

COMPREHENSIVE AGREEMENT

between

THE COUNTY OF SOUTHAMPTON, VIRGINIA

and

BUNROOTIS, LLC

for

**INDUSTRIAL PARK SITE GRADING, CONSTRUCTION OF THE
COMPENSATORY MITIGATION SITE AND DEVELOPMENT AND
OPERATION OF THE CHEROENHAKA WETLAND AND STREAM
MITIGATION BANK**

January __, 2010

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COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (this “Agreement”) is entered into as of January __, 2010, between **THE COUNTY OF SOUTHAMPTON, VIRGINIA** (“the County”), a County and political subdivision of the Commonwealth of Virginia, and **BUNROOTIS, LLC** (“Developer”), a Delaware limited liability company. The County and Developer are referred to individually as a “Party” and collectively as “the Parties”.

Recitals

1. On March 28, 2005, the County adopted “Public-Private Education Facilities and Infrastructure Act of 2002 - Procedures for Southampton County, Virginia,” establishing procedures for the development of public facilities through public-private partnerships (“Implementing Procedures”), which procedures satisfy the requirements of the PPEA (as defined below).
2. On August 27, 2009, the County published a solicitation for conceptual phase proposals under the Public-Private Education Facilities and Infrastructure Act of 2002 (Title 56, Chapter 22.1 of the Code of Virginia of 1950 as amended (the “Code”), and such chapter hereinafter referred to as the “PPEA”) for certain site development work associated with development of an industrial park, including compensatory mitigation in the form of forested and emergent wetlands and relocated/restored stream, and development, financing, construction and sponsorship of a wetland and stream mitigation bank (as more fully described hereinafter, the “Project”).
3. On or about September 25, 2009, the County received one response to the solicitation described in Recital 2, from the Developer.
4. On September 28, 2009, the Board of Supervisors adopted a resolution which, among other things, accepted the conceptual phase proposal of the Developer and made findings that it would be advantageous for the County to proceed with the Project using procedures for competitive negotiation, rather than sealed, competitive bids, given the probable scope, complexity and urgency of the Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Project that might otherwise not be available.
5. After reviewing the Developer’s conceptual phase proposal and, in the absence of any competing proposals, by resolution adopted on October 26, 2009, the County selected the Developer to advance to the detailed review phase in accordance with the Implementing Procedures, retaining the right to reject said proposal at any time for any reason.
6. After reviewing the detailed phase proposal dated November 19, 2009 as submitted by the Developer, by resolution dated November 23, 2009, the County

selected the Developer for negotiation of a comprehensive agreement under the PPEA for the Project based upon the conceptual phase proposal and the detailed phase proposal submitted by the Developer and upon the County's evaluations of those proposals.

7. The Parties have negotiated this Agreement consistent with the PPEA, other applicable law, the Implementing Procedures, the proposals and discussions between representatives of the County and Developer.
8. Having considered this Agreement and other information, the County has determined that the Project to be developed, constructed and operated pursuant to this Agreement serves the public purpose of the PPEA under the criteria of Section 56-575.4(C) of the Code.

[agreement continues on following page]

Agreements

NOW THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Contract Documents.** The Contract Documents are comprised of the following:
 - a. All written modifications, amendments and change orders to this Agreement; and
 - b. This Agreement, including all exhibits and attachments hereto.
3. **Definitions.** The following definitions apply to this Agreement.
 - a. “Cheroenhaka Construction Documents” means the sealed plans and specifications prepared by Timmons Group, approved by the County and transferred to the Developer, which the Developer has reviewed and determined to be reasonably suitable for use to develop, construct and operate the Cheroenhaka Wetland and Stream Mitigation Bank, as more particularly listed and described in **Exhibit D**, attached hereto and incorporated herein.
 - b. “Cheroenhaka Wetland and Stream Mitigation Bank” means the wetland and stream mitigation bank to be located on approximately 240 acres located off Rose Valley Road, west of the City of Franklin, and adjacent to the industrial park site (the exact location of which is more specifically described on **Exhibit D**, which the Developer shall lease from the IDA and shall be developed, constructed and operated by the Developer to generate approximately 50.88 wetland credits and approximately 12,379 to 14,427 stream credits, all as more particularly described in **Exhibit B**.
 - c. “Compensatory Mitigation Site” means the compensatory mitigation site to be constructed on that part of the Site anticipated to be developed as an industrial park to address impacts caused by such proposed development (the exact location of which is more specifically described on **Exhibit C**).
 - d. “Construction Work” means the all the work required of the Developer to develop and construct the Industrial Park Site Grading and the Compensatory Mitigation Site as a turnkey project, as more particularly described in Article 7.
 - e. “Contract Documents” means those documents listed in Article 2 herein.
 - f. “Date of Commencement” means the date described in Article 7 herein.

- g. “Final Completion” or “final completion” means completion of the Industrial Park Site Grading and the Compensatory Mitigation Site in conformance with the Industrial Park Construction Documents and other Contract Documents, including without limitation, punch list items, but not including warranty items.
- h. “Industrial Park Construction Documents” means the sealed plans and specifications prepared for and approved by the County, which the Developer has reviewed and determined to be reasonably suitable for use to perform the Construction Work, as more particularly listed and described in **Exhibit C**, attached hereto and incorporated herein.
- i. “Industrial Park Site Grading” means the portion of the Construction Work necessary to prepare the portion of the Site anticipated to be developed as an industrial park for such future development (the exact location of which is more specifically described on **Exhibit C**).
- j. “Lease” means the lease dated, executed and delivered as of the date of this Agreement, by which the Southampton County Industrial Development Authority (the “IDA”) will lease to the Developer the land on which the Developer shall develop, construct and operate the Cheroenhaka Wetland and Stream Mitigation Bank, which shall be in a form substantially similar to that attached hereto and incorporated herein as **Exhibit F**.
- k. “Mitigation Banking Instrument” means the document to be executed by Developer as the sponsor of the Cheroenhaka Wetland and Stream Mitigation Bank, which shall be in a form substantially similar to that attached hereto and incorporated herein as **Exhibit B**.
- l. “Project” means the construction of the Industrial Park Site Grading and the Compensatory Mitigation Site as a turnkey project and the development, construction and operation of the Cheroenhaka Wetland and Stream Mitigation Bank, as contemplated by the Contract Documents. “Project” includes both the entirety of the Project or a part thereof.
- m. “Project Schedule” means that schedule attached hereto as part of **Exhibit E**, as it may be adjusted pursuant to the Contract Documents.
- n. “Site” means the land on which the Cheroenhaka Wetland and Stream Mitigation Bank, the Industrial Park Site Grading, and the Compensatory Mitigation Site will be constructed as described on sheet 7.0 of the documents listed in **Exhibit C** and sheet 1.2 of the documents listed in **Exhibit D**.
- o. “Substantial Completion,” or “substantial completion,” with respect to the Construction Work shall have the meaning as set forth in Article 7 of this Agreement.

