

**RIDER (“RIDER”) TO VACANT LAND CONTRACT (THE “CONTRACT”) BY AND BETWEEN CITY OF STUART, AS SELLER (“SELLER”) AND GOLDSTEIN KITE ENVIRONMENTAL REDEVELOPMENT PARTNERS STUART I, LLC, AS BUYER (“BUYER”)**

**1. General Provisions:**

(a) All capitalized terms used but not defined herein shall have the meanings assigned to the same in the Contract.

(b) In the event of a conflict between the terms of the Contract and this Rider, the terms of this Rider shall prevail. Except as otherwise set forth herein, the Contract is unmodified and in full force and effect, and the parties hereby reaffirm and ratify all non-conflicting portions of the Contract. The Contract, as amended by this Rider, constitutes the entire Contract and understanding of the parties, and shall not be modified or amended except by written agreement duly executed by the parties hereto.

(c) Except as may otherwise be provided for herein, all capitalized terms used herein shall have the meaning ascribed to them in the Contract. The Contract and this Rider may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts are to be construed together and shall constitute one document. This document, including any amendments hereto, to the extent signed and delivered by means of a facsimile machine, electronic mail (including .pdf or any electronic signature e.g., [www.docusign.com](http://www.docusign.com)) or other commercially reasonable transmission method (“Electronic Signature”) shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. The parties agree that any document executed by Electronic Signature (including this document) shall be deemed (i) to be “written” or “in writing”, (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts”, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto agrees to and shall re-execute original forms thereof and deliver such original forms thereof to all other parties.

(d) No party hereto may raise the use of an Electronic Signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine, electronic mail, or other commercially reasonable transmission method as a defense to the formation of a contract, and each party forever waives such defense. For the purposes hereof, a business day (“Business Day”) shall mean any day other than a Saturday, Sunday or any other day on which banking institutions in the State of Florida are authorized by law or executive action to close.

(e) The Effective Date of the Contract shall be the date on which the last of Seller and Buyer executes the Contract and this Rider and communicates the fact of execution to the other party.

(f) The rights of Buyer hereunder shall be freely assignable to a single purpose entity, affiliate, related entity or an entity with common ownership or control, i.e., the majority interest and the principals of the Buyer and assignee shall be substantially the same. Any other assignment shall

be subject to Seller's written consent, which shall not be unreasonably withheld.

(g) In the event any term or provision of this Contract shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Contract shall be construed to be in full force and effect.

(h) The failure of any party hereto to enforce any provisions of this Contract shall not be construed to be a waiver of such or any other provision, nor in any way to affect the validity of all or any part of this Contract, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of this Contract shall be held to constitute a waiver of any other or subsequent breach.

2. **Definitions:** The following additional terms shall have the meanings assigned herein.

(a) "Environmental Laws" means any federal, state, regional, or local (i) law, statute, ordinance, provision, regulation, rule, court order, judicial or administrative order, decision, determination, decree, consent order, consent decree, consent agreement, or other legal requirement; (ii) permit, license, registration, authorization, or approval; or (iii) administrative policy, guideline, or standard required or imposed by a Governmental Entity (as hereinafter defined), whether now existing or hereinafter enacted, promulgated, issued, or ordered (including as they may be amended from time to time), and whether codified, common law, judicial, administrative, or quasi-administrative in nature, arising under, relating to, or otherwise in connection with (a) the natural environment (including but not limited to all environmental media found in the natural environment), public health, or any Hazardous Substances (as hereinafter defined) or Solid Waste (as hereinafter defined); (b) the protection, conservation, or use of soils, sediments, surface water, groundwater, drinking water, or air; or (c) any other similar, analogous, or related subjects, laws, or environmental matters. For purposes of this definition, the term "Environmental Law" shall include but not be limited to the following: (A) the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251, et seq.); (B) the Solid Waste Disposal Act, including the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901, et seq.); (C) the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. § 9601, et seq.); (D) the Superfund Amendments and Reauthorization Act of 1986, as amended (codified in sections of 10 U.S.C., 29 U.S.C., and 42 U.S.C.); (E) the Federal Clean Air Act, as amended (42 U.S.C. § 7401, et seq.); (F) the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136, et seq.); (G) the Toxic Substances Control Act, as amended (15 U.S.C. § 2601, et seq.); (H) the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. § 11001, et seq.); (I) the Occupational Safety and Health Act, as amended (29 U.S.C. § 650, et seq.); (J) the Safe Drinking Water Act, as amended (21 U.S.C. § 349 and 42 U.S.C. §§ 201 and 300f, et seq.); (K) the National Environmental Policy Act, as amended (42 U.S.C. § 4321, et seq.); (L) the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.); (M) the Atomic Energy Act, as amended (42 U.S.C. § 2011, et seq.); (N) the Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. § 301, et seq.); (O) the Endangered Species Act (16 U.S.C. § 1531, et seq.); (P) any laws regulating the use of biological agents or substances including medical or infectious wastes; (Q) any environmental transfer laws that regulate the transfer of property; (R) Chapters 373, 376, and 403 of the Florida Statutes; and (S) as it relates to subsections (A) through (R) of this definition, any and all corresponding, implementing, or related rules, regulations, or requirements or any and all state or local laws, ordinances, and requirements that may be applicable, all as in effect on the date hereof and as may hereafter be amended from time to time.

