

IT MANAGEMENT SERVICES AGREEMENT

THIS IT MANAGEMENT SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2012 ("Effective Date") by and between **THE VILLAGES OPERATING COMPANY**, a Florida corporation whose address is 1020 Lake Sumter Landing, The Villages, Florida 32162 d/b/a **THE VILLAGES TECHNOLOGY SOLUTIONS GROUP** ("TSG") and **SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida whose address is 7375 Powell Road, Wildwood, Florida 34785 ("Sumter").

RECITALS

A. On March 9, 2010, TSG and Sumter entered into a "Programming Services Agreement" concerning TSG providing Sumter with programming services.

B. On March 23, 2010, TSG and Sumter entered into a "General IT Support Services Agreement" concerning TSG providing Sumter with general IT support services.

C. On May 6, 2010, TSG and Sumter entered into an "Agreement for VOIP Sales, Installation, Administration, and Support Services" concerning TSG providing Sumter with VOIP sales, installation, administration, and support services.

D. TSG and Sumter wish to terminate the agreements listed in Recitals A, B and C on the Effective Date.

E. Sumter is in need of certain IT management services for its computer systems, telecommunications systems, video surveillance systems, and networks ("IT Management Services").

F. TSG is in the business of providing IT Management Services for computer systems, telecommunications systems, video surveillance systems, and networks.

G. At this time, TSG and Sumter wish to set forth their agreement concerning TSG providing Sumter with IT Management Services, as identified by the Service Level Agreement ("SLA", as attached in Exhibit "A").

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties hereto agree as follows:

1. Termination of Prior Agreements. The agreements listed in Recitals A, B and C are terminated as of the Effective Date.

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2. Description of Services: TSG shall provide the services as described in the "SLA".

3. Term: The term of this Agreement shall be three (3) years from the Effective Date.

3.1 Either party may terminate this Agreement for a breach of this Agreement by the other party after giving a written notice of the breach and allowing the other party a cure period of sixty (60) days to correct the alleged breach.

3.2 After receipt of a written notice of breach, and expiration of applicable cure period without proper cure, the non-breaching party shall have the option to terminate this Agreement by providing a written notice of termination which shall become effective upon delivery.

3.3 Fiscal Year Funding Appropriation: Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the Sumter County BOCC, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the fiscal period at the time of the contract. Payment and performance obligations for succeeding fiscal periods shall be subject to appropriation by the Sumter County BOCC of funds thereafter. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be entitled to reimbursement for reasonable value of any nonrecurring cost incurred but not advertised in the price of the supplied or services delivered under the contract or otherwise recoverable.

4. Fee Structure: Sumter shall pay the fees set forth in the attached **Exhibit "B"**. For any services requested outside of the attached SLA, that may require work away from TSG's usual place of business shall be billed from the time of departure from TSG's usual place of business to the time of return to TSG's usual place of business. TSG shall bill Sumter on a bi-weekly basis for all requested services outside of the SLA which occurred in that billing cycle. TSG shall bill Sumter for work specified in the SLA on the 15th of each month. Sumter shall pay all invoices within forty-five (45) days of the billing date. Late payments shall be subject to a late fee of five percent (2%).

5. Ownership of Work Product: Sumter shall be the owner of all codes and programs created by TSG specifically for Sumter and placed on the computer systems of Sumter.

6. Third Party Software Licensing: With prior approval from Sumter IT, TSG may from time to time install software or hardware on Sumter's system that requires licensing arrangements with a third party. Sumter shall be responsible for acquiring and maintaining the necessary licenses for any third party software or hardware placed on Sumter's computer systems.

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7. Access to System: Sumter agrees to provide TSG with the necessary access to the computer system as required for TSG to perform those services contracted for herein. Sumter shall provide necessary access for TSG to provide its IT Management Services remotely.

8. Confidential Information: TSG acknowledges that it may have access to certain confidential information when performing the services contracted for herein and agrees to take necessary acts to ensure that TSG does not make public any information that is identified in writing by Sumter to TSG as confidential and further agrees not to use or disseminate such confidential information except as is necessary to perform its IT Management Services contracted for herein or as required by law.

9. Employees: Sumter agrees not to hire employees of TSG for the term of this Agreement and for one year beyond the date this Agreement terminates.

10. Insurance: TSG agrees to keep in place insurance, and produce verification of insurance upon request, with limits not below the following amounts: One Million and 00/100 Dollars (\$1,000,000.00) general liability; Two Million and 00/100 Dollars (\$2,000,000.00) aggregate liability; Two Million and 00/100 Dollars (\$2,000,000.00) professional liability or errors and omissions (E & O); One Million and 00/100 Dollars (\$1,000,000.00) business automobile liability (if applicable); One Hundred Thousand and 00/100 Dollars (\$100,000.00) worker's compensation each accident and each disease; and, Five Hundred Thousand and 00/100 Dollars (\$500,000.00) worker's compensation policy limit. Certificates of insurance naming the Sumter County Board of Commissioners as an additional insured shall be provided for each insurance policy. All insurance carriers must have a financing rate of A- or higher by A.M. Best.

11. Damages: Sumter agrees that damages for any action brought against TSG pursuant to this Agreement shall not exceed the amount of insurance TSG has in place at the time of the event causing such action. In no event shall TSG be liable for special, indirect or consequential damages resulting from work performed under this Agreement.

12. Hold Harmless: TSG agrees to hold Sumter harmless for any damage done to TSG's computer systems while performing work on Sumter's computer system.

13. Force Majeure: Each party shall be excused from performing any obligation or undertaking provided for in this Agreement for so long as such performance is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, requisition, laws, orders of government or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party prevented, retarded or hindered thereby, including reasonable delays for adjustments of insurance.

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14. Merger. This Agreement contains the entire understanding among the parties and supersedes any prior understandings and agreements between them within the respecting subject matter. There are no representations, agreements, arrangements, or understandings, verbal or written, between and among the parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

15. Construction, Jurisdiction, and Venue. This Agreement shall be construed according to the laws of the State of Florida. Jurisdiction and Venue for any action hereunder shall lie within the Fifth Judicial Circuit, in and for Sumter County, Florida.

16. Miscellaneous: TSG and Sumter acknowledge that the parties and their counsel have reviewed and revised this Agreement, and that the normal rule of construction (ambiguities are to be resolved against the drafting party) shall not be employed in the interpretation of this Agreement.

(signature page to follow)

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

THE VILLAGES OPERATING COMPANY,
a Florida corporation d/b/a The Villages
Technology Solutions Group

By: _____
Name: _____
Title: _____

**BOARD OF COUNTY COMMISSIONERS
SUMTER COUNTY, FLORIDA**

ATTEST:

_____, Clerk

By: _____
Name: _____
Title: _____

Approved as to Form
and Legal Sufficiency

County Attorney