

**AGREEMENT BETWEEN
THE SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT
AND
LITTLE HARBOR PROPERTY OWNERS' ASSOCIATION, INC.
REGARDING PROVISION OF CONTRACTUAL SERVICES IN LITTLE HARBOR**

THIS AGREEMENT ("**Agreement**") is made this and entered into this 3rd day of October, 2014 (the "**Effective Date**") by and between the South Bay Community Development District, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, located in Hillsborough County, Florida (hereinafter referred to as "**District**"), and the Little Harbor Property Owners' Association, Inc., a Florida Nonprofit Corporation (hereinafter referred to as "**Operator**").

RECITALS

WHEREAS, District owns (or will own), operates, and maintains certain Recreation Facilities (as later defined) and Common Areas (as later defined) (collectively, the "**Facilities**"); and

WHEREAS, District has the legal right and authority to provide management and operation services to the Facilities; and

WHEREAS, District desires to enter into an agreement with an independent operator to provide management and operation services for the Facilities; and

WHEREAS, District and Operator warrant and agree that they have all right, power, and authority to enter into and to be bound by this Agreement.

ACCORDINGLY, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings:

"Approved Budget" shall mean the annual budget for the operation of the Facilities to be adopted on an annual basis as hereinafter provided.

"Common Areas" shall mean any lands, parking lots, roads, medians, entrance monuments, entrance fountains, related entrance features, facilities, improvements, and grassed or landscaped areas owned by District within Little Harbor and within the boundaries of the District, or other areas designated by written agreement between District and Operator as "Common Areas" under this Agreement.

"District" shall have the meaning provided in the introductory paragraph hereto.

"District Manager" shall mean that person appointed by District pursuant to section 190.007, Florida Statutes.

"Little Harbor" shall mean that certain master-planned community known as "Little Harbor", located within Ruskin, Florida, which is managed by Operator.

"Operator" shall have the meaning provided in the introductory paragraph hereto.

"Owner" shall mean each record owner of legal title to a real property within Little Harbor.

"Recreational Facilities" shall mean all recreational facilities within Little Harbor owned by District from time to time, including but not limited to any future facilities designated by written agreement between District and Operator as "Recreational Facilities" under this Agreement.

SECTION 3. RESPONSIBILITIES WITH RESPECT TO FACILITIES.

3.1. Services to be Provided. District and Operator hereby contract for services from the Operator to operate, repair, and maintain the Facilities and to purchase supplies therefor. The parties agree that the Operator is providing services to the District through its operation of a portion of the following facilities or services: Landscaping, Management, Water-Irrigation, Electricity – Light Poles and Electricity – Gate house.

3.2. Delegation. Operator may retain a Sub-operator (hereinafter defined) or manager to perform some or all of its duties with respect to the Facilities and may delegate to such Sub-operator or manager some or all of its authority and duties hereunder. Operator may retain and/or designate such a Sub-operator without the prior written consent of (or notice to) District.

3.3. Compensation. For the operation, repair, and maintenance of the Facilities, Operator shall receive initially as compensation a monthly fee of \$9,529.17 beginning on October 1, 2014. Each monthly payment made shall be made by District to Operator no later than the 15th day of each month prior to the month for which the payment is to be applied. The parties intend to set an annual budget for the payment of the costs of these expenditures for each year thereafter until the termination of this Agreement. The Operator will present in writing each year at least thirty (30) days before the District is required to consider its proposed annual budget (that is, by April 15 of each year) a proposed annual compensation amount for services to be rendered under this Agreement for the next fiscal year, together with detailed breakdowns of projected costs within each category of Facilities covered by this Agreement. The Board of the District shall consider this proposed annual compensation amount for services and determine an amount to be budgeted and then paid in proportionate equal monthly installments to the Operator in the next fiscal year. The Board shall evidence its approval of the proposed annual compensation amount and monthly payment

amount by approving such amounts in its annual budget. If the Board does not timely receive the proposed annual compensation amount, then the annual compensation amount shall be set at the prior fiscal year's amount. If the Operator disagrees with the District's decision on the proposed annual compensation amount, it may terminate the agreement. The first Approved Budget shall be for October, 2014 through September, 2015. The budget is intended to cover normal expenses but not extraordinary expenses. "Extraordinary expenditures" are hereby defined as any expenditure not included in and contemplated by the Approved Budget. Extraordinary expenditures shall require approval of the Chairman of the Board of Supervisors of the District prior to being incurred (except in an emergency). Extraordinary expenditures shall be paid for by District or, if advanced by the Operator in an emergency, shall be reimbursed to Operator by District within 30 days after the expenditure. Extraordinary expenditures for emergencies may be made without prior approval for the Chairman of the Board of Supervisors of the District. Operator shall immediately notify the Chairman of the Board of Supervisors of the District of any such emergency expenditures.

