

**MAINTENANCE AND FINANCIAL RESPONSIBILITIES
AGREEMENT BETWEEN THE CITY OF FORT
MYERS AND THE MCGREGOR RESERVE
COMMUNITY ASSOCIATION, INC.**

THIS MAINTENANCE AND FINANCIAL RESPONSIBILITIES AGREEMENT ("Agreement") is entered into on this 19th day of November, 2018 by and between the CITY OF FORT MYERS, a Florida municipal corporation with a principal address of 2200 Second Street, Fort Myers, Florida 33901 ("City") and MCGREGOR RESERVE COMMUNITY ASSOCIATION, INC., a Florida not-for-profit corporation with a principal address of 11691 Gateway Boulevard, Suite 603, Fort Myers, Florida 33913 ("Association"). The City and Association shall collectively be referred to as the "Parties".

WHEREAS, the City and Association are desirous of entering into this Agreement with each other in order to designate each party's maintenance and financial responsibilities as it relates to McGregor Reserve and Sommerset Drive; and

WHEREAS, under PUD Ordinance 2759, the streets in McGregor Reserve are to remain open to public access and the streets of McGregor Reserve are to be accepted by the City; and

WHEREAS, the Association has requested that the City acknowledge its maintenance responsibilities for the right-of-way, including streets, sidewalks, water, sewer, curbing, drainage, structures, pipes, trees and signage inside McGregor Reserve; and

WHEREAS, the City desires to accept the Association's request to take maintenance responsibilities for the right-of-way, including streets, sidewalks, water, sewer, curbing, drainage, structures, pipes, trees and signage inside McGregor Reserve; and

WHEREAS, the Association has requested that the City be given the right but not the responsibility, to clear drainage systems and outfalls in McGregor Reserve; and

WHEREAS, the City desires to accept the Association's request to be given the right but not the responsibility to clear drainage systems and out falls in McGregor Reserve; and

WHEREAS, the Association maintains and shall continue to maintain the City-owned medians on Sommerset Drive between Colonial Boulevard and Park Shore Circle, as well as, the neighborhood identification signs at Colonial Boulevard and Sommerset Drive and the intersection with Park Shore Circle; and

WHEREAS, the Association maintains and shall continue to maintain the irrigation, mowing and landscaping in the right-of-way on Sommerset Drive between Colonial Boulevard and Park Shore Circle; and

WHEREAS, the Association has requested that the City take maintenance responsibilities for the roadway, drainage, lighting, signage (except for the neighborhood identification signs), sidewalks and curbing on Sommerset Drive between Colonial Boulevard and Park Shore Circle; and

WHEREAS, the City desires to accept the Association's request to take maintenance responsibilities for the roadway, drainage, lighting, signage (except for the neighborhood identification signs), sidewalks and curbing on Sommerset Drive between Colonial Boulevard and Park Shore Circle; and

WHEREAS, the Association has requested that the City take over the financial responsibility for the lighting provided by Florida Power & Light Company on Sommerset Drive between Colonial Boulevard and Park Shore Circle; and

WHEREAS, the City desires to accept the Association's request to take over the financial responsibility for the lighting provided by Florida Power & Light Company on Sommerset Drive between Colonial Boulevard and Park Shore Circle, provided that the Association removes and/or trims all trees around the lighting and notifies Florida Power & Light Company to fix all the lighting before the City takes over the financial responsibility; and

WHEREAS, the Association shall be responsible for the well and irrigation pump located on the island median on Sommerset Drive between Colonial Boulevard and Park Shore Circle because of the enhanced level of landscaping provided by the Association; and

WHEREAS, the City Council of the City of Fort Myers finds that this Agreement is in the interests of the public health, safety and welfare.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein, the sufficiency of which is acknowledged by both Parties, the Parties do hereby agree as follows:

1. The foregoing recitals are hereby fully incorporated herein by this reference and are deemed a material part of the Agreement.

2. The City agrees to take maintenance responsibilities for the right-of-way, including streets, sidewalks, water, sewer, curbing, drainage, structures, pipes, trees and signage (except for the neighborhood identification signs) inside McGregor Reserve.

3. The City agrees to the right but not the responsibility to clear the drainage system and outfalls in McGregor Reserve.

4. The Association agrees to continue maintaining the medians on Sommerset Drive between Colonial Boulevard and Park Shore Circle.

