

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: February 1, 2022

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Third Amendment to Construction, Joint Use and Easement Agreement (R2008-1863), as amended on February 2, 2010 (R2010-0208) and May 2, 2017 (R2017-0577), with Boynton Beach Associates X, LLLP and Boynton Beach Associates XVIII, LLLP (GL Homes) providing for an increase in janitorial services for public restrooms at Canyon Town Center site.

Summary: On October 21, 2008, the County and GL Homes entered into a Construction, Joint Use and Easement Agreement which sets forth the requirements and obligations of each party for the construction and maintenance of the recreational elements located on the 10.8 acre Canyon Town Center civic site. On February 2, 2010, the County amended the agreement to require GL Homes to maintain the public restrooms and the County to reimburse GL Homes 50% of the cost of the custodial contract amount of \$267.50 per month. On May 2, 2017, the County amended the agreement to allow a rate increase of \$650 per month. The County was notified that the vendor will be increasing their rates effective January 2022. This amendment will increase the amount paid by GL Homes to the contractor from \$650 per month to \$682.50 per month. Staff has reviewed the master agreement for janitorial services and determined that the price proposed by the GL Homes Contractor is reasonable and customary. GL Homes' total annual cost for the custodial contract is \$8,190 and the County's portion will be \$4,095, which is an increase to the County of \$195. District 5 (AH)

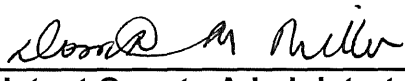
Background and Justification: In 2007, the Board approved modifications to GL Homes' Canyon Traditional Marketplace Development, including conditions of approval which required GL Homes to construct a multi-purpose recreational field, and an amphitheater. In 2008, the County and GL Homes entered into a Construction, Joint Use and Easement Agreement to address the County and GL Homes responsibilities regarding construction, maintenance, and operation of the recreational amenities. In 2010, the agreement was amended to require GL Homes to provide fire monitoring for the amphitheater and for the County to reimburse them 100% of the cost of this service and to reassign the responsibility for the custodial maintenance from the County to GL Homes and to have the County reimburse GL Homes 50% of the cost. GL Homes is able to provide these custodial services as part of a larger contract for substantially less than the County can contract out for similar services.

Attachment:

Third Amendment to Construction, Joint Use and Easement Agreement

Recommended by: 
Department Director

1-5-22
Date

Approved by: 
Assistant County Administrator

1/12/2022
Date

**THIRD AMENDMENT TO CONSTRUCTION, JOINT USE AND EASEMENT
AGREEMENT**

THIS THIRD AMENDMENT TO CONSTRUCTION, JOINT USE AND EASEMENT AGREEMENT (the "Amendment") is made and entered into on _____, (the "Amendment Effective Date") by and between BOYNTON BEACH ASSOCIATES XVIII, LLLP, a Florida limited liability limited partnership, having an address of 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323 (the "BBAXVIII") and PALM BEACH COUNTY, a Political Subdivision of the State of Florida, having an address of 301 North Olive Avenue, West Palm Beach, Florida 33401-4791 ("the County"). BBAXVIII and the County are sometimes referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, on October 21, 2008, BOYNTON BEACH ASSOCIATES X, LLLP, a Florida limited liability partnership ("BBAX"), BBAXVIII and the County entered into an Agreement (R2008-1863), as amended on February 2, 2010 (R2010-0208) and May 2, 2017 (R2017-0577) ("the Agreement"), to convey property to the County for civic use; and

WHEREAS, the Parties amended the Agreement on February 2, 2010 to release and discharge BBAX from the Agreement and update contract requirements; and

WHEREAS, the Parties amended the Agreement on May 2, 2017 to adjust the amount reimbursed to BBAXVIII for amphitheater janitorial services; and

WHEREAS, the Parties desire to amend the Agreement to adjust the amount reimbursed to BBAXVIII for amphitheater janitorial services; and

WHEREAS, entering into this Amendment services a public purpose.