(b) “Governmental Entity” means any federal, state, regional or local government agency, authority, district, court, tribunal, organization, department, board, commission, officer, official, or other instrumentality that exercises any form of jurisdiction or authority under any Environmental Law.

(c) “Hazardous Substances” means and includes, without limitation, (i) any solid, liquid, gaseous, or thermal pollutant, irritant, or contaminant, including but not limited to soot, acids, alkalis, vapors, fumes, or toxic chemicals, waste and waste material, and/or by-products or progeny thereof whether known or unknown; (ii) any chemicals, materials, elements, compounds, substances, or contaminants defined, classified, or regulated by any applicable Environmental Law or by any Governmental Entity, now, in the past, or in the future, including but not limited to as are encompassed in the definition of "hazardous substances," "hazardous waste," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "hazardous air pollutants," "pollutants," "contaminants," "contamination," "toxic chemicals," "petroleum or petroleum products," "toxics," "hazardous chemicals," "extremely hazardous substances," "pesticides," or related materials; (iii) any petroleum or petroleum products (including but not limited to gasoline and fuel additives including MTBE and other oxygenates, typically added to gasoline or their degradation products), natural or synthetic gas, radioactive materials, asbestos-containing materials, urea formaldehyde foam insulation, or radon; (iv) per- and polyfluoroalkyl substances; and (v) any other chemical, material, substance, pollutant, or contaminant, exposure to which is prohibited, limited, or regulated by any Governmental Entity.

(d) “Solid Waste” means and includes, without limitation, garbage, rubbish, refuse, special waste, yard waste, construction and demolition debris, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations. For purposes of this definition, “solid waste” shall also mean ash that is produced from the process of incinerating municipal solid waste, ash residue, white goods, waste tires, construction and demolition debris, yard trash, and biological wastes.

3. **Property Condition:** For purposes of clarity, Buyer’s Inspections under **Paragraph 8** of the Contract during the Feasibility Study Period may include, without limitation:

- (a) inspection of all physical aspects of the Property;
- (b) evaluation of all zoning, code and governmental requirements and the development potential of the Property;
- (c) Phase I and Phase II environmental assessments and testing;
- (d) geotechnical assessments and testing;
- (e) assessments, surveys, and studies regarding wetlands, habitats, species, and any and all other natural resources;
- (f) engaging all contractors and consultants to assist with the Inspections;
- (g) evaluation of title and survey; and
- (h) evaluation of the Property Information.

In addition, for purposes of clarity, Buyer shall have the right to terminate the Contract on or before the expiration of the Feasibility Study Period under **Paragraph 8** of the Contract to the extent that Buyer's Inspections, Buyer's contemplated development of the Property or any other matters related to the Property are not acceptable to Buyer, all as determined by Buyer in its sole and absolute discretion.

