

**AGREEMENT BETWEEN THE
HAMMOCK BAY COMMUNITY DEVELOPMENT DISTRICT
AND HAMMOCK BAY FREEPORT MASTER ASSOCIATION, INC.,
FOR FACILITY MANAGEMENT AND MAINTENANCE SERVICES**

THIS AGREEMENT is made and entered into this 22 day of May, 2006, by and between:

Hammock Bay Community Development District, a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, located in the City of Freeport, Florida, and with offices at 2002 North Lois Avenue, Suite 507, Tampa, Florida 33607 (hereinafter "District"), and

Hammock Bay Freeport Master Association, Inc., a Florida not-for-profit corporation, whose address is Post Office Box 1735, Destin, Florida 32540-1735 (the "Association").

RECITALS

WHEREAS, the District is a local unit of special-purpose government established, pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, Florida Statutes ("Uniform Act"), by ordinance of the City Council in and for the City of Freeport, Florida; and

WHEREAS, pursuant to the Uniform Act, the District is authorized to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge and extend, equip, operate, and maintain systems, facilities and infrastructure in conjunction with the development of lands within the District; and

WHEREAS, the District presently owns and is continuing to construct and/or acquire various systems, facilities and infrastructure including, but not limited to, landscape and hardscape, reuse irrigation systems and stormwater management facilities ("District Property") requiring inspection, operation and maintenance services for which the District desires to retain an independent contractor; and

WHEREAS, the Association is a Florida not-for-profit corporation owning, operating and maintaining various improvements and facilities in close proximity to District Property; and

WHEREAS, for ease of administration, potential cost savings and the benefits of full time on-site inspection, operation and maintenance personnel, the District desires to contract with the Association to manage and maintain District Property; and

WHEREAS, the Association represents that it is qualified, through its officers, employees, contractors and affiliates, to manage and maintain District Property and desires to contract with the District to do so in accordance with the terms of this Agreement.

NOW, THEREFORE, 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 recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. ASSOCIATION'S OBLIGATION.

A. *General duties.* Association shall be responsible for the management and maintenance of District Property in an efficient, lawful and satisfactory manner. Association will act in a fiduciary capacity with respect to the protection and accounting of the District's assets.

B. *Inspection.* Association shall conduct regular inspections of all District Property and report any irregularities to the District Manager, or his designated representative, and shall correct any irregularities in accordance with the terms of this Agreement.

C. *Repair and Maintenance.* Association shall make, or cause to be made, such routine repair work or normal maintenance to District Property as may be required for the operation or physical protection of District Property. Association, in consultation with the District Engineer, shall promptly cause emergency repairs to be made when such repairs are necessary for the preservation and safety of persons and/or property, or when the repairs are required to be made to avoid the suspension of any service of the District. Association shall immediately notify the District Engineer and District Manager, or a designated representative, concerning the need for emergency repairs.

D. *Investigation and Report of Accidents/Claims.* Association shall promptly investigate and provide a full written report to the District Manager as to all accidents or claims for damage relating to the management of the District and maintenance and operation of District Property. Such report shall at a minimum include a description of any damage or destruction of property and the estimated cost of repair. Association shall cooperate and make any and all reports required by any insurance company or the District in connection with any accident or claim. Association shall not file any claims with the District's insurance company without the prior consent of the District Board of Supervisors.

E. *Compliance with Government Rules, Regulations, Requirements and Orders.* Association shall take such action as is necessary to comply promptly with any and all orders or requirements affecting District Property placed thereon by any governmental authority having jurisdiction. Association shall immediately notify the District Manager and District Counsel in writing of all such orders or requirements. At the request of the District, Association shall prepare for execution and filing by the District any forms, reports or returns

which may be required by law in connection with the ownership, maintenance and operation of the District Property.

F. Adherence to District Rules, Regulations and Policies. Association's personnel shall be familiar with all District policies and procedures and shall ensure that all persons using District Property are informed with respect to the rules, regulations and notices as may be promulgated by the District from time to time and ensure that said persons conform therewith. Association assures the District that all third parties will be dealt with at arm's length, and that the District's interest will be best served at all times.

G. Care of the Property. Association shall use all due care to protect the property of the District, its residents and landowners from damage by Association, its employees or contractors. Association agrees to repair any damage resulting from Association's activities and work.

H. Staffing and Billing. Association shall be solely responsible for the staffing, budgeting, financing, billing and collection of fees, assessments, service charges, etc., necessary to perform the management and maintenance responsibilities set forth in this Agreement.

I. Liens and Claims. The Association shall promptly and properly pay for all contractors retained, labor employed, materials purchased, and equipment hired by it to perform under this Agreement. The Association shall keep the District's property free from any materialmen's or mechanic's liens and claims or notices in respect to such liens and claims, which arise by reason of the Association's performance under this Agreement, and the Association shall immediately discharge any such claim or lien.

