. If the Company does not waive all outstanding contingencies within 180 days after receiving such notice, this Agreement shall terminate.

**ARTICLE 6**

**REPRESENTATIONS AND WARRANTIES**

**SECTION 6.1 Representations and Warranties of the County**

The County hereby represents and warrants to the Company as of the date hereof:

(a) Subject to a successful validation, the County has full power and authority to enter into this Agreement and to perform and observe its obligations hereunder.

(b) By proper action of the Commission, the County has duly authorized the execution and delivery of this Agreement and the consummation of the transactions contemplated therein.

(c) The County has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the execution and delivery of this Agreement.

(d) The execution and delivery by the County of this Agreement and the consummation of the transactions contemplated herein will not conflict with, be in violation of or constitute (upon notice or a lapse of time, or both) a default under any indenture, mortgage, deed of trust or other contract, agreement or instrument to which the County is a party or a subject, or any resolution, order, rule, regulation, writ, injunction,

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decree or judgment of any governmental authority or court having jurisdiction over the County.

(e) Other than with respect to the Validation, there is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or to the County's knowledge, threatened against or affecting the County or the properties of the County, which involves the consummation of the transactions contemplated by this Agreement, the validity of this Agreement, the organization of the governing body of the County, the election or qualification of its representatives or the powers of the County.

(f) Subject to the terms of the Validation Order, this Agreement constitutes the legal, valid and binding obligation of the County and is enforceable against the County in accordance with its terms, except insofar as the enforceability thereof may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights and (i) general principles of equity, regardless of whether such enforceability is considered in a proceeding at equity or at law.

(g) Based on its knowledge, information and belief, it is not aware of any reason why the Company shall be unable to procure all permits, licenses and governmental approvals necessary to be obtained prior to commencement or of construction of the Project.

(h) The Commission has determined that the expenditure of public funds for the purposes herein described will serve a valid and sufficient public purpose, notwithstanding any incidental benefits accruing to the Company.

(i) The County shall work with the Company to make reasonable changes to the County Regulations which will allow the Company to operate within Amendment 506 to maximize the profitability of the Project which shall include, but not be limited to, i) provisions requiring the Electronic Bingo Permit to have a term, at a minimum, equal to the term of this Agreement, with a 25 year renewal option, ii) defining Bingo Expenses as reasonable expenses associated with this Agreement and with the development, financing, operations, planning, design, operation and construction of the Project and the temporary/interim electronic bingo facility and iii) providing satisfactory provisions regarding the disbursement of net proceeds to charity and reporting and enforcement of payouts and bingo sessions.

(j) The County shall cooperate and assist Company in obtaining necessary approvals, permits and consents for the Project and shall cooperate and shall cooperate and assist the Company in removing all Contingencies listed in Section 5.1.

(k) The County shall, within the fifteen (15) days of executing this Agreement, enact an amendment to the County Regulations providing that the Interim Bingo Permit, once issued, shall be effective and valid until the opening of the Entertainment Facility and shall provide for a period of overlap between the Interim and permanent Electronic Bingo Permits so as to allow for continuous operation of the Entertainment Facility, subject to the revocation provision of the County Regulations set forth therein.

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(l) The County shall take no action to impair the issuance or validity of the Electronic Bingo Permit issued pursuant to this Agreement and shall not revoke said Permit except as expressly set forth in the County Regulations.

## **6.2 Representations and Warranties of the Company**

The Company hereby represents and warrants to the County as of the date hereof:

(a) The Company is duly organized and validly existing as a limited liability company under the laws of the State of Alabama and is in good standing under its articles of organization and the laws of said State, and is duly qualified to transact business and is in good standing in the State of Alabama.

(b) The Company has the power to consummate the transactions contemplated by this Agreement.

(c) By proper company action, the Company has duly authorized the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

(d) The Company has obtained all consents, approvals, authorizations and orders of governmental authorities that are required to be obtained by it as a condition to the execution and delivery of this Agreement.

(e) The execution and delivery by the Company of this Agreement and the confirmation by the Company of the transactions contemplated herein will not (i) conflict with, be in violation of, or constitute (upon notice or a lapse of time or both) a default under its articles of organization, or any indenture, mortgage, deed of trust or other contract, agreement or instrument to which the Company is a party or a subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the Company, or (ii) result in or require the creation or imposition of any lien of any nature upon or with respect to any of its properties now owned or hereafter acquired.

(f) This Agreement constitutes the legal, valid and binding obligation of the Company and is enforceable against the Company in accordance with its terms, acceptance so far as the enforceability thereof may be limited by (i) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights and (ii) general principles of equity, regardless of whether such enforceability is considered in a proceeding at equity or at law.

(g) Other than with respect to the Validation, there is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or, to the Company's knowledge, threatened against or affecting the Company or its properties, which involves the consummation of the transactions contemplated by this Agreement, the validity of this Agreement, the organization of the Company, the qualifications of its directors, managers or officers, or the powers of the Company.