4. **Buyer Release:** BUYER HEREBY FOREVER RELEASES SELLER FROM ANY AND ALL LIABILITIES, CLAIMS, DEMANDS, LOSSES (INCLUDING BUT NOT LIMITED TO ECONOMIC LOSSES AND LOSS IN THE VALUE OF THE PROPERTY), SUITS, ACTIONS, JUDGMENTS, DAMAGES, EXPENSES, COSTS, FEES (INCLUDING REASONABLE ATTORNEYS' FEES), OR PENALTIES INCLUDING BUT NOT LIMITED TO ALL OF THE FOREGOING ARISING UNDER THE ENVIRONMENTAL LAWS, RESULTING FROM (I) SOLID WASTE ON OR ANY HAZARDOUS SUBSTANCES ON OR MIGRATING AWAY FROM THE PROPERTY; (II) ANY CURRENT OR FUTURE CORRECTIVE ACTION REQUIREMENTS OR OBLIGATIONS WITH RESPECT TO THE PROPERTY IMPOSED ON ANY PARTY, INCLUDING BUT NOT LIMITED TO SELLER, UNDER ANY APPLICABLE ENVIRONMENTAL LAW WITH RESPECT TO ANY SOLID WASTE ON OR ANY HAZARDOUS SUBSTANCES ON OR MIGRATING AWAY FROM THE PROPERTY; (III) ANY DAMAGE OR THREAT OF DAMAGE TO ANY NATURAL RESOURCES OR ECOLOGICAL RECEPTORS WITH RESPECT TO ANY SOLID WASTE ON OR ANY HAZARDOUS SUBSTANCES ON OR MIGRATING AWAY FROM THE PROPERTY; AND (IV) ANY LOSS OF BUYER'S ABILITY TO DEVELOP OR USE THE PROPERTY IN ANY MANNER WHATSOEVER DUE TO ANY SOLID WASTE ON OR ANY HAZARDOUS SUBSTANCES ON OR MIGRATING AWAY FROM THE PROPERTY. BUYER EXPRESSLY AGREES THAT BUYER SHALL NEVER INSTITUTE LITIGATION AGAINST SELLER ALLEGING DAMAGES RELATING TO, OR SEEKING INJUNCTIVE OR OTHER EQUITABLE RELIEF BASED ON, ANY CONDITION, FACT, OR OCCURRENCE ARISING OUT OF ANY SOLID WASTE ON OR ANY HAZARDOUS SUBSTANCES ON OR MIGRATING AWAY FROM THE PROPERTY. BUYER EXPRESSLY WAIVES ANY RIGHT WHICH IT MAY NOW HAVE OR MAY EVER ACQUIRE AGAINST SELLER FOR OR BY REASON OF ANY SOLID WASTE ON OR ANY HAZARDOUS SUBSTANCES ON OR MIGRATING AWAY FROM THE PROPERTY. ALL OF THE FOREGOING IS HEREBY REFERRED TO AS "BUYER'S ENVIRONMENTAL RELEASE."

5. **Brownfields Designation.** Buyer agrees to assist Seller in designation of the Property as a Brownfield Area pursuant to §376.80, Florida Statutes. Buyer shall be responsible for preparing the designation request and all supporting documentation including all costs for preparation and notice. Seller shall work Buyer to ensure that public notification as required under §376.80, Florida Statutes, is properly given and that the public hearings required by statute occur during the Feasibility Study Period. No later than one hundred and twenty days (120) after the Effective Date of the Contract, Buyer shall submit to Seller a request to designate the Property a Brownfield Area pursuant to applicable Florida law. Seller shall cooperate in the designation request and hold a public hearing to approve the application at the earliest allowable opportunity consistent with the applicable statutory requirements.

6. **Brownfield Site Rehabilitation Agreement.** No later thirty (30) days following the Closing Date, Buyer shall submit a Brownfield Site Rehabilitation Agreement ("BSRA") for the Property to the Florida Department of Environmental Protection ("FDEP") and use best efforts to have the BSRA executed as promptly as possible.

7. **Buyer's Site Rehabilitation Obligations.** Provided that Buyer takes title to the Subject

Property, Buyer and/or Buyer's successors and assigns shall fund and perform site rehabilitation activities pursuant to Chapter 62-780, Florida Administrative Code, in order to obtain a Site Rehabilitation Completion Order with Conditions ("SRCOC"). Seller acknowledges that an SRCOC will involve the use of engineering controls and institutional controls as approvable methodologies to obtain regulatory closure. Seller agrees to support such use and, if required, execute any Consent and Joinder documents that FDEP may require as a condition to agreeing to a Declaration of Restrictive Covenant. Inasmuch as migration of Hazardous Substances to adjacent City owned lands may have occurred, Seller agrees to record restrictions regarding use of groundwater if requested by Buyer. No later than one hundred and twenty (120) days after approval of a Remedial Action Plan ("RAP") for the Property by FDEP, Buyer shall post a bond or, if a bond is not commercially available or practical, other form of reasonable financial assurance acceptable to both Buyer and Seller, to ensure implementation of the RAP in the event that Buyer defaults on its obligation to obtain an SRCOC pursuant to this paragraph.