- p. “Work” means all of Developer’s development, construction, operation and other services required by the Contract Documents, including but not limited to the Construction Work, and procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.
- 4. **General Scope.** Developer shall perform and provide or cause to be performed and provided, all development, construction and operation services, and provide or cause to be provided all material, equipment, services and labor, necessary to complete the Work, including but not limited to entry into the Lease and both the Construction Work, described in and reasonably inferable from the Industrial Park Construction Documents and the work required to develop, construct and operate the Cheroenhaka Wetland and Stream Mitigation Bank. It is the intent of County and Developer that, unless otherwise specifically set forth in this Agreement, Developer shall perform or provide all development and construction services that are necessary to provide County with a turnkey Project with respect to the Industrial Park Site Grading and the Compensatory Mitigation Site that fully complies with County’s requirements for those parts of the Project as described in this Agreement and in the Industrial Park Construction Documents. With regard to matters concerning the Developer’s performance of its obligations pursuant to this Agreement, the Developer shall remain solely responsible to perform all of its obligations under this Agreement as set forth in this Agreement and in accordance with the applicable standard of care. However, notwithstanding anything herein to the contrary, the Developer shall assume no responsibility for any element of any of the plans, specifications, design or other related services and/or materials furnished by the County or Timmons Group, except that if the Developer observes or becomes aware of any error, omission, inconsistency or deficiency of any kind in such furnished materials, the Developer shall promptly notify the County, with a copy to Timmons Group, of the error, omission, inconsistency or deficiency.
- 5. **Interpretation; Intent and Incorporation.**
 - a. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the order of precedence among Contract Documents shall be as provided in Article 2 hereof.
 - b. Capitalized terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement and the Exhibits hereto, unless another meaning is clearly intended.
 - c. In accordance with Article 24 hereof and as more fully provided thereby, the Contract Documents form the entire agreement between County and

Developer. No oral representations or other agreements have been made by the Parties except as specifically stated in the Contract Documents.

6. **Ownership of Work Product.**

- a. **Work Product.** All drawings, specifications and other documents and electronic data furnished by County to Developer in connection with this Project (collectively, the “Work Product”) are deemed to be instruments of service and the ownership and property interests therein, including the copyrights thereto, shall be as set forth in any agreements that the County entered to procure their production. The Work Product shall include, but not be limited to, the Industrial Park Construction Documents and the Cheroenhaka Construction Documents. The Developer shall not have any rights of ownership in the Work Product.
- b. **Grant of License to Work Product.** In connection with its Work under this Agreement on the Project, Developer shall have a limited license to use and reproduce (and to allow its general subcontractor and other subcontractors to use and reproduce) the Work Product, but only as necessary to its development, construction and operation of the Project. Developer shall not have the right to, and Developer covenants and agrees that Developer will not, transfer to any other person for use in connection with any other project Developer’s limited license to use and reproduce the Work Product in connection with its development, construction and operation of the Project. This limited license shall terminate upon completion of all of the Work required under this Agreement or any termination of this Agreement, whichever may occur first; if the Agreement is terminated with respect to only a portion of the Work, then the limited license shall terminate with respect to only the Work Product applicable to such Work. With respect to the portion of the Work Product consisting of the Cheroenhaka Construction Documents, the limited license described herein shall be subject to payment by the Developer to the County of a use fee of Ten Thousand and no/100 Dollars (\$10,000.00) prior to any use of the Cheroenhaka Construction Documents.

7. **Construction of the Industrial Park Site Grading and Compensatory Mitigation Site.**

- a. The Developer shall construct, or cause to be constructed, the Industrial Park Site Grading and Compensatory Mitigation Site as a turnkey project, in accordance with the Industrial Park Construction Documents, and in full compliance with all applicable laws, ordinances, regulations (including, but not limited to, those of the Virginia Department of Environmental Quality) and applicable permits.
- b. The County, its employees, representatives and consultants, including, but not limited to, its independent engineer, Timmons Group, shall be

afforded reasonable access to the Project to ensure that the Developer's activities are acceptable to the County and the Industrial Park Site Grading and the Compensatory Mitigation Site are being performed in accordance with this Agreement and the Contract Documents, so long as such access does not interfere with the Developer's performance of the Work or other permitted activities.

- c. Upon Substantial Completion of the Industrial Park Site Grading and the Compensatory Mitigation Site, the Developer shall deliver to County a certificate from itself and its general subcontractor for such work concerning performance of the Industrial Park Site Grading and Compensatory Mitigation Site, which certificate shall be in substantially the form attached to this Agreement as **Exhibit A**.
- d. Intentionally deleted.
- e. For the development of the Industrial Park Site Grading and the Compensatory Mitigation Site, the County shall pay Developer the lump sum price of Two Million, Nine Hundred Forty-Seven Thousand, Eight Hundred Thirty-Five and no/100 Dollars (\$2,947,835.00) ("Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum"). The County shall not be responsible to pay any costs in excess of the lump sum price set forth herein unless such lump sum price is changed through an amendment to this Agreement, signed by both the County and the Developer and in accordance with the provisions of this Agreement. Unless otherwise provided in the Contract Documents, the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum is deemed to include all sales, use, consumer and other taxes imposed by law or any governmental authority.
- f. The County shall not be required to pay to the Developer the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum until Substantial Completion of the Industrial Park Site Grading and Compensatory Mitigation Site has been achieved, as more particularly set forth herein. To assure the Developer of the availability of funds with which the County can pay the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum, the County represents and warrants that proceeds of the Industrial Development Authority of Southampton County, Virginia (the "Authority") Public Facility Lease Revenue Bonds (Southampton County, Virginia Public Facilities Project), Series 2006A (the "Bonds") currently in escrow with Regions Bank, as trustee (the "Trustee") for the Bonds, exceed the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum; that such escrowed funds have been allocated for purposes related to development of the industrial park site as evidenced by the Bonds; and that upon confirmation of Substantial Completion, the County will make the required requisition and take other appropriate steps to cause the Trustee