NOW THEREFORE, in consideration of the mutual promises contained herein, the County and BBAXVIII agree as follows:

1. **PARAGRAPH 2(c)(iii) of the Agreement** is hereby amended as follows:

BBAXVIII shall enter into a maintenance agreement with a qualified third party provider for the maintenance of the Bathrooms (any such maintenance agreement whether now or hereafter existing is referred to herein as a "Bathroom Maintenance Contract"), and the Parties shall equally share all fees, costs and expenses payable thereunder. The County through the Director or Assistant Director of Parks and Recreation Department shall have the right to approve or disapprove any such renewal or replacement Bathroom Maintenance Contract. The County shall reimburse BBAXVIII its half of the amounts payable (excluding tax) under a Bathroom Maintenance Contract (the "Bathroom Maintenance Reimbursement Amount") within 45 days after: (i) the expiration or earlier termination of the Bathroom Maintenance Contract; (ii) BBAXVIII provides the County with a copy of the Bathroom Maintenance Contract; and (iii) BBAXVIII provides the County with copies of all invoices sent to BBAXVIII by the third party provider for services rendered under the Bathroom

Maintenance Contract, together with proof of payment of all such invoices. BBAXVIII shall immediately notify the Director or Assistant Director of Parks and Recreation or their designee of any acts of vandalism, theft, other property damage, or anything outside of the scope of the Bathroom Maintenance Contract. Additionally, BBAXVII shall request approval from the Director or Assistant Director of Parks and Recreation or their designee prior to requesting the third party provider perform any additional cleaning or any related janitorial work ("Special Services") covered under the Bathroom Maintenance Agreement. If the Director or Assistant Director of Parks and Recreation or their designee approves Special Services, then such work shall be itemized on the third party provider's monthly invoice that is submitted to the County as part of the Bathroom Maintenance Reimbursement Amount invoice from BBAXVII. The County shall not require, nor shall BBAXVIII be required to provide, any other or further documentation than the required above as a prerequisite to the County's obligation to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount as provided in this paragraph. Except for BBAXVIII's payment of its half of all amounts payment under a Bathroom Maintenance contract, BBAXVIII shall have no further responsibility or obligation to pay for any upkeep or maintenance of the Bathrooms outside the scope of the Bathroom Maintenance Contract.

2. **PARAGRAPH 3 of the Agreement** is hereby amended as follows:

BBAXVIII has entered into a one year Bathroom Maintenance Contract, pursuant to which a third party provider maintains the Bathrooms for \$682.50 per month excluding tax during the term thereof. Either the County or BBAXVII has the right to terminate the Bathroom Maintenance Contract upon 30 days written notice to the other party. The County hereby approves such Bathroom Maintenance Contract and agrees to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount as provided in paragraph 2(c)(iii) of this Agreement. The Parties hereby agree that the County's obligation to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount shall commence as of the date on which the "Civic Site" was conveyed to the County; such date being April 23, 2009.

3. Except as provided herein, each and every other term of the Agreement shall remain in full force and effect and the Agreement is reaffirmed as modified herein.

[signatures and notary acknowledgements follow on next page]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates set forth after their respective signatures below.

Signed, Sealed and Delivered
In the Presence of:

BBAXVIII:

BOYNTON BEACH ASSOCIATES XVIII, LLLP, a
Florida limited liability limited partnership

[Signature]

Print: David DiCaprio

By: Boynton Beach XVIII Corporation, a
Florida corporation, its general partner

By: [Signature]

[Signature]

Print: Cynthia Penn

Date: 12-4-2021

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instructed was acknowledged before me by Misha Fzratti, a General Partner of Boynton Beach XVIII Corporation, a Florida corporation, the General Partner of Boynton Beach Associates XVIII LLLP, a Florida limited liability limited partnership, freely and voluntarily on behalf of such corporation and partnership. She is personally known to me, or has produced personally known as identification.

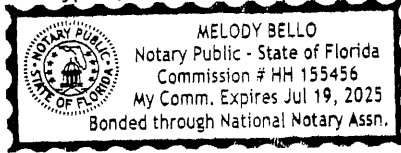
WITNESS my hand and official seal in the County and State last aforesaid this 4th day of December 2021.

[Signature]

Notary Public

My Commission Expires: 7/19/25

Typed, Printed or Stamped Name of Notary Public



[signatures and notary acknowledgements follow on next page]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates set forth after their respective signatures below.

ATTEST:

JOSEPH ABRUZZO
CLERK of CIRCUIT COURT & COMPTROLLER

By: _____
Deputy Clerk

COUNTY:

PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida

By: _____, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: Arme Delgado
County Attorney

APPROVED AS TO TERMS AND CONDITIONS:

By: Eric Call
Eric Call, Director
Parks and Recreation Department