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**ARTICLE 7**

**MISCELLANEOUS**

**SECTION 7.1 Notices.**

(a) Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with, the County or the Company shall be sufficient for every purpose hereunder if in writing and (except as otherwise provided in this Agreement) either (i) delivered personally to the party or to an officer of the party to whom the same is directed, (ii) delivered to the party by telex or telecopy (provided that the original is forwarded to the addressee by first-class mail, postage prepaid) or (iii) mailed, first-class postage prepaid and addressed as follows;

To County: Etowah County Commission  
800 Forrest Avenue, Suite 113  
Gadsden, Alabama 35001  
Attn: Chief Executive Officer  
Telephone: 256/549/5300  
Facsimile: 256/549-5400

To : CBS Supply, LLC  
2487 River Bluff Lane  
Mount Pleasant, SC 39466  
Attn: Michael DeLeon  
Telephone: (843)-709-9949  
Facsimile: (843) 216-1595

With Copy to: Christie D. Knowles, Esq.  
153 South 9<sup>th</sup> St.  
Gadsden, AL 35901  
Telephone: 256-543-0400  
Facsimile: 256-543-0488

Any party hereto may, by giving ten (10) days' notice to the other, designate another address for notices.

(b) Any such notice or other document shall be deemed to be received as of the date of receipt of same, if delivered in the manner hereinabove provided.

**SECTION 7.2 Term of Agreement.**

The term of this Agreement shall commence on the date of this Agreement and, except as provided in Section 5.2 hereof, shall continue in effect through the earlier to occur of the date (i) on which the Company, or an affiliate of the Company, shall cease to operate the Project or (ii) the date the Debt is paid in full.

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**SECTION 7.3 Amendments.**

(a) The Parties acknowledge that this Agreement is preliminary and may be subject to amendment in order to accommodate changed circumstances. Therefore, the Parties agree to cooperate with each other in good faith in connection with the consideration of amendments to this Agreement from time to time. All such amendments shall be mutually agreed to by the Parties and must be in writing and signed by both Parties. Notwithstanding the above, the Parties agree that this Agreement may not be amended or supplemented in the following respects without the written consent of each of the Parties:

- (i) an amendment altering the size of the Improvement Site;
  - (ii) an amendment altering the amount of the Company's required capital investment in the Project pursuant to Section 2.2(g);
  - (iii) an amendment altering to the type or amount of security required to be obtained by the Company pursuant to Section 3.5.
- (b) The Parties acknowledge that the regulatory framework in place for electronic bingo may be subject to change on the state level and that credit markets are subject to change on a state and national level during the financing, development and construction of the Project. The Parties contemplate that amendments may be necessary to this Agreement to adjust to changes in condition of circumstances. The Parties agree to negotiate in good faith with regard to any changes in condition which might occur which could occur which would impact the Parties or this Agreement.

**SECTION 7.4 Successors and Assigns.**

All covenants and agreements in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, whether so expressed or not.

**SECTION 7.5 Assignment and Subleasing.**

Except as otherwise provided in this Agreement, neither the County nor the Company may assign any of its rights or delegate any of its obligations under this Agreement to any person. The Company's rights under this Agreement may be assigned to a third party as part of a stock or asset sale or merger of the Company only with the County's prior written approval, which approval shall not be unreasonably withheld so long as the surviving entity complies with the County Regulations.

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**SECTION 7.6 Benefit of Agreement.**

Nothing in this Agreement, express or implied, is intended to give any person, other than the Parties and their respective successors and permitted assigns, any benefit or any legal or equitable right, remedy or claim under this Agreement.

**SECTION 7.7 Further Assurances.**

The Parties agree to do, execute, acknowledge and deliver such further acts, instruments and assurances, and otherwise cooperate with one another as necessary or appropriate for accomplishing the purposes of this Agreement.

**SECTION 7.8 Nonrecourse.**

(a) No present or future member, shareholder, director, officer, employee or agent of the Company shall ever be personally liable for the performance of the Company hereunder.

(b) No present or future elected or appointed official or employee or other representative of the County or the Company shall ever be personally liable for the performance of the respective Parties they represent hereunder.

**SECTION 7.9 Prior Agreements.**

This Agreement supersedes in its entirety any and all other agreements, verbal or written, concerning the payment of the Debt and the other subject matters dealt with herein. In furtherance (but not in limitation) of the foregoing, the Parties hereto hereby acknowledge and agree that the terms and provisions of this Agreement shall govern and control with respect to the subject matter hereof. Notwithstanding the foregoing, each and every term of this Agreement is subject to the terms of the operative contract and agreements by and among the various Parties, and to the terms of the documents delivered in connection with the Debt. To the extent there is any discrepancy between the terms hereof and the terms of such other documents, it is the express intent of the Parties that the terms of such other agreements shall govern.

**SECTION 7.10 Liability; Indemnification**

(a) The Company shall defend, protect, indemnify and hold harmless the County and its respective agents, employees and members of their respective governing bodies, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any of the following:

(i) any construction activity performed under this Agreement by the Company, or anyone claiming by, through or under the Company; and

(ii) any loss of life, personal injury or damage to property arising from or out of the use of the Improvement Site by any Party including, without limitation, tenants, customers and invitees at the Improvement Site.