to pay the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum to the Developer in accordance with and subject to the terms of the Indenture of Trust dated as of November 1, 2006, between the Authority and the Trustee, related to the Bonds (the “Indenture”) within five (5) days of confirmation of Substantial Completion. Substantial Completion shall be deemed to have occurred when the Construction Work is substantially complete, which shall not require installation of dormant season plantings, and upon the happening of all of the following, which shall be certified by the County’s consultant, Timmons Group: upon written notification from the Developer to the County acknowledging that the Construction Work has been completed in accordance with the Industrial Park Construction Documents, the County shall cause Timmons Group to, within twenty-five (25) days of such time, on behalf of the County, perform a Substantial Completion inspection, prepare an as-built survey, and submit to the County a letter providing its opinion as to the Substantial Completion and accompanying punch list for determination of the “Withheld Payment” amount (defined below). Within five (5) days of receipt such submission of certification of Substantial Completion by Timmons Group, the County shall then pay to the Developer the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum, less that amount equal to one-hundred fifty percent (150%) of the estimated cost to complete the punch list items identified by the County and/or its consultants and achieve Final Completion (the “Withheld Payment”). When all portions of the Industrial Park Site Grading and Compensatory Mitigation Site including, but not limited to, any punch list items have been completed, the Developer shall notify the County. Then, the County shall cause Timmons Group, within seven (7) days of receipt of such notice, to investigate to confirm the actual Final Completion of the punch list items and the Industrial Park Site Grading and Compensatory Mitigation Site, in accordance with the provisions of the Contract Documents, and if it finds that such work has been satisfactorily performed, then the County shall cause Timmons Group to certify that Final Completion has been achieved. Within five (5) days of such certification by Timmons Group, the County shall pay the Withheld Payment to the Developer. Prior to receipt of any payments from the County, the Developer shall provide the County with its own lien waiver and with lien waivers from its general subcontractor with regard to payment for the Industrial Park Site Grading and the Compensatory Mitigation Site.

- g. **Lender Requirements.** As described above, the County intends to pay the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum with proceeds of the Bonds currently held in escrow by the Trustee. In connection with such funding, Developer shall comply with all conditions established by the terms of the Indenture or any other lender or other financial source in connection with payment under this Agreement, provided that such conditions are explained in writing to the

Developer by the County in easily understandable terms. County shall use its best efforts to insure that any such conditions are reasonable in light of the nature and complexity of the Project and are at no additional cost and expense of any material amount to Developer. Any such additional costs or expenses shall be reimbursed promptly to the Developer by the County.

- h. **Date of Commencement.** The County shall issue to the Developer a notice to proceed on the Industrial Park Site Grading and the Compensatory Mitigation Site within five (5) days of January 25, 2010. Pending receipt of this notice to proceed, the Developer shall proceed with the Construction Work for the Industrial Park Site Grading and Compensatory Mitigation Site no later than April 15, 2010 (“Date of Commencement”) unless the Parties mutually agree otherwise in writing.
- i. **Substantial Completion and Final Completion of Industrial Park Site Grading and Compensatory Mitigation Site.**

 - i. Substantial Completion of all Industrial Park Site Grading and the Compensatory Mitigation Site shall be achieved no later than August 18, 2010 (“Industrial Park Site Grading and Compensatory Mitigation Site Scheduled Substantial Completion Date”), provided that this Agreement is executed and the notice to proceed is issued on or before January 30, 2010.
 - ii. Final Completion of the Industrial Park Site Grading and Compensatory Mitigation Site shall be achieved as expeditiously as reasonably practicable, and no later than November 24, 2010 (“Industrial Park Site Grading and Compensatory Mitigation Site Scheduled Final Completion Date”).
 - iii. The dates for Substantial Completion and/or Final Completion may be extended, and the Developer shall not be in default, by reason of an excusable failure in performing this Agreement in accordance with its terms (including any failure by the Developer to make progress in the prosecution of the Construction Work that endangers performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Developer or those providing any services through the Developer. Such causes may include, but are not limited to, acts of God or of the public enemy, acts or omissions of the County, fires, severe floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe or extreme weather, but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Developer or those providing any services through the Developer. Contingencies which can be reasonably anticipated shall not be considered a basis for claiming excusable delay. The Developer must notify the County in writing within ten

(10) days of the Developer's knowledge of any such event and such notice is a condition precedent to any claim for an excusable delay. If the Developer's claim for an excusable delay meets the requirements of this paragraph, the Developer shall be entitled to a change order allowing for a reasonable extension of the dates for Substantial Completion and/or Final Completion. For the purposes of this Article 7.i.iii, the Developer acknowledges that it has taken into consideration normal weather conditions, which does not mean statistically average weather, but rather means a range of weather patterns which might be reasonably anticipated based on weather data for the past ten (10) years (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the National Oceanic and Atmospheric Administration records available for Wakefield, Virginia. Notices on the basis of "unusually severe or extreme weather" must be further substantiated by weather data collected during the period of delay at or in the general vicinity of the Industrial Park Site Grading and Compensatory Mitigation Site. Said data must demonstrate that an actual departure from normal weather occurred at the Industrial Park Site Grading and Compensatory Mitigation Site during the dates in question. Those notices must also show that the unusually severe or extreme weather caused an actual delay in completion of the Construction Work. All of the evidence and data supporting the request must be furnished to the Owner before any consideration will be given to the request.

