

AGREEMENT FOR FACILITY MAINTENANCE AND SYSTEMS CONSTRUCTION

THIS AGREEMENT is made effective the 1st day of October, 2019, by and between the **UNION PARK EAST COMMUNITY DEVELOPMENT DISTRICT**, a special-purpose unit of local government created and existing pursuant to Chapter 190, Florida Statute, ("**District**") and the **UNION PARK MASTER HOMEOWNERS ASSOCIATION, INC.**, a Florida non-profit corporation ("**Association**").

RECITALS:

- A. District is the owner of lands and facilities within the development known as Union Park ("**Development**"), and Association is the community association pursuant to restrictions for the Development.
- B. District is responsible for the installation, repair and maintenance of certain infrastructure facilities and associated systems (the "**Facilities and Systems**").
- C. Association was formed to preserve and enhance the values and quality of life in the Development and the health, safety and welfare of the residents thereof.
- D. Association and District desire to co-operate in the funding for the installation, repair and maintenance of the Facilities and Systems, for the benefit of all residents of the District and Association Owners.
- E. District possesses experience arranging for the installation, repair and maintenance of the Facilities and Systems within the District.
- F. Association has sufficient funds available to contribute to the installation, repair and maintenance of the Facilities and Systems within the District without any increase in assessments to Owners.
- G. District and Association desire to enter into an agreement whereby the Association funds the installation, repair and maintenance of the Facilities and Systems, and the District is principally responsible for contracting and supervising the installation, repair and maintenance of the Facilities and Systems

NOW THEREFORE, in consideration of the above-stated recitals and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties hereto, District and Association agree as follows:

- 1. Recitals Confirmed. The parties confirm that the above stated recitals are true and correct.
- 2. Construction Contracts and Funding.
 - a) The parties acknowledge that it is in the best interest of the residents and property owners in the District to provide for the Facilities and Systems. The District shall be responsible for contracting and supervising the installation, repair and maintenance

of the Facilities and Systems. The District shall ensure that evidence of insurance required by this Agreement shall be provided to District and Association at the time of execution of any construction contracts.

- b) The District will invoice the Association for the amount of the contract billings as they are received during the construction period. The District shall not include any administrative fees or overhead of the District, and shall only include those expenses directly related to the construction contracts. District shall pay the contract billings after it receives the payment from the Association or may elect for the Association to pay the contract billings directly to the contractors.

3. Association's Review of Proposal. Within seven (7) days after District receives a proposal(s) for construction of the recreation facilities and associated systems, District shall provide a copy of the proposal to Association for review. If Association objects to the proposal in any respect, Association shall promptly notify District of its objections. In such event, Association and District agree to cooperate in good faith toward resolving Association's objections prior to District's acceptance of the proposal.

4. Payment. The District shall invoice the Association no more than twice a month for the contract billings that the District will receive during the construction period so that the District can be funded to pay the billings. In lieu of the Association funding the District, the District may elect for the Association to pay the contract billings directly to the contractor. The total amount funded to the District or paid to a contractor by the Association shall not exceed the available unrestricted funds available in the Association's budget. Any cost of construction that exceeds the Association available unrestricted funds shall be paid by the District. Invoices will be paid in full to the District or contractor within a thirty-day period.

5. Inspection of Records Payment Disputes. Upon request, District shall make available to Association for review at a reasonable time and place, its books and records with respect to the construction costs. In the event of a dispute between the parties relating to the reimbursement of the construction costs, Association shall pay the amount requested by District in the time frame set forth above. Association shall give written notice accompanying the payment which states it disputes the amount of the payment. Payment in this manner shall not waive the right of Association to dispute the correct amount of such required payment.

6. Termination. This Agreement shall terminate upon the final completion and acceptance of the Facilities and Systems. Notwithstanding anything in this Agreement to the contrary, the District and Association shall each have the right to terminate this Agreement upon thirty (30) days written notice with or without cause. District shall ensure that all contracts with persons or entities performing services contain a provision that such contract may be terminated, upon thirty (30) days written notice without cause. Upon termination, the District and Association shall account to each other with respect to all matters outstanding as of the date of termination.

7. Insurance. District shall ensure that the following language is included in all contracts with persons or entities performing services:

- a) The Contractor shall provide and maintain during the term of this Contract "Workmen's Compensation Insurance" in accordance with the laws of the State of Florida for all of his employees employed at the site of the project and, in case any Work is sublet, the Contractor shall require each Subcontractor similarly to provide "Workmen's Compensation Insurance" for all of the latter employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees who are engaged in hazardous work under this Contract at the site of the project are not protected under the "Workmen's Compensation" Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate coverage for the protection of his employees not otherwise protected.
- b) The Contractor shall provide and maintain during the term of this Contract, insurance that will protect him, and any Subcontractor performing Work covered by the Contract from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractors or by anyone directly or indirectly employed by either of them. The Contractor shall also provide and maintain during the life of this Contract insurance that will defend, indemnify and hold harmless the District and Association, and their agents and employees from and against all claims, costs, expenses, including attorneys' fees and damages arising out of or resulting from the performance of the Work, injury or conduct, want of care or skill, negligence and patent infringement providing that any such claims, damage loss or expenses (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself), including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