**8. Requirements and Best Practices for Landfill Redevelopment.** When conducting any redevelopment activities at the Property, Buyer and Buyer's successors and assigns shall comply with the applicable provisions of FDEP's Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida, Version 2.2, dated August 19, 2015, as may be amended from time-to-time. Buyer and, as may be applicable, Buyer's successors and assigns shall also utilize best practices when any construction activities impact contaminated media. Such activities shall include at a minimum preparation of a Soil Management Plan, Air Monitoring Plan, Health & Safety Plan, and Dewatering Plan ("collectively, Environmental Construction Management Documents"). Buyer and, as may be applicable, Buyer's successors and assigns shall seek approval of the Environmental Construction Management Documents from FDEP.

**9. Environmental Liability Insurance.** Buyer covenants to purchase, at Buyer's sole cost and expense, an environmental liability insurance policy ("ELIP") providing claims coverage for pre-existing conditions of no less than \$10 million per occurrence and \$10 million in the aggregate from a carrier that is rated no less than "A" by AM Best and Company. Such policy shall have a deductible no greater than \$100,000.00 and carry a term of no less than ten years. Buyer shall use its best efforts to include Seller on the ELIP as an additional insured; however, Seller acknowledges that such coverage may be limited or fully prohibited by, or in light of, Seller's ownership and operation of the Property.

**10. Economic Incentives for Site Rehabilitation and Redevelopment Activities.** Buyer and Seller acknowledge that grant funding and other forms of economic incentives may be available for site rehabilitation, redevelopment, job training, and job creation and training activities at and in connection with the Property from one or more Governmental Entities (collectively, "Economic Incentives"). Provided that the Contract has not been terminated at an earlier date, no later than forty-five (45) days after commencement of the Feasibility Study Period, Buyer shall present Seller with a memorandum summarizing those Economic Incentives that Buyer reasonably believes would enhance the remediation and redevelopment of the Property (the "EI Memorandum"). Provided that the Contract has not been terminated at an earlier date, Buyer shall meet with Seller to discuss the EI Memorandum and develop a strategy for pursuing the Economic Incentives summarized therein. The parties shall use reasonable best efforts to agree to such a strategy, which strategy shall be documented in a "Memorandum of Understanding". Where required by the application process associated with a particular the Economic Incentive, Seller shall agree to serve as an applicant, co-applicant, or endorser. All costs associated with the development, filing, pursuit, and award of an Economic Incentive shall be borne by Buyer. Seller shall promptly execute all agreements, agency forms or other documents that may be necessary for the request of such approvals. This provision shall survive the closing of the transaction contemplated by this Contract.

11. **Delivery of Documents:** Within forty-five (45) Business Days after the Effective Date, Seller shall deliver to Buyer true and complete copies of the following non-privileged documents related to the Property in Seller's actual possession or control, including, without limitation: (a) engineering and geo-technical reports; (b) environmental reports and studies ("Seller's Environmental Disclosure"); (c) surveys; and (d) all plans, plats, engineering studies, soil and topography reports, title reports, commitment and policies, surveys, wetlands studies, environmental reports, remediation reports and oil and gas leases, if any, in Seller's possession or control, which relate to the Property (collectively, the "Property Information"). The Property Information shall also be deemed to include true and complete copies of the Seller's Environmental Disclosure which shall be delivered by Seller to Buyer within the aforesaid 3-day period. Property Information may be provided electronically by Dropbox or similar platform.

12. **Seller Representations:**

(a) Seller is the owner of the Property and has the full right, power and authority to convey the Property without the need for further consents or authorizations. All necessary authorizations and approvals on the part of Seller have been obtained authorizing the signatory to execute this Contract and consummate the transactions contemplated hereby.

(b) Other than as may be disclosed by Seller in writing within thirty (30) days of the Effective Date, there are no leases, use rights or other rights of occupancy of the Property which would survive Closing and the delivery of the deed of conveyance to Buyer.