- j. **Liquidated Damages.** Developer and the County recognize that time is of the essence with respect to all dates and time frames set forth or described in this Agreement with respect to the Industrial Park Site Grading and Compensatory Mitigation Site and that the County will suffer financial loss if the Industrial Park Site Grading and Compensatory Mitigation Site are not substantially and finally completed within the times specified in this Agreement. Developer and the County further recognize the difficulty of proving actual loss to the County in the event of a failure to achieve Substantial Completion and Final Completion of the Industrial Park Site Grading and the Compensatory Mitigation Site in accordance with the dates established in this Agreement. Accordingly, instead of requiring such proof, Developer acknowledges that the rate of the liquidated damages set forth herein is reasonable and does not constitute a penalty. Developer agrees that if Substantial Completion of the Industrial Park Site Grading and Compensatory Mitigation Site is not attained by fourteen (14) days after the scheduled Industrial Park Site Grading and On-Site Mitigation Work Scheduled Substantial Completion date (the "LD Date"), Developer shall pay on demand to County Five Hundred and no/100 Dollars (\$500.00) per day as liquidated damages for each day that Substantial Completion of the Industrial Park Site Grading and Compensatory Mitigation Site extends beyond the LD Date. The

liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by County which are occasioned by any delay in the Developer achieving Substantial Completion. The Developer hereby waives any defense as to the validity of any liquidated damages stated herein on the grounds that such liquidated damages are void as penalties not reasonably related to actual damages.

- k. **Hazardous Conditions.** The Developer is not responsible for any hazardous conditions encountered at the Industrial Park Site Grading and Compensatory Mitigation Site. The Developer will be entitled to a reasonable extension of the dates for Substantial and/or Final Completion as well as an increase in compensation to the extent the Developer's cost and/or time of performance have been adversely impacted by the presence of hazardous conditions, which, if granted, shall be memorialized by a written amendment to this Agreement. For the purposes of this paragraph, hazardous conditions shall mean any materials, wastes, substances and chemicals deemed to be hazardous under any applicable federal, state or local laws, codes, ordinances, rules, regulations, orders or decrees of any government or quasi-government entity having jurisdiction over the Project, the Industrial Park Site Grading and Compensatory Mitigation Site, or the Construction Work.

8. **Lease of Land for Development of Cheroenhaka Wetland and Stream Mitigation Bank.**

- a. The County shall cause the IDA to lease to the Developer the land on which the Developer plans to develop, construct and operate the Cheroenhaka Wetland and Stream Mitigation Bank, in accordance with a Lease substantially in the form set forth as **Exhibit F** attached hereto and incorporated herein. The Lease shall be executed simultaneously with this Agreement.
- b. The Developer shall construct, or cause to be constructed, the Cheroenhaka Wetland and Stream Mitigation Bank on the land leased from the IDA. Construction shall be in accordance with the Cheroenhaka Construction Documents, subject to the Developer's payment of the use fee described in Article 6 and in full compliance with all applicable laws, ordinances, regulations (including, but not limited to, those of the Virginia Department of Environmental Quality) and applicable permits. Construction of Phase 1 of the Cheroenhaka Wetland and Stream Mitigation Bank shall commence no later than February 1, 2010. Substantial completion of Phase 1 of the Cheroenhaka Wetland and Stream Mitigation Bank shall occur not later than May 29, 2010.

- c. Upon approval by the interagency review team, the Developer shall execute the Mitigation Banking Instrument, attached hereto and incorporated herein as **Exhibit B**. As a “Bank Sponsor” under the Mitigation Banking Instrument, the Developer shall market and sell wetland and stream credits generated by the Cheroenhaka Wetland and Stream Mitigation Bank, using its commercially reasonable efforts to maximize, in light of the then-current market, the sale of credits and the pricing at which credits are sold.
- d. As a Bank Sponsor, Developer shall monitor and maintain, or cause to be monitored and maintained, the Cheroenhaka Wetland and Stream Mitigation Bank, in full compliance with the Mitigation Banking Instrument and all applicable laws, ordinances, regulations (including, but not limited to, those of the Virginia Department of Environmental Quality) and applicable permits, for the life of the Mitigation Banking Instrument.
- e. The County, the IDA, and the employees, representatives and consultants of either, shall be afforded reasonable access to the Cheroenhaka Wetland and Stream Mitigation Bank to ensure that the Developer’s activities in connection therewith are acceptable to the County and the maintenance and monitoring is being performed in accordance with this Agreement and the Contract Documents, provided that (i) the County provides the Developer with reasonable advance notice and (ii) there is no interference with Developer’s activities.
- f. The Developer shall be solely responsible for all costs associated with its construction and operation of the Cheroenhaka Wetland and Stream Mitigation Bank as contemplated by this Agreement, including, but not limited to, any Lease payments, construction costs, permitting costs, marketing costs, and costs of monitoring and maintenance.
- g. Development of Phase 2 of the Cheroenhaka Wetland and Stream Mitigation Bank shall be completed not later than December 31, 2013.
- h. Annually on the anniversary of this Agreement, the Developer shall file with the County a schedule listing the base charges to users of the Cheroenhaka Wetland and Stream Mitigation Bank for both stream credits and wetland credits. If the Developer adjusts the base charges in any manner during a year, it shall file with the County an updated listing within ten (10) days of the new charge becoming effective. Additionally, the Developer shall file copies of any service contracts that it enters with respect to the Cheroenhaka Wetland and Stream Mitigation Bank within ten (10) days after the effective date of such agreement.