5. The Association agrees to continue maintaining the neighborhood identification signs at Colonial Boulevard and Sommerset Drive and the intersection with Park Shore Circle.

6. The Association agrees to continue maintaining the irrigation, mowing and landscaping in the right-of-way on Sommerset Drive between Colonial Boulevard and Park Shore Circle.

7. The City agrees to take maintenance responsibilities for the roadway, drainage, signage (except for the neighborhood identification signs), sidewalks and curbing on Sommerset Drive between Colonial Boulevard and Park Shore Circle.

8. The City agrees to take financial responsibility for the lighting provided by Florida Power & Light Company on Sommerset Drive between Colonial and Park Shore Circle, provided that the Association removes and/or trims all trees around the lighting and notifies Florida Power & Light Company to fix all the lighting before the City takes over the financial responsibility.

9. The Association agrees to continue being responsible for the well and irrigation pump located on the island median on Sommerset Drive between Colonial Boulevard and Park Shore Circle because of the enhanced level of landscaping provided by the Association.

10. The Association agrees to continue maintaining the gates, cameras and associated equipment in the right-of-way at the gatehouse.

11. Pursuant to PUD Ordinance 2759, the Association shall be permitted to erect a gated and/or guarded security system to be approved by the City Police Department and the Public Works Department. Since the streets are to be accepted by the City, the system may only monitor persons and/or vehicles passing through; but may not restrict public access in any way.

12. The mailbox lighting and mailboxes remain the responsibility of the homeowners.

13. The Association agrees that the planting of trees in the right-of-way in McGregor Reserve is prohibited and the City has the right to remove any trees in the right-of-way.

14. The Parties will each designate a representative to serve as the liaison between them with respect to the terms and conditions of this Agreement. All notices, demands, correspondence, and communications between the City and Association shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail and addressed as follows:

To City: City Engineer
2200 Second Street
Fort Myers, Florida 33901

Copy to: Chief Administrative Attorney
2200 Second Street
Fort Myers, Florida 33901

To Association: President
McGregor Reserve Community
Association, Inc.
c/o Vision Golf & Association Management
11691 Gateway Boulevard, Suite 603
Fort Myers, FL 33913

15. The Parties agree that any dispute arising under this Agreement will be governed by Florida law, and that the proper venue for said dispute shall be in Lee County, Florida.

16. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of the Agreement.

17. This Agreement is a binding contract and constitutes the entire agreement and understanding of the Parties, whether oral or written, relating to the subject matter hereof and is intended as the Parties' final expression and complete and exclusive statement of the terms hereof, superseding all prior or contemporaneous agreements, representations, communications, promises and understandings, whether written or oral and may be amended or modified only by an instrument in writing signed by both parties.

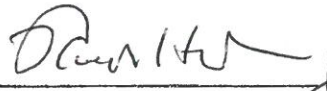
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IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement on the dates shown below to be effective the day and year first shown above.

CITY OF FORT MYERS, FLORIDA

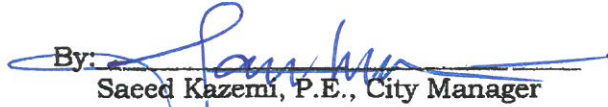
a Municipal Corporation

ATTEST:

By: 
Randall P. Henderson, Jr., Mayor


Gwen Carlisle, MMC, City Clerk

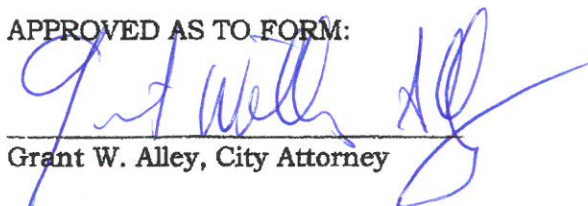
Date: 12/6/18

By: 
Saeed Kazemi, P.E., City Manager

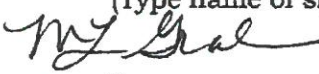
Date: 12/6/18



APPROVED AS TO FORM:


Grant W. Alley, City Attorney

MCGREGOR RESERVE COMMUNITY ASSOCIATION, INC.

By: Mary-Lisa Graham
(Type name of signee here)

Title: President, McGregor Reserve HOA

Witness: 

Name: Barry Bolinger

Witness: 

Name: L. P. Lappan

Date: 11/19/19

CORPORATE SEAL