(c) Between the date of the Contract and the date of Closing, Seller will not, without Buyer's prior written consent, which consent shall not be unreasonably withheld, create or permit to be created any encumbrances on the Property with the exception of those imposed by a government agency such as the Florida Department of Environmental Protection. In no event shall any encumbrance be for a period ending subsequent to the date of Closing and any encumbrance must specifically provide that it is subordinate to the terms of the Contract. For the purposes of this subparagraph, the term "encumbrance" shall mean any liens, claims, options, mortgages, encroachments, leases, easements, covenants, conditions or restrictions.

13. **As Is Purchase: SELLER AND BUYER AGREE THAT, EXCEPT AS PROVIDED FOR IN THIS CONTRACT OR ANY CLOSING DOCUMENT, THE PROPERTY SHALL BE SOLD AND THAT BUYER SHALL ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE AS IS, WHERE IS, WITH ALL FAULTS, WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT OR ANY CLOSING DOCUMENT SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EXCEPT FOR THOSE SET FORTH IN THIS CONTRACT, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER REPRESENTS THAT IT IS A KNOWLEDGEABLE BUYER OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE.**

14. **Legal Description and Survey:** Paragraph a1 (line 6) and Paragraph 20 (lines 337 to 338) are amended to provide that the Property being conveyed is described as follows:

Parcel 3: Tx ID No. 163841000000000140

Parcel 4: Tax ID No. 163841000000000160, **less** that portion of parcel 4 between Southeast Monterey Rd and Parcel 1 as needed to maintain the its lift station as shown in “Exhibit C”, **and less** approximately 3 acr of parcel 4 directly to the south of parcel 1 currently used for debris staging as shown in “Exhibit D” ; **together with** an easement over such portions of Parcels 1 and 2 (as shown on the attached Exhibit B) as to provide a 50 foot wide strip for access to Parcel 4 from Monterey Road

Parcel 5: 163841000000000130

The parcels are further depicted on Exhibit “A” attached hereto. During the Feasibility Period, the Buyer shall, at Buyer’s expense, obtain a survey setting forth the full legal description for the parcels being conveyed to Buyer, as well as the parcels being retained by Seller. The legal description of the Property will thereupon be agreed to by the parties and incorporated into the Contract.

**15. Force Majeure and Pandemic:** Paragraph 12 of the Contract is deleted, and the following is substituted therefor:

(a) Force Majeure. In the event that the performance by either party of any of its obligations hereunder is delayed by acts of God, natural disaster, terrorist activity or war, order of the Government of the United States or of the State of military authority, restraint of government or people due to civil disturbances, or other similar cause not within the reasonable control of the party claiming such delay then the party affected shall notify the other party in writing of the event of force majeure causing the delay, the specific obligation delayed, and the duration of the delay and the deadline for completion of such obligation shall be extended by a like number of days. Notwithstanding the foregoing, no events or matters of force majeure are deemed to extend the Closing or the performance of any other obligations hereunder by Buyer or Seller for more than ninety (90) days.

(b) Pandemic. Seller acknowledges and agrees that the impact of the recent pandemic known as the “coronavirus” or “COVID-19” may make Buyer’s performance of the Inspections impractical or impossible and any delay or election not to perform any of the Inspections shall not be deemed a Buyer’s Default under this Agreement. Additionally, if, as a result of such pandemic, the State of Florida and/or any governing authority over the jurisdiction in which the Property is located is, at any point in time during the term hereof, subjected to a “state of emergency,” “stay at home order,” or “shelter in place order” as declared by its Governor or other applicable governing authority (in each case, a “COVID 19 Tolling Event”), all time periods under this Agreement within which to perform hereunder, including without limitation, the Feasibility Period and the Closing Date, shall automatically toll until the Governor of the State of Florida or other applicable governing authority declares such COVID 19 Tolling Event has been lifted and no longer is in effect. Notwithstanding the foregoing, governmental orders or declarations in place as of the Effective Date shall not be considered COVID 19 Tolling Events unless such orders or declarations are modified or extended after the Effective Date.

**16. Phase I and II:** Buyer agrees to contract for a Phase I ESA Assessment no later than ninety (90) days after the Effective Date of the Contract and to contract for a Phase II ESA Assessment no later than one hundred fifty (150) days after the Effective Date of the Contract. The scope of the Phase II shall be determined by Buyer. Following completion of the Phase II investigation, including test pits, Buyer shall restore the Property to its previous condition, at Buyer’s expense.