9. **Project Schedule.**

- a. Attached hereto as part of **Exhibit E** is the initial Project Schedule. The Project Schedule includes, among other things, the Industrial Park Site Grading and Compensatory Mitigation Site Scheduled Substantial Completion Date and the Industrial Park Site Grading and the Compensatory Mitigation Site Scheduled Final Completion Date. Time is of the essence in achieving all Scheduled Substantial and Final Completion dates in accordance with the dates set forth in the Project Schedule, subject to changes made to the Project Schedule in accordance with the terms of this Agreement.
- b. The Developer shall use commercially reasonable efforts to maintain the Project Schedule, which can be modified upon request by the Developer, such request to be granted, withheld or delayed in the sole discretion of the County, keeping in mind the importance of achieving the Substantial and Final Completion dates as set forth in the Project Schedule and this Agreement. The Parties will use their best efforts to secure an expedited review and approval by the County (as issuing or reviewing agency, not in its capacity as a Party to this Agreement) and any other governmental or private entity of applications made by Developer for permits, reviews, inspections or approvals. Developer shall include in the Project Schedule sufficient allowance of time for such permitting, reviews, inspections and approvals.

10. **Plan of Finance.** While all funding of the County's obligations under this Agreement may be subject to annual appropriation, the County plans to finance the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum in a manner that results in the availability of funds in the amounts and at the times required, as more particularly set forth in Article 7, and, as of the date of this Agreement, does not anticipate requiring any additional sources of funding. If the funding as described in Article 7 is not available, in whole or in part, to make this payment, the County will include in its annual budgets amounts reasonably necessary to finance the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum. Prior to the start of the Construction Work, the County will provide reasonable evidence of funding to the Developer upon its request.

11. **Termination for Cause.**

- a. **County's Right to Perform and Terminate for Cause.**
 - i. If Developer fails to (i) provide or cause to be provided a sufficient number of skilled workers for the Construction Work; (ii) supply the materials or equipment required by the Contract Documents for the Construction Work; (iii) comply with applicable legal requirements; (iv) timely pay, without cause, subcontractors; (v)

prosecute the Construction Work with promptness and diligence to ensure that the Construction Work is completed by the scheduled dates for substantial and final completion; (vi) perform material obligations under the Contract Documents; or (vii) comply with the terms of the Lease such that it becomes terminated, or if Developer (i) becomes insolvent; (ii) makes a general assignment for the benefit of its creditors; (iii) commences or consents to any action seeking reorganization, liquidation or dissolution under any law relating to bankruptcy or relief of debtors; or (iv) commences or consents to any action seeking appointment of a receiver or trustee for itself or its assets, then the County, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Articles 11.a.ii and 11.a.iii below.

- ii. Upon the occurrence of an event set forth in Article 11.a.i above, the County may provide written notice to Developer that it intends to terminate this Agreement with respect to the Construction Work unless the problem cited is cured, or reasonably commenced to be cured, within fifteen (15) days of Developer's receipt of such notice. If Developer fails to cure, or reasonably commence to cure, such problem, then the County may declare this Agreement terminated for default with respect to the Construction Work by providing written notice to Developer of such declaration.
- iii. Upon declaring this Agreement terminated with respect to the Construction Work pursuant to Article 11.a.ii above, the County, at its option and upon written notice to the Developer, may take assignment of the Developer's subcontract for the Construction Work, and/or enter upon the premises and take possession of the Site and any materials, equipment, scaffolds, tools, appliances and other items thereon, which have been actually incorporated in the Construction Work, all of which Developer hereby transfers, assigns and sets over to the County for such purpose, and to employ any person or persons to complete the Construction Work and provide all of the required labor, services, materials, equipment and other items. To effect such assignment, the Developer shall include in its subcontract for the Construction Work a provision by which the general subcontractor performing such Construction Work agrees to such an assignment. In the event of such termination, Developer shall not be entitled to receive any payment for the Construction Work until the Construction Work shall be finally completed in accordance with the Contract Documents. At such time, the Developer shall be paid for the Industrial Park Site Grading and Compensatory Mitigation Site work it properly performed in accordance with this Agreement prior to termination, based on the ratio that the amount

of Work properly completed bears to the amount of Work called for in order to achieve Final Completion, and if the difference between the costs actually incurred by the Developer prior to termination for the Construction Work and the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum exceeds the cost and expense incurred by the County in completing the Construction Work, such excess shall be retained by the County. If the County's cost and expense of completing the Construction Work exceeds the difference between the costs actually incurred by the Developer prior to termination for the Construction Work and the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum, then Developer shall be obligated to pay the difference to the County. Such costs and expenses shall include not only the cost of completing the Construction Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by the County in connection with the procurement and defense of claims arising from Developer's default.

- iv. If the County improperly terminates the Construction Work for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 12 hereof and the County will reimburse Developer for such costs and expenses incurred in connection with the improper termination as provided in Article 12.
- v. If the Lease is terminated for any default of the Developer whatsoever, then this Agreement shall automatically terminate with respect to all Work as of the same date and the County shall have all the rights described in this Article 11.a. If the Lease is terminated for any reason other than a default of the Developer, then while this Agreement shall automatically terminate with respect to all Work as of the same date, the termination shall be considered a termination for convenience in accordance with Article 12 hereof and the provisions of Article 12 shall apply.

b. Developer's Right to Terminate for Cause.

- i. Developer, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate this Agreement with respect to the Construction Work for cause for the following reasons specified in clauses ii. and iii. below:
- ii. The Construction Work has been stopped for forty-five (45) consecutive days, or more than sixty (60) days during the duration of the Project, because of an order by a court or any government authority having jurisdiction over the Construction Work, provided

that such stoppages are not due to the acts or omissions of Developer or anyone for whose acts Developer may be responsible.

- iii. The County's failure to provide Developer with any information, permits or approvals that are the County's responsibility under the Contract Documents which result in the Construction Work being stopped for forty-five (45) consecutive days, or more than sixty (60) days during the duration of the Project, even though the County has not ordered Developer in writing to stop and suspend the Construction Work and such failure of the County was not due to the acts or omissions of Developer or anyone for whose acts Developer may be responsible.
- iv. Upon the occurrence of an event set forth in Article 11.b.ii. through Article 11.b.iii. above, Developer may provide written notice to the County that it intends to terminate this Agreement with respect to the Construction Work unless the problem cited is cured, or commenced to be cured, within fifteen (15) days of the County's receipt of such notice. If the County fails to cure, or reasonably commence to cure, such problem, then Developer may declare this Agreement terminated with respect to the Construction Work for default by providing written notice to the County of such declaration. In such case, Developer shall be entitled to recover in the same manner as provided for in Article 12 of this Agreement.

c. Bankruptcy of County or Developer.