SECTION 3. COMPENSATION. The District shall pay Association the sum of One Hundred Dollars (\$100.00) per year for the provision of management and maintenance services pursuant to the terms of this Agreement.

SECTION 4. TERM. The term of this Agreement is for a period of two (2) years commencing on June 1, 2006, and shall be automatically renewed for additional one (1) year periods after June 1, 2008, unless either party provides the other party at least thirty (30) days written notice of its intent not to renew. The District shall have the right to terminate this Agreement effective immediately at any time due to Association's failure to perform in accordance with the terms of this Agreement, or upon thirty (30) days written notice without a showing of cause. The Association shall have the right to terminate this Agreement upon sixty (60) days written notice without a showing of cause.

SECTION 5. INSURANCE. The Association shall maintain, at its own expense throughout the term of this Agreement, the following insurance with the District, its staff, consultants and supervisors shall be named as an additional insured:

- A. Worker's Compensation Insurance in accordance with the laws of the State of Florida.
- B. Commercial General Liability Insurance covering the Association's legal liability for bodily injuries, with limits of not less than \$1,000,000 combined single limit bodily injury and property damage liability, and covering at least the following hazards:
- C. Employer's Liability Coverage with limits of at least \$1,000,000 (one million dollars) per accident or disease.
- D. Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the Association of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.

SECTION 6. INDEMNIFICATION. Association agrees to indemnify and hold harmless the District and its 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 Association, including litigation or any appellate proceedings with respect thereto.

SECTION 7. RECOVERY OF COSTS AND FEES. In the event the District is required to enforce this Agreement or any provision hereof by court proceedings or otherwise then, if prevailing, the District shall be entitled to recover from Association 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.

SECTION 8. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District 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.

SECTION 9. ASSIGNMENT. Neither the District nor the Association may assign this Agreement without the prior written approval of the other.

SECTION 10. INDEPENDENT CONTRACTOR STATUS. In all matters relating to this Agreement, the Association shall be acting as an independent contractor. Neither the Association nor employees of the Association, if there are any, are employees of the District under the meaning or application of any Federal or State Unemployment or Insurance Laws or Old Age Laws or otherwise. The Association agrees to assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of the Association, if there are any, in the performance of this Agreement. The Association shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Association shall have no authority to represent the District as an agent, employee, or in any other capacity, unless otherwise set forth in this Agreement.

SECTION 11. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 12. AGREEMENT. This instrument shall constitute the final and complete expression of this Agreement between the District and Association relating to the subject matter of this Agreement.

SECTION 13. AMENDMENTS. 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 the District and the Association.

SECTION 14. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Association, both the District and the Association have complied with all the requirements of law, and both the District and the Association have full power and authority to comply with the terms and provisions of this instrument.

SECTION 15. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to the District:	Hammock Bay Community Development District 2002 North Lois Avenue, Suite 507 Tampa, Florida 33607 Attn: District Manager
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With a copy to:

Hopping Green & Sams, P.A.
123 South Calhoun Street
Post Office Box 6526
Tallahassee, Florida 32314
Attn: Brian A. Crumbaker

B. If to the Association:

Hammock Bay Freeport
Master Association, Inc.

Attn: _____

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Association may deliver Notice on behalf of the District and the Association. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 16. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Association and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Association any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Association and their respective representatives, successors, and assigns.

SECTION 17. CONTROLLING LAW. This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida.

SECTION 18. PUBLIC RECORDS. The Association understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and shall be treated as such in accordance with Florida law.

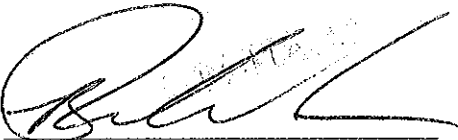
SECTION 19. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 20. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Association as an arm's length transaction. The District and the Association participated fully in the preparation of this Agreement with the assistance of their respective counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, the parties are each deemed to have drafted, chosen, and selected the language, and any doubtful language will not be interpreted or construed against any party.

IN WITNESS WHEREOF, the parties execute this agreement the day and year first written above.

Attest:

**HAMMOCK BAY
COMMUNITY DEVELOPMENT DISTRICT**



Secretary/Assistant Secretary

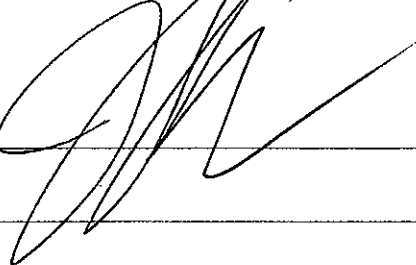


Jack Rhodes
Chairman, Board of Supervisors

**HAMMOCK BAY FREEPORT
MASTER ASSOCIATION, INC.**



(Signature of Witness)

By: 

Its: _____

Bill H. Lamb

(Print Name of Witness)