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LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("License Agreement"), is made by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094 (the "County"), and the WILLIAM R. GAINES JR., VETERAN MEMORIAL FUND, INC., a Florida Not-For-Profit Corporation, 3280-55A Tamiami Trail, Unit 121, Port Charlotte, Florida 33952 (the "Memorial Fund"); (collectively, the "Parties").

RECITALS

WHEREAS, William R. Gaines, Jr., a resident of Charlotte County, Florida, was killed in action while serving his country as a Marine in the U.S. component of the Multi-national peacekeeping force in Beirut, Lebanon; and

WHEREAS, the William R. Gaines, Jr., Veterans Memorial Park (the "Memorial Park") is a County-owned Park located on Edgewater Drive, Port Charlotte, Charlotte County, Florida, named in honor of William R. Gaines, Jr. and established to provide a place where veterans, neighbors and families can come together to experience the beauty of nature and honor the sacrifices of veterans and first responders; and

WHEREAS, the Memorial Fund has been established as a 501(c)(3), non-profit organization and a Florida Not-For-Profit corporation, for the purpose of raising funds for the development of new structures and facilities at the Memorial Park; and

WHEREAS, the Memorial Fund wishes to plan, fund, construct and donate an observation tower (the "Tower"), to be placed at the end of the entrance driveway of Memorial Park in perpetuity at the eastern most entrance at the Memorial Park; and

WHEREAS, the Memorial Fund wishes to honor and celebrate the legacy and sacrifice of William R. Gaines, Jr. and all veterans and first responders who served in the Multi-National peacekeeping mission in Beirut by naming the Tower "The Beirut Peacekeepers Tower"; and

WHEREAS, in addition to the Tower, the Memorial Fund also wishes to undertake and donate certain improvements to the Park Grounds surrounding the Tower, which improvements include, but are not limited to, the addition of trees, turf, irrigation, retaining wall, sidewalk, seating, flag poles, signage, and related incidentals which facilitate the construction of the Tower (the "Park Grounds Improvements"); and

WHEREAS, the County wishes to accept the donation of the Beirut Peacekeepers Tower, and to permit the Memorial Fund and/or its agents to enter upon County land to construct the Tower and Park Grounds Improvements; and

WHEREAS, the County is willing to accept and undertake, in perpetuity, the maintenance of the Tower and Park Grounds Improvements (together, the "TPG Improvements"); and

WHEREAS, the Parties wish to enumerate their respective responsibilities and rights regarding the TPG Improvements in this License Agreement.

NOW THEREFORE, the Parties agree as follows:

1. **Recitals.** The Recitals above are incorporated into this License by reference.

2. **License.** The County grants to the Memorial Fund a non-exclusive, revocable license to enter onto County property to construct the Tower and Park Grounds Improvements as described, and at the locations specified, in **Exhibit A**, attached, which includes a Site Plan approved by the County.

3. **Maintenance.** The Memorial Fund agrees to create a separate fundraising account and trust dedicated specifically to the maintenance of the TPG Improvements. The Memorial Fund agrees to provide the County audited annual reports on funds raised and dedicated to the maintenance of the TPG Improvements. The County and Memorial Fund agree to work together on the maintenance of the TPG Improvements. The Memorial Fund shall pay one-half of the costs to maintain the TPG Improvements, in perpetuity, for the duration of their useful lives, so long as the property continues to be used as the Memorial Park. The County shall provide to the Memorial Fund a statement of actual costs (the "statement") on January 31 of each year for the prior fiscal year ending on October 31. The Memorial Fund shall pay one-half of the statement's amount due no later than March 31. If the Memorial Fund fails to pay the statement's amount, the County may deem the failure to pay as a material breach of this Agreement subject to the requirements set forth below. Notwithstanding any provision to the contrary herein, the County may accept title to the Tower and the maintenance responsibilities related to the TPG Improvements and shall be vested with authority to make all budget and maintenance decisions at its sole discretion, in perpetuity. This subparagraph shall survive expiration, termination or cancellation of this agreement.

4. **Term.** The Effective Date of this License shall be the last date on which it is signed by either party. The term of this License shall be three (3) years from its effective date. This term may be extended by mutual written agreement of the Parties. Paragraph 3 shall survive in perpetuity.

5. **Consideration.** In addition to the mutual promises described in this License, the Parties agree that as further consideration for the License, the Memorial Fund donates and grants to the County title to the Tower, along with any Park Grounds Improvements associated with the Tower, which title shall vest upon Completion of Construction, the County's final Acceptance of the Donation, and the Expiration of this License.

6. **Limitations on License.** The Memorial Fund is permitted to use this License for the sole purposes set forth herein. The Memorial Fund agrees to be responsible for its own compliance, and for the compliance of its employees, agents and contractors, with the terms of this License Agreement, with all applicable laws, rules, orders, ordinances and regulations issued or enforced, and with all grant requirements of the Florida Communities Trust Grant Award and Agreement dated March 20, 2000.

Further, this License Agreement is contingent upon the Memorial Fund obtaining all necessary design and engineering, and permits from all governmental authorities with jurisdiction, associated with construction of the Tower and Park Grounds Improvements, including, but not limited to, building or construction permits, sign permits, and environmental permits, if required. After all permits are acquired and before construction commences, the Memorial Fund shall schedule a pre-construction conference with the County to review the construction aspects of the project. A schedule of work shall be delivered to the County at that time. The Memorial Fund is responsible for quality assurance testing and all inspections necessary to meet permit conditions and all actions necessary to comply with permit conditions. The Memorial Fund agrees to implement Maintenance of Traffic ("MOT") processes, approved in advance by the County, as may be required both for the construction of the Tower and for Park Grounds Improvements. All Site Plans and construction, or changes thereto, must meet County engineering and construction standards and must be approved, in advance, by the County. The construction of the Tower and Park Grounds Improvements must not create adverse impacts to existing Memorial Park facilities. Should adverse impacts result, the Memorial Fund will take all actions necessary to mitigate the adverse impacts. The County will observe all construction and installation authorized by this License to ensure that the same meets County construction standards and is being done in accordance with the approved plans and specifications, including MOT. The Memorial Fund shall, at such times as may be required by the County, remove from the County's property