- i. If either the County or Developer institutes or has instituted against it a case under the United States Bankruptcy Code (such Party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:
- ii. The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- iii. The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of this Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

- iv. If the Bankrupt Party fails to comply with the foregoing obligations listed in clauses ii. and iii. above, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject this Agreement, declare this Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.
 - v. The rights and remedies under this Article 11.c.i above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Developer to stop Construction Work under any applicable provision of this Agreement.
12. **Termination for Convenience.** Upon ten (10) days written notice to Developer, the County may, for its convenience and without cause, elect to terminate this Agreement with respect to the Construction Work. In such event, the County shall pay Developer for the following:
- a. All Industrial Park Site Grading and Compensatory Mitigation Site work properly performed in accordance with this Agreement, based on the ratio that the amount of Work properly completed bears to the amount of Work called for in order to achieve Final Completion, unless the Industrial Park Site Grading and Compensatory Mitigation Site have already been accepted and paid for by the County; and
 - b. The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors.
13. **Payment Bonds, Performance Bonds, and Other Security; No Liens.**
- a. As a condition for entry into this Agreement, the Developer shall furnish, or cause to be furnished (i) a performance bond or letters of credit in the amount of Two Million, Nine Hundred Twenty-Two Thousand, Eight Hundred Thirty-Five and no/100 Dollars (\$2,922,835.00) to secure its obligation to complete the Construction Work on the Industrial Park Site Grading and Compensatory Mitigation Site; and (ii) a maintenance bond or letter of credit in the amount of One Hundred Thousand and no/100 Dollars (\$100,000.00) to secure the warranty on the landscaping installed on the Industrial Park Site Grading and Compensatory Mitigation Site, which shall apply to the shrubs, trees, herbaceous plugs, tublings, one-gallon container plants, live stakes, bareroot seedlings and wetland and riparian buffer seed mixes to be installed in locations as specified by the Industrial Park Construction Documents described in **Exhibit C**. Performance bonds, maintenance bonds and/or letters of credit provided

by the Developer's general subcontractor shall suffice to meet these obligations provided that the County is listed as an additional obligee on each. If bonds are provided, they shall be executed by a corporate surety or corporate sureties that are reasonably acceptable to the County, and duly authorized to do business in the Commonwealth of Virginia, that meet the requirements of Section 2.2-4337 of the Code and are executed in a form acceptable to the County. Developer shall cooperate with the County to fulfill any reasonable requirements in connection with the financing for the Project with respect to the form of bonds provided hereunder.

- b. Developer shall also furnish any cash escrow, funds, cashiers checks, certified checks, or letters of credit required for the County's issuance of any earth-disturbing or other permit and any bonds or security required by VDOT or any other governmental authority.
- c. The Site is a publicly owned property against which liens cannot be filed for the enforcement of claims. The Developer shall not cause or permit any mechanics or other liens or encumbrances to be filed against the Project or the Site, or to remain against the Project, the Site or any other property of the County or the IDA, and it shall provide, in each of its subcontractors and supplier agreements, and further require that its subcontractors and suppliers do the same in any of their subagreements related to this Project, that the respective subcontractor or supplier waives all rights to file liens against the Project, the Site, or any portion thereof. If a lien or claim of lien is filed against all or any part of or interest in the Project or the Site by any contractor, subcontractor, mechanic, laborer, materialman or any other person whomsoever, then the Developer shall, within thirty (30) days (or such shorter period if reasonably deemed necessary in order to avoid a foreclosure of such lien) after notice of the filing of such lien or claim of lien, cause the same to be discharged of record; provided, however, that the Developer shall have the right to contest the amount or validity of any such lien or claim of lien by appropriate proceedings, but in such event, the Developer shall promptly and fully bond over such lien by obtaining a statutory bond sufficient to discharge such lien with a responsible surety company acceptable to the County. The Developer shall prosecute such proceedings with due diligence and dispatch. The Developer shall also, at the Developer's expense, defend the County and the IDA against any action, suit or proceeding which may be brought on or for the enforcement of any such lien and shall pay damages and satisfy and discharge any judgment entered in such action, suit or proceeding and save the Developer and IDA harmless from any liability, claim or damages resulting therefrom.

14. **Insurance.**

- a. With respect to the Industrial Park Site Grading and the Compensatory Mitigation Site, Developer's general subcontractor shall obtain and maintain the following insurance with companies that are reasonably satisfactory to the County with at least an A (financial strength) and a VI (size) or greater rating by A.M. Best.
 - i. Worker's Compensation insurance with statutory limited and Employer's Liability Insurance of \$500,000 for one accident or aggregate disease;
 - ii. Commercial General Liability insurance including produces and completed operations coverage; \$1,000,000 each occurrence; on exclusion for X, C and U hazards allowed;
 - iii. Business Automobile Liability insurance for a combined single limit for bodily injury and property damage of not less than \$2,000,000; and
 - iv. Umbrella or Excess Liability insurance with following form coverage for a minimum single limit of \$2,000,000 supplementing the Commercial General Liability policy and Business Automobile Liability policies.
 - v. Developer's general subcontractor may satisfy the minimum liability limits required above for Commercial General Liability and Business Automobile Liability under an Umbrella or Excess Liability policy so long as at least an additional \$2,000,000 of coverage under the Umbrella or Excess Liability policy remains available.
 - vi. Developer's general subcontractor shall be responsible for the filing and settling of claims and liaison with insurance adjusters.
 - vii. Developer shall send proofs of coverage to the County, which shall be deemed to have approved of such policies unless, within thirty (30) days after receipt thereof, the County shall by notice in writing advise Developer to the contrary.
 - viii. The Commercial General Liability, Business Automobile Liability and Umbrella or Excess Liability insurance policies shall name the County, and the security trustees, if any, as part of any financing, if any, as Additional Insureds. Developer shall provide a policy endorsement in the form as follows:

Additional Insured - County, Lessees or Contractors

(Form B)

This endorsement conditions insurance provided under the following policy:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Developer's general subcontractor as named insured, Project Name or Number, and Section II is amended to include as an insured the person or organization shown in the Schedule (County), but only with respect to liability arising out of "your work" for that insured by or for you. Developer's general subcontractor also agrees to endorse the County as "Additional Insureds" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a pure "True Follow-Form" basis.