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provided, however, that the foregoing indemnity shall not extend to the negligent acts or willful misconduct of the County and the Company and their respective agents, employees and members of their respective governing bodies.

- (b) The County shall defend, protect, indemnify and hold harmless the Company and its respective agents, employees and members, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any injury, loss or life or construction activity performed under this Agreement by the County, or anyone claiming by, through or under the County on the Project Site.

provided, however, that the foregoing indemnity shall not extend to the negligent acts or willful misconduct of the County and the Company and their respective agents, employees and members of their respective governing bodies.

- (c) Prior to the commencement of any construction activity to be performed by the County and the Company in connection with the Project, such party shall furnish proof of liability and casualty insurance policies satisfactory to the other party, which shall name the other party as additional insured.

The indemnifications set forth in this Section 7.10 shall survive the issuance of the Debt and shall not be merged into the documents evidencing the Debt.

**SECTION 7.11                      No Waiver**

No consent or waiver, express or implied, by any Party hereto or to any breach or default by such Party in the performance by the other Party of its obligations hereunder shall be valid unless in writing, and no such consent or waiver to or of one breach or default shall constitute a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The granting of any consent or approval in any one instance by or on behalf of any Party hereto shall not be construed to waive or limit the need for such consent in any other or subsequent instance.

**SECTION 7.12                      Remedies**

The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, promptly by negotiations and mediation. Any Party may give the other Party written notice of any dispute not resolved. Within sixty (60) days after delivery of said notice both shall meet at a mutually acceptable time and place to mediate the dispute with a mediator agreed to by both parties which must be certified by the Alabama Academy of Attorney Mediators. If the matter has not been resolved by mediation, either Party may initiate arbitration or legal action of the controversy of claim as provided hereafter. All negotiations pursuant to this claim are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence, state rules of evidence, and other applicable law.

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If the Parties agreed to arbitrate the dispute, such arbitration shall be binding and conducted on a confidential basis, under the then current Commercial Arbitration Rules of the American Arbitration Association ("Association") strictly in accordance with the terms of this Agreement and the substantive law of the State of Alabama. The arbitration shall be held in Etowah County, Alabama, or another agreed upon location and conducted by one (1) arbitrator chosen from a list of attorneys who are members of the Association's commercial arbitration panel and are knowledgeable about the subject matter and who have been engaged in the practice of law for a period of at least ten (10) years and who are not residents of or practice in Etowah County, Alabama. If the Parties cannot promptly, within thirty (30) days, agree on the selection of the arbitrator, the arbitrator will be chosen pursuant to Rule 13 of the Commercial Arbitration Rules of the Association. The costs of the arbitration, including the fees to be paid to the arbitrator, shall be shared equally by the Parties to the dispute. The judgment upon the award rendered by the arbitrator may be entered and enforced in any court of competent jurisdiction. Neither Party shall be precluded hereby from seeking provisional remedies in the courts of any competent jurisdiction including, but not limited to, temporary restraining orders and preliminary injunctions, to protect its rights and interests, but such shall not be sought as a means to avoid or stay arbitration. To the extent that this Agreement contains a limitation and/or disclaimer of liability clause, the terms of such clause will be applied by the arbitrator. The Parties agree that they have voluntarily agreed to arbitrate their disputes in accordance with the foregoing.

Provided, however, if either party chooses legal action in order to resolve the dispute, such legal action shall be the sole forum for the resolution of the dispute and arbitration shall not be available unless mutually agreed to by the Parties.

Unless provided for by court-ordered provisional remedies as set forth above, nothing herein shall be construed as preventing the operation of the Project or staying the provisions of this Agreement during the pending arbitration.

### **SECTION 7.13 No Partnership or Joint Venture**

Nothing contained in this Agreement shall constitute or be construed to be a partnership or joint venture among the Parties and their respective successors and assigns.

**[signatures on following pages]**

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\_\_\_\_\_ County

\_\_\_\_\_ Company

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first set forth above.

**ETOWAH COUNTY**

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

Its: \_\_\_\_\_

**CBS SUPPLY, L.L.C.**

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

Its: Michael DeLeon, member

STATE OF ALABAMA

COUNTY OF ETOWAH

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ as \_\_\_\_\_ of Etowah County, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the forgoing, he executed the same voluntarily on the day the same bears date as an act of Etowah County.

Given under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 2009.

STATE OF SOUTH CAROLINA

COUNTY OF BERKLEY

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that Michael DeLeon, member of CBS Supply, LLC, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the forgoing, he executed the same voluntarily on the day the same bears date as an act of said Company.

Given under my hand and official seal this \_\_\_ day of \_\_\_\_\_, 2009.

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\_\_\_\_\_ County

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EXHIBIT A  
LEGAL DESCRIPTION OF PROJECT SITE

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\_\_\_\_\_ County

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EXHIBIT B  
DESCRIPTION OF PROJECT INFRASTRUCTURE

1. Water Service
2. Utility Service
3. Interstate Interchange
4. Fire Station
5. Any other items described in 3.1 of the Agreement

\* The scope, size and substance of all items described on this Exhibit B are contingent upon a Feasibility Study conducted by the Company and the approval by the Parties of the Master Site Plan.

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