17. **Default:**

(a) Paragraph 15(a) of the Contract is modified as follows: If Seller fails, neglects or refuses to perform Seller's obligations under this contract, Buyer's sole remedy shall be to bring an action for specific performance.

(b) Paragraph 15b of the Contract is amended to provide that, in the event of a default by Buyer, Seller may bring an action against Buyer for its damages. Seller specifically waives any right to bring an action against the members, managers, principals, employees or agents of Buyer arising out of or as a result of the breach of this Agreement and acknowledges it has no recourse against such individuals.

18. **Closing Costs:** Paragraph 9 is amended to provide that Buyer shall be responsible for all of the Seller Costs set forth therein, including but not limited to, all recording fees.

19. **Title:** Paragraph 7 is amended to provide that the Seller will convey title by means of a special warranty deed and that such special warranty deed shall reflect that the title is subject to existing contamination and any liens, easements, and encumbrances resulting from such contamination. Paragraph 7 is further modified to provide that Buyer shall obtain its own title commitment from a title company selected by Buyer and at Buyer's sole expense. Notwithstanding anything to the contrary, paragraph 7c is modified to provide that Buyer shall have thirty (30) days from the Effective Date of the Contract to advise Seller, in writing, of any title defects. Seller shall thereupon have ten (10) days to notify Buyer, in writing, whether it is electing to cure the title defects. In the event Seller advises Buyer that it is not electing to cure the title defects then Buyer shall have ten (10) days to elect either to cancel this Contract or to accept title as is. In no event shall Seller have any obligation to cure any title defects raised by Buyer, Buyer's only remedy being to cancel this Contract.

20. **Notices:** Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be deemed to be delivered (a) upon personal delivery to and receipt by the person to whom delivered (including, without limitation, delivery to and receipt by facsimile or electronic mail), or (b) three (3) days after deposit in United States registered or certified mail, return receipt requested, or (c) one (1) business day after deposit with a nationally recognized overnight express courier for "next day" delivery, in each case, addressed to the parties at their respective addresses or facsimile numbers (as applicable) set forth below:

**If to Seller:**

City of Stuart  
Office of the City Manager  
121 SW Flagler Avenue  
Stuart, FL 34994  
Office: (772) 288-5312  
Attn: David Dyess, City Manager  
[ddyess@ci.stuart.fl.us](mailto:ddyess@ci.stuart.fl.us)

**With a copy to:**

Office of the City Attorney  
121 SW Flagler Avenue



Stuart, FL 34994  
Office: (772) 288-583-6836  
Attn: Michael J. Mortell, Esq., City Attorney  
[mmorteell@ci.stuart.fl.us](mailto:mmorteell@ci.stuart.fl.us)

**If to Buyer:**

Goldstein Kite Environmental Redevelopment Partners Stuart I, LLC  
2055 US Highway 1, Vero Beach, FL 32960  
Office (772) 237-3444  
E-fax (772) 237-3444  
Cell (772) 538-7507  
Attn: Kelly P. Kite., Jr., Manager  
[kelly@kvlc.com](mailto:kelly@kvlc.com)

**and**

Goldstein Kite Environmental Redevelopment Partners Stuart I, LLC  
2100 Ponce de Leon Blvd., Suite 2100  
Coral Gables, FL 33134  
Office (305) 777-1682  
Cell (305) 962-7669  
Attn: Michael R. Goldstein, Manager  
[mgoldstein@goldsteinenvlaw.com](mailto:mgoldstein@goldsteinenvlaw.com)

**With a copy to:**

Norman Leopold, Esq.  
Leopold Korn, P.A.  
[20801 Biscayne Blvd., Suite 501](#)  
[Aventura, FL 33180](#)  
Direct Telephone: [305-356-8401](tel:305-356-8401)  
Main Office: [305-935-3500](tel:305-935-3500) x 209  
Email: [nleopold@leopoldkorn.com](mailto:nleopold@leopoldkorn.com)

A party may change its address, facsimile number and email address for receipt of notices by service of a notice of such change in accordance herewith. Notwithstanding the foregoing, the parties agree that their respective attorneys shall have the authority to deliver and to receive notices on behalf of their clients and to enter into any extensions of time periods provided for in this Agreement on their behalves and that such notices and extensions by the attorney shall be binding upon each of the parties hereto in this Contract and that such extension by the attorney shall be binding upon Buyer and Seller.