- b. The County reserves the right, but not the obligation, to review and revise any insurance requirement, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon any material adverse change in insurance market conditions after the date of this Agreement affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, and the costs of any such change shall be an adjustment to the compensation payable to Developer. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein and to reject any insurer providing coverage due to its poor financial condition or failure to operate legally, provided, however, that if the policy or insurer is rejected, then Developer shall be entitled to request, and the County shall grant, an adjustment of the Industrial Park Site Grading and Compensatory Mitigation Site Contract Sum if the Developer's costs are adversely impacted by such rejection and subsequent coverage with another policy or insurer.
- c. Developer agrees to provide, or cause to be provided to, the County Certificates of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and are in full force and effect, along with copies of the applicable policies of insurance. The Certificates of Insurance shall clearly indicate the project name and project number. Said Certificates of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

County Administrator
County of Southampton, Virginia
26022 Administration Center Drive
P.O. Box 400
Courtland, Virginia 23837
Tel: (757) 653-3015 Fax: (757) 653-0227

- d. Developer, prior to notice to proceed with or commencement of any Construction Work, whichever occurs first, will cause Builder's Risk insurance to be provided and maintained that names the County as named insured by means of an endorsement to the policy and gives coverage to protect the interests of the County, Developer and its subcontractors. The Builder's Risk coverage shall include property in transit, on or off-premises, which will become part of the Work, and for "acts of terrorism" coverage under the Terrorism Risk Insurance Act of 2002. Developer shall procure and maintain, or cause to be procured and maintained, the Builder's Risk insurance policy on an "all risk", 100% replacement cost basis, until completion of the Construction Work and final payment to Developer for the Construction Work. Cessation of the Builder's Risk coverage shall be affirmatively coordinated with the County's property insurer, as identified by the County. Copies of required endorsements shall be received prior to commencement of the Project.
 - e. With respect to the Cheroenhaka Wetland and Stream Mitigation Bank, the Developer shall maintain all insurance as required by the Lease, providing proof thereof as required by the Lease.
15. **Representations and Warranties.**
- a. **Developer.**
 - i. Developer represents and warrants that it has legal authority to enter into this Agreement and perform all of its obligations herein (including but not limited to the obligations required by Section 56-575.8 of the Code) and that the execution of this Agreement by it has been duly and properly authorized.
 - ii. The Developer represents and warrants that, during the performance of this Agreement:
 - A. The Developer will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Developer. The Developer agrees

to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. The Developer, in all solicitations or advertisements for employees placed by or on behalf of the Developer, will state that the Developer is an equal opportunity employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

Additionally, the Developer shall include the provisions of subparagraph (A) in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- iii. By entering into this Agreement, the Developer represents and warrants that the proposals submitted for this Project were made without collusion or fraud and that it did not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that it did not confer on any public employee having official responsibility for the procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- iv. By entering into this Agreement, the Developer represents and warrants that it does not and will not during the performance of this Agreement employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- v. By entering into this Agreement, the Developer represents and warrants that during the performance of this Agreement, the Developer will (i) provide a drug-free workplace for the Developer's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the

Developer that the Developer maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this subsection, “*drug-free workplace*” means a site for the performance of work done in connection with this Agreement executed by the Developer, the employees of which are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

- vi. The Developer will use good faith efforts to use local, minority and women-owned businesses as subcontractors for its Work under this Agreement, and shall require its main subcontractors to do the same.

b. **County.**

- i. The County represents and warrants that it has authority to enter into this Agreement and perform all its obligations herein and that the execution of this Agreement by it has been duly and properly authorized, including approval by the County Board of Supervisors of the County’s entry into this Agreement.
- ii. By entering into this Agreement, the County certifies that the Developer was not discriminated against in the solicitation or award of this Agreement because of race, religion, color, sex, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the Developer employs ex-offenders unless the County made a written determination that employing ex-offenders on this Agreement was not in its best interest. If the Developer is a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the County shall offer the individual, within a reasonable period of time after the date of his/her objection, access to equivalent goods, services, or disbursements from an alternative provider.

16. **Resolution of Disputes, Claims and Other Matters.** Disputes, claims and other matters in question between the Parties under this Agreement shall be resolved as follows:

- a. The Parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted with a mediator from The McCammon Group, with the site of the mediation being the County of Southampton, Virginia, which is agreed to be the sole and exclusive venue. Should the dispute, claim, or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than ninety (90) days after mediation is initiated, then, provided such Party participated in the mediation in good faith, a Party may proceed in accordance with subparagraph 16(b) below.
 - b. If the procedures of subparagraph 16(a) have been followed and the dispute, claim or matter in question remains unresolved, then any Party that has participated in mediation in good faith may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of the County of Southampton, Virginia, or in the United States District Court for the Eastern District of Virginia and may pursue all available appeals in any courts, to the extent they have jurisdiction.
 - c. Nothing in paragraphs (a) or (b) shall prevent a Party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the County of Southampton, Virginia or in the United States District Court for the Eastern District of Virginia if circumstances so warrant.
 - d. In the event of any dispute, claim, or other matter in question arising, Developer shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any dispute in connection with the payment of moneys, Developer shall be entitled to receive payments for non-disputed items.
 - e. Each of the Parties waives any claims against the other for consequential damages arising out of or relating to this Agreement. This waiver includes but is not limited to damages incurred by the Developer related to losses of financing, business and reputation, office expenses, and loss of profit including but not limited to any anticipated profit arising directly or indirectly from any of the Work contemplated under this Agreement.
 - f. In the event of litigation arising out of or relating to this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs resulting therefrom.
17. **Notices.** All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To the County: County Administrator
County of Southampton, Virginia
26022 Administration Center Drive
P.O. Box 400
Courtland, Virginia 23837