SECTION 4. AGENCY; STANDARDS; COMPLIANCE.

4.1. Employees: Independent Contractor. All matters pertaining to the employment, supervision, compensation, promotion and discharge of Operator's employees or any employees of entities retained by Operator are the responsibility of Operator (or the entities retained by Operator). Operator (or the entities retained by Operator) shall fully comply with all applicable acts and regulations having to do with workmen's compensation, social security, unemployment insurance, hours of labor, wages, working conditions and other employer-employee related subjects. In performing its services hereunder, Operator shall be an independent contractor and not an employee of District.

4.2. Care of Property. Operator shall use all due care to protect the property of District, its residents and landowners from damage by Operator or its employees. Operator agrees to repair any damage resulting from Operator's activities within 24 hours of notice or as otherwise agreed to between the parties unless the repair will require a longer period of time to complete, in which case the damage shall be repaired with reasonable promptness.

4.3. Standards and Compliance with Laws. Operator will perform its duties and obligations in a diligent, careful and professional manner and shall comply in all material respects with applicable laws, ordinances, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, boards and offices, any national or local board or fire underwriters, any environmental agency, or any other body exercising functions similar to those of any of the foregoing which may be applicable to the Facilities.

4.4. Additional Authority. Operator shall perform such other acts as it deems necessary and proper in the discharge of its duties under this Agreement. District hereby authorizes Operator to exercise such powers with respect to the Facilities as are necessary and appropriate to carry out its duties hereunder. Operator shall have no right or interest in the Facilities, nor any claim of lien with respect thereto, arising out of this Agreement or the performance of its services hereunder. Operator shall be the agent of District solely to perform the duties as set forth in this Agreement.

4.5. Information. District shall promptly furnish Operator with all documents and records required for the operation and management of the Facilities, including but not limited to all Chapter 190, F.S., District's adopted Rules of Procedure and any amendments thereto over time, District's Disclosure of Public Financing pursuant to Section 190.009, F.S., ("**CDD Documents**"); and a summary of all applicable insurance policies and District's process for handling claims. District shall provide any changes or amendments to the CDD Documents as such amendments are made over time.

SECTION 5. INSURANCE.

5.1. District's Insurance. District may, at its expense, obtain and keep in force Facilities insurance and liability insurance as District deems necessary and in its best interest. Nothing herein shall prevent District from self insuring. If District elects to self-insure with respect to any risk normally covered by a fire and extended coverage policy: (i) District shall so notify Operator at least 60 days before the self-insurance commences; (ii) Operator may thereafter, at its option, elect to terminate this Agreement.

Should District obtain liability insurance for the Facilities, District shall furnish Operator with a certificate of insurance evidencing the scope of its coverage. In the event of a claim covered by this insurance, Operator shall:

- (a) notify District and the insurance carrier as soon as reasonably possible after Operator receives notice of any such loss or injury; and
- (b) prepare and complete District's and/or insurance carrier's incident report.

Operator shall furnish whatever information is requested by District for the purpose of establishing the placement of insurance coverages and shall aid and cooperate in every reasonable way with respect to such insurance and any loss covered thereunder.

5.2. Operator's Insurance. Operator shall obtain and keep in force at Operator's expense and shall furnish a certificate of insurance to District evidencing:

- (a) Worker's Compensation - In sufficient amounts to cover full liability under the worker's compensation laws in effect from time to time in the State of Florida
- (b) Employers' / Professional Liability - \$ 1,000,000.
- (c) Business Auto Liability including hired and non-owned auto coverage - \$1,000,000 combined single limit

The certificate shall provide that District will be given at least thirty (30) days prior written notice of cancellation of the policy. All such policies shall be issued by insurance companies licensed in Florida. District, its directors, officers and employees

shall be listed as an additional insured on all such policies. District will not reimburse Operator for Operator's cost of such insurance or for any and all other coverages that Operator obtains for its own account, other than worker's compensation insurance for on-site employees.