21. **License:** Seller, as Licensor, entered into a License Agreement with Virgin Trains, USA Florida LLC, a Delaware limited liability company, as Licensee, dated April 12, 2019 (the "License Agreement"), a true and correct copy of which is attached hereto and made a part hereof as **Exhibit "E"**. Seller represents that the License Agreement is in good standing and the Licensee obtained approval from the Florida Department of Environmental Protection as of \_\_\_\_\_, 20\_\_\_. Seller will not enter into any amendments, modifications or alterations of the License Agreement without first obtaining the consent of the Buyer, which consent may be granted or withheld in

Buyer's sole discretion. Seller will, at Closing, furnish to Buyer an estoppel letter from the Licensee specifying the nature and duration of the Licensee's occupancy, rental rates, advanced rent and security deposits paid by Licensee, confirmation that there are no options and that Seller is not in default. The form of the estoppel shall be prepared by Buyer and shall be reasonably acceptable to Seller. If Seller is unable to obtain such letter from Licensee, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact Licensee to confirm such information. If the terms of the License Agreement differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least two (2) days prior to Closing. Seller shall, at Closing, deliver and assign the original License Agreement to Buyer. The Settlement Statement will reflect a credit to Buyer for any deposit and the rent will be prorated in accordance with standard customs. Buyer shall have no responsibility to credit Seller for any uncollected rent as of the Closing.

**SIGNATURES CONTINUE ON THE FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals the day and year written below.

**SELLER:**

**BUYER:**

**CITY of STUART, a municipal corporation**

**GOLDSTEIN KITE ENVIRONMENTAL  
REDEVELOPMENT PARTNERS STUART I,  
LLC, a Florida limited liability company**

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

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

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

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

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

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

**Date:** \_\_\_\_\_, 2021

**Date:** \_\_\_\_\_, 2021

\_\_\_\_\_

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**EXHIBIT “E”  
LICENSE AGREEMENT**

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## LICENSE AGREEMENT

### CITY OF STUART, FLORIDA LICENSE AGREEMENT FOR VIRGIN TRAINS USA FLORIDA LLC

THIS LICENSE AGREEMENT, hereinafter the "Agreement" is made and entered into this 12<sup>th</sup> day of April, 2019 by the CITY OF STUART, FLORIDA, a municipal corporation of the State of Florida, 121 S.W. Flagler Avenue, Stuart, Florida 34994, hereinafter the "City" or "Licensor", and Virgin Trains USA Florida LLC, a Delaware Limited Liability Company, hereinafter the "Licensee."

**WHEREAS**, the City owns certain lands located within the corporate limits of Stuart, Florida, described in the location map attached as Exhibit "A", which shall hereinafter be called the "Subject Property."

**WHEREAS**, the Licensee desires to locate and store certain railroad equipment (consisting primarily of cement railroad ties, and other railroad construction materials) on the Subject Property.

**NOW THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, THE CITY DOES HEREBY GRANT THIS LICENSE to the Licensee to locate and store equipment on the Subject Property, including the placement of necessary structures, devices, and power connections, with the right of access to and egress from the Subject Property by Licensee's employees and agents, as necessary for the purposes of this Agreement, subject to the following terms and conditions:

1. The foregoing whereas clauses are incorporated in and made a part of this Agreement.
2. As consideration to the City for the granting of this license, the Licensee shall pay the sum of \$1,000.00 each month, beginning on the first day of the month following Licensee's initial placement of railroad ties on the Subject Property.
3. Throughout the Term of this Agreement, the Licensee shall be solely responsible for all taxes or assessments levied or charged against the Subject Property as a result of this Agreement or the storage of said equipment on the Subject Property. Licensor shall forward any and all notices, bills or invoices requiring payment and Licensee shall promptly satisfy same.
4. Licensee shall pay by electronic funds transfer ("EFT") to the bank depository named in writing by the City, on or before the first *day* of each month, in advance, and shall be delinquent on the 2nd day of the month. Any late payments shall be subject to a \$75.00 dollar late fee as well as the accrual of a

\$35.00 dollar per day late fee for each day after the 3<sup>rd</sup> of the month that the rent is not current.