With copies to: County Attorney
County of Southampton, Virginia
26022 Administration Center Drive
P.O. Box 400
Courtland, Virginia 23837

And: Ashley H. Harrison
McGuireWoods LLP
901 E. Cary Street
Richmond, Virginia 23219

To Developer: Bunrootis, LLC
400 South Record, Suite 1250
Dallas, Texas 75202
Attn: David Gibbons

With copies to: Hanley Partners
101 South Hanley, 4th Floor
St. Louis, Missouri 63105
Attn: Kelly Wetzler

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

18. **Successors and Assigns.** Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns. This Agreement may not be assigned without the prior written consent of the Parties to this Agreement. Notwithstanding the foregoing, if financing is obtained for the Project or a part of the Project that requires any assignment of contractual interests, then the County may assign this Agreement, or a part hereof, to a third party as needed to comply with the terms of the financing, and the Developer shall execute any documents reasonably necessary to facilitate such assignment so long as the Developer's responsibilities are in no way modified or expanded. Developer's subcontracting of any construction-related work called for by this Agreement shall not be deemed an assignment of this Agreement.

19. **Time of the Essence.** All timelines and dates set forth in this Agreement are of the essence. The Developer shall proceed expeditiously with adequate forces and make diligent efforts to perform, or cause to be performed, all portions of the Work in accordance with the Project Schedule and the Developer shall achieve Substantial Completion and Final Completion of the Industrial Park Site Grading and the Compensatory Mitigation Site Work within the completion times specified in this Agreement. The County will cooperate reasonably with Developer's efforts to keep the Project on schedule.
20. **Independent Contractor.** It is expressly understood and agreed by the Parties hereto that Developer, in performing its obligations under this Agreement shall be deemed an independent contractor and not an agent, employee or partner of the County.
21. **No Waiver.** The failure of the County or Developer to insist upon the strict performance of any provisions of this Agreement, the failure of the County or Developer to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by the County of any act by Developer requiring the County's consent or approval shall not be construed to waive or render unnecessary the requirement for the County's consent or approval of any subsequent similar act by Developer. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the Party to be charged.
22. **Cooperation.** The Parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each Party agrees to designate representatives with the authority to make decisions binding upon such Party (subject in the case of the County to those matters requiring an appropriate vote of its Board of Supervisors) so as to not unduly delay the Project Schedule.
23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.
24. **Entire Agreement and Order of Precedence.** This Agreement, including the Exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between Developer and the County concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon Developer or the County unless reduced to writing in a

- formal amendment signed by each Party. In the event of any conflict or inconsistency between or among the meaning of any provision of the Contract Documents, such meaning, and the Contract Documents, shall be interpreted in the order in which they are listed in Article 2.
25. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia. The provisions of this Agreement shall not be construed in favor of or against either Party but shall be construed according to their fair meaning as if both Parties jointly prepared this Agreement.
26. **Annual Appropriation; Filing With Auditor of Public Accounts.** Except to the extent Bonds proceeds are used as described in Article 7, the financial obligations of the County contained in this Agreement are subject to annual appropriation. Within thirty (30) days after the date of this Agreement, the County shall submit a copy of this Agreement to the Auditor of Public Accounts, to the extent required by Section 56-575.9(F) of the Code.
27. **Financial Statements.** Developer agrees to provide the County with copies of current financial statements reflecting the general financial condition of the Developer on an annual basis. The financial statements provided need not be audited, but if those financial statements are audited, the Developer shall supplement the initial submission of unaudited financial statements for the year concerned with copies of audited statements within thirty (30) days after they become available. The Developer hereby designates and the County agrees to treat such financial statements as confidential proprietary information exempt from release under the Virginia Freedom of Information Act.
28. **Conditions Precedent and Subsequent to Agreement's Effectiveness.** It shall be a condition precedent to this Agreement's effectiveness that: (i) it first be approved by the County Board of Supervisors as evidenced by the signature of its County Administrator on behalf of the County on the signature pages hereof; (ii) it shall be executed in full with all exhibits attached by County and Developer on or before January 29, 2010; and (iii) the Lease shall be executed by the IDA and Developer on or before January 29, 2010.
29. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.
30. **Conflicts of Interest.** Any conflicts of interest that may arise during the term of this Agreement must be revealed to the County.
31. **Indemnification.** The Developer shall indemnify, hold harmless and defend the County, its officers, employees, agents and representatives from and against any

claims, demands, losses, liabilities, damages (direct and/or indirect), causes of action and costs and expenses of whatsoever kind (including attorneys' fees) or nature arising from or related to the following, except to the extent proximately caused by the negligence or misconduct of the County or any of its respective agents or employees:

- a. The development of the Project by the Developer, or its officers, directors, employees, agents, or subcontractors;
- b. Any conduct or misconduct of Developer not included in subparagraph 31.a hereof and for which the County, its officers, employees, agents or representatives are alleged to be liable;
- c. Claims, suits, actions or proceedings of whatever nature that are brought by Developer's employees, candidates for employment and statutory employees, as determined by the applicable worker's compensation laws.

These indemnifications shall survive the completion of the Project and the termination of this Agreement.

To the extent that the County obtains any indemnifications from any future contractors performing work on the Site or any future lessees of any part of the Site, the County will endeavor to have such indemnifications include the Developer as an indemnified party.

32. **Exhibits.** The following exhibits are hereby deemed to be part of this Agreement:

Exhibit A: Form of Construction Certificate

Exhibit B: Mitigation Banking Instrument

Exhibit C: Industrial Park Construction Documents

Exhibit D: Cheroenhaka Construction Documents

Exhibit E: Project Schedule

Exhibit F: Lease

IN WITNESS WHEREOF, the Parties have executed this Comprehensive Agreement as of the day and year first above written.

COUNTY OF SOUTHAMPTON, VIRGINIA

By: _____

Name: _____

Title: _____

Approved as to form:

County Attorney

BUNROOTIS, LLC

By: _____

Name: _____

Title: _____

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