5.3. Subrogation Waiver. Operator shall not have any right to recover from District any loss that is covered by Operator's insurance. Likewise, District shall not have any right to recover from Operator any loss that is covered by District's insurance, or, if District elects to self insure, any loss that would ordinarily be covered by the extended coverage hazard insurance had District not elected to self insure. Each of the parties agree to obtain a "waiver of subrogation" from its insurance companies.

5.4. Insurance for Sub-operator. Operator has the right to delegate its responsibilities under this Agreement to a facilities operator ("**Sub-operator**") to run the day to day operations of the Facilities. The term "Sub-operator" shall not include subcontractors employed to perform individual functions at the Facilities. For example, the term Sub-operator shall not include a pool, landscape or janitorial service performing services at the Facilities. Operator shall require that any Sub-operator retained by Operator to operate the Facilities have insurance coverage at that entity's expense, in the same minimum amounts as Operator. All such policies shall be issued by insurance companies licensed to do business in the state of Florida. Operator shall be named as additional insured on the insurance policies obtained by any Sub-operator. Operator shall obtain and keep on file Certificates of Insurance for any Sub-operator and Operator must obtain District's permission to waive any of the above requirements.

Section 6. FINANCIAL REPORTING AND RECORDKEEPING.

6.1. Ownership of Books and Records. Any books, documents, records, correspondence or other information kept or obtained by District or furnished by District to Operator in connection with Facilities related records are property of District. Operator agrees and acknowledges that any and all such books, documents, records, correspondence or other information may be public records under Chapter 119, F.S. Operator agrees to promptly comply with any order of a court having competent jurisdiction which determines that records maintained by Operator are "public records" which must be made available to the public. District agrees and acknowledges that any and all such books, documents, records, correspondence or other information may also be subject to inspection and copying by members of Operator pursuant to Section 720.303 of the Florida Statutes.

SECTION 7. TERM AND TERMINATION.

7.1. Term. This Agreement shall become effective on the Effective Date and shall continue in full force and effect for three (3) years from such date unless terminated in writing pursuant to Section 7.2. If neither party terminates this Agreement within sixty (60) days prior to the expiration of such three (3) year period, this Agreement will continue in force for successive one (1) year periods, unless either party terminates this Agreement within sixty (60) days prior to the expiration of any such successive one (1) year period.

7.2. Termination. This Agreement shall terminate upon the occurrence of the earlier of the following events:

- (a) For Cause (as hereinafter defined); or
- (b) Without Cause (as hereinafter defined).

7.3. Termination for Cause. "For Cause" shall mean (i) a default by Operator in any material respect in the performance or observance of any covenant, or term of this Agreement, provided that the breach shall be material and adverse to District and that Operator shall fail either to cure, terminate or remove such default within ninety (90) days after written notice thereof from District to Operator; (ii) a default by District in any material respect in the performance or observance of any covenant, or term of this Agreement, provided that the breach shall be material and adverse to Operator and that District shall fail either to cure, terminate or remove such default within ninety (90) days after written notice thereof from Operator to District; or (iii) if after good faith negotiations, the parties hereto are unable to agree upon an annual compensation amount prior to the commencement of any fiscal year of District.

7.4. Termination Without Cause. Either District or Operator may terminate this Agreement "without cause" upon sixty (60) days prior written notice. "Without Cause" shall mean for any reason whatsoever, in the sole discretion of the terminating party. Operator will continue to receive its monthly pro-rata payment through the date of termination.

(i) If this Agreement is terminated by District Without Cause in the first year (12 months) during which the Agreement is in effect, District will pay Operator a cancellation fee of \$ 5,000.

(ii) If this Agreement is terminated by District Without Cause in the second year (12 months) during which the Agreement is in effect, District will pay Operator a cancellation fee of \$5,000.

(iii) If this Agreement is terminated by District Without Cause in the third year (12 months) during which the Agreement is in effect, District will pay Operator a cancellation fee of \$ 5,000.

(iv) The cancellation fee shall be paid by District to Operator as a separate payment made no later than twenty one (21) days after the effective date of the termination.

7.5. Effect of Termination. Upon termination of this Agreement, Operator shall, as soon as practicable but in no event later than date of termination:

(i) deliver to District all materials, equipment, tools and supplies, keys, contracts and documents relating to the Facilities which are owned by District, and such other accountings, papers, and records as District shall request pertaining to the Facilities;

(ii) vacate any portion of the Facilities then occupied by Operator

as a consequence of this Agreement; and

(iii) furnish all such information and take all such action as District shall reasonably require in order to effectuate an orderly and systematic ending of Operator's duties and activities hereunder. Within ten (10) days after any such termination, Operator shall deliver to District any written reports required hereunder for any period not covered by prior reports at the time of termination.

7.6. Compensation Owed to Operator Upon Termination. Upon termination, all compensation, reimbursements and any other amounts owed by District to Operator shall be paid promptly but in no event later than Operator's fulfillment of its obligations owed pursuant to Section 7.5.

SECTION 8. IMMUNITY. Nothing herein shall cause or be construed as a waiver of District's immunity or limitations on liability granted pursuant to section 768.28, Florida Statutes, or other law, 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.

SECTION 9. MISCELLANEOUS.

9.1. Notices. Any notice or other communication required or permitted to be made or given under this Agreement, shall be in writing and shall be deemed to have been received by the party to whom it is addressed: (i) on the date actually received if hand delivered or if transmitted by telefax (receipt of which is confirmed by sender); (ii) three business days after such notice was deposited in the United States Mail postage prepaid; or (iii) one business day after such notice was delivered to an overnight delivery service, addressed, delivered or transmitted in each case as follows:

If to District:

South Bay Community Development District
Special District Services
2501 A Burns Road
Palm Beach Gardens, FL 33410
Attention: District Manager

With copy to:

Thomas A. Cloud, Esquire
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, FL 32801

If to Operator:

Little Harbor Property Owners' Association, Inc.
12800 University Drive, Suite 400
Ft. Myers, FL 33907
Attention: _____, President

With a copy to:

9.2. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

9.3. Assignment. Operator may not assign this Agreement or any monies to become due hereunder without the prior written approval of District which approval shall not be unreasonably withheld. Nothing herein, however, shall prevent Operator from delegating its duties to a Sub-operator hereunder as provided in Section 3.2.

9.4. Governing Law. The nature, validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

9.5. Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties hereto related to the management services for the Facilities and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties hereto.

9.6. No Joint Venture. Operator shall not be deemed to be a partner or a joint venturer with District.

9.7. Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

9.8. Successors. Except as otherwise provided herein, 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.

9.9. Further Assurances. Each party agrees to execute and deliver any and all additional instruments and documents and do any and all acts and things as may be necessary or expedient to more fully effectuate this Agreement and carry on the business contemplated hereunder.

9.10. Force Majeure. Inability of either party to commence or complete its obligations hereunder by the dates herein required resulting from delays caused by strikes, picketing, acts of God, war, governmental action or inaction, emergencies or other causes beyond either party's reasonable control which shall have been timely communicated to the other party, shall extend the period for the performance of the obligations for the period equal to the period(s) of any such delay(s).

9.11. Third Party Beneficiaries. 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.

9.12. Remedies Cumulative. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

9.13. No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

9.14. Recovery of Costs and Fees. In the event either party is required to enforce this Agreement or any provision hereof by court proceedings or otherwise, the prevailing party shall be entitled to recover from the other party all fees and costs incurred prior to or during any litigation or other dispute resolution and including fees incurred in appellate proceedings.

9.15. Construction. This Agreement shall be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed by their duly authorized officers where applicable and sealed as of the date first above written.

OPERATOR

LITTLE HARBOR PROPERTY OWNERS' ASSOCIATION, INC., a Florida nonprofit corporation

By: Robert M. Carthy
_____, President

(Corporate Seal)

ATTEST:

DISTRICT

SOUTH BAY COMMUNITY DEVELOPMENT DISTRICT, a independent special district created pursuant to chapter 190, Florida Statutes

Richard J. Lopez
District Manager

By: William Thomas Garcia
WILLIAM THOMAS GARCIA, Chairman