5. Beginning with the licensee's twenty-fifth monthly payment, the monthly license fee shall increase by 3 percent, per year.
6. The Term of this Agreement shall be four (4) years from the date of approval. All parties agree and understand that this Agreement is conditioned upon the Licensee obtaining permission from the Florida Department of Environmental Protection ("FDEP") to conduct the operations and storage necessary to effectuate the Agreement, or, if no permit is required, a letter of no objection from FDEP.
7. Notwithstanding the provisions of Section 6, above, the Licensee may, at its sole option, terminate this Agreement at any time upon 30 days notice to the City. Upon termination or upon expiration of this License, the Licensee shall forthwith remove all improvements and restore the site to at least as good a condition as prior to its occupancy, normal wear and tear excepted.
8. For the purposes of this Agreement, "Neglect" shall mean a state of disrepair to the point that it is reasonably deemed unsafe, or unusable or inoperable, for a period of more than thirty (30) days following receipt of written notice of such condition from the City's Building Official. If such conditions of Neglect exist, the City may deem all improvements made by the licensee to be "Abandoned Property", as that term is used in Sec. 38-86 of the Stuart Code of Ordinances, and may thereafter cause its removal by the Licensee.
9. The Licensee hereby fully indemnifies the City against any injury, tort, damage, or other claim, or amount due, arising out of this Agreement, except to the extent caused or contributed thereto by the City's gross negligence, and further agrees to provide a suitable defense for the City in the event that any legal action is instituted against the City for any injury, tort, damage, or claim arising out of this Agreement.
10. Licensee agrees: that Licensee will indemnify and hold harmless Licensor from all losses, damages, liabilities and expenses, which may arise or be claimed against Lessor and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, consequent upon or arising from the use or occupancy of said Premises by Licensee, or consequent upon or arising from any acts, omission, neglect or fault of Licensee, its agents, servants, employees, licensees, visitors, customers, patrons, or invitees, or consequent upon or arising from Licensee 's failure to comply with any laws, statutes, ordinances, codes or regulations as

herein provided; that Licensor shall not be liable to Licensee for any damages, losses or injuries to the persons or to property of Licensee which may be caused by the acts, neglect, omissions or faults of any persons, firms or corporations and that Licensee will indemnify and keep harmless Licensor from all damages, liabilities, losses, injuries or expenses which may arise or be claimed against Licensor and be in favor of any persons, firms or corporations, for any injuries or damages to the person or property of any persons, firms or corporations, where said injuries or damages arose about or upon said Premises, as a result of the negligence or cause of Licensee, its agents, employees, servants, licensees, visitors, customers, patrons and invitees. Notwithstanding the foregoing, Licensee will not indemnify the Licensor for damages, losses, or injuries to the extent caused or contributed thereto by Licensor's gross negligence.

11. All personal property placed or moved into the Premises shall be at the risk of Lessee or the owners thereof, and Licensor shall not be liable to Licensee for any damages to said personal property. If Licensee makes a claim from its own insurance for damages, the licensee agrees that it hereby waives the right of subrogation against the Licensor.
  
12. The Licensee shall provide "all risk" liability insurance coverage for the City in an amount of not less than. One Million (\$1,000,000) Dollars per Individual, and Two Million (\$2,000,000) Dollars per occurrence. A certificate of insurance showing the "City of Stuart, its officials, agents and employees" as "additional insured's" shall be provided to the City Clerk, and shall be maintained throughout the term of the this Agreement. Said Certificate shall include the condition that the insurance provided shall not expire without thirty (30) days written notice to the City.
  
13. Licensee shall, at all times, be in compliance with the City's Land Development Code as it pertains to the storage of the materials and the necessary safe guards.
  
14. The prevailing party to any litigation to enforce the terms of this License Agreement shall be entitled to reasonable attorney's fees and costs at all trial and appellate levels.

Witness our duly authorized signatures on this License Agreement, as executed on this day and year first above written.


CITY:

LICENSEE:

CITY OF STUART, FLORIDA

VIRGIN TRAINS USA FLORIDA LLC



DocuSigned by:  


\_\_\_\_\_  
David Dyess, City Manager

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3A6A30B3BF67460...  
Patrick Goddard, President

Date: 4/9/2019

Date: 4/12/2019