Insurance shall be provided with limits as follows:

- 1. Commercial General Liability Insurance - \$ 2,000,000.00, including bodily injury, and products and/or completed operations, explosion hazard, collapse hazard and underground property damage hazard. The Owner shall be named as an additional insured.
- 2. Comprehensive auto liability insurance - \$ 2,000,000.00.
- 3. Employer's Liability Coverage - \$2,000,000.00 per accident or disease.
- c) All such insurance shall be obtained from companies licensed and authorized or eligible to do business in the field of insurance in the State of Florida, and are authorized and licensed to provide the insurance required herein.
- d) Prior to the time of the execution of the Contract, the Contractor will file with the District certificates of such insurance acceptable to the District. These certificates shall contain a provision that the coverage afforded under the policies will not be canceled or materially

changed until at least thirty (30) days prior written notice has been given to the District and shall be in substantially the form provided with the proposal.

- e) The District and Association, their staff, consultants and supervisors shall be named as additional insureds, The Contractor shall furnish the District with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverages, as certified, shall not be effective within thirty (30) days of prior written notice to the District.
- f) If the Contractor fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, the Contractor shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance. The District may waive certain insurance requirements if they are determined to be unnecessary.
- a. Indemnification. District shall ensure that the following language is included in all contracts with persons or entities performing services:
 - a) The Contractor agrees to defend, indemnify, and hold harmless the District, the Association, and their officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or of any nature, arising out of, or in connection with, the work to be performed by Contractor, including litigation or any appellate proceedings with respect thereto. Contractor further agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in section 190, Florida Statutes, or other statute.
 - b) Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, and paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings) as ordered.

8. Negotiation at Arm's Length. This Agreement has been negotiated fully between the parties as an arms length transaction. The Parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all Parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any Party.

9. Amendment. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto.

10. Authority to Contract. The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

11. Notices. All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by Federal Express or First Class Mail, postage prepaid, to the parties, as follows:

If to Association: Union Park Master
Homeowners Association, Inc.
c/o Titan Management, LLC
1631 East Vine Street
Suite 300
Kissimmee, FL 34744

If to District: Union Park East
Community Development District
c/o DPGF
15310 Amberly Drive Ste., 175
Tampa, FL 33647

With a copy to: Straley Robin Vericker
1510 W. Cleveland St.
Tampa, FL 33606

12. Applicable Law. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida.

13. Term. This Agreement shall become effective as of the date of execution by the last signing party and remain in effect until final completion and acceptance of the Facilities and Systems or unless otherwise terminated by either party in accordance with Section 6. of this Agreement.

14. Enforcement. A default by either party under this Agreement shall entitle the other party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief and specific performance.

15. Interest and Attorneys' Fees. Any payment due from Association to District shall bear interest at the highest permissible rate of interest under the laws of the State of Florida, from the date such payment is due pursuant to this Agreement. In the event either party is required to enforce this Agreement or any provision hereof through court proceedings or otherwise, the prevailing party shall be entitled to recover from the non-prevailing party all fees and costs incurred, including but not limited to reasonable attorneys' fees incurred prior to or during any litigation or other dispute resolution, and including fees incurred in appellate proceedings.

16. Assignment. This Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other. Any purported assignment without such approval shall be void.

17. Limitations on Governmental Liability. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of Association beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida

Statutes or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

18. Binding Effect; No Third Party Beneficiaries. The terms and provisions hereof shall be binding upon and shall inure to the benefit of District and Association. This Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and all antecedent and contemporaneous negotiations, undertakings, representations, warranties, inducements and obligations are merged into this Agreement and superseded by its delivery. No provision of this Agreement may be amended, waived or modified unless the same is set forth in writing and signed by each of the parties to this Agreement, or their respective successors or assigns.

20. Execution in Counterparts. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

21. Public Records. As required under Section 119.0701, Florida Statutes, Association shall (a) keep and maintain public records required by the District in order to perform the service, (b) upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law, (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Association does not transfer the records to District, (d) meet all requirements for retaining public records and transfer, at no cost, to the District all public records in possession of the Association upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with the information technology systems of the District.

IF THE ASSOCIATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ASSOCIATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 418-7473, OR BY EMAIL AT PAUL.CUSMANO@DPFG.COM, OR BY REGULAR MAIL AT 15310 AMBERLY DRIVE, SUITE 175, TAMPA, FLORIDA 33647.

IN WITNESS WHEREOF, District and Association have each caused their duly authorized officers to execute this Agreement as of the date and year first above-written.

**UNION PARK EAST
COMMUNITY DEVELOPMENT
DISTRICT**

By: _____

Michael Lawson
Chair

**UNION PARK MASTER
HOMEOWNERS ASSOCIATION, INC.**

By: _____

John M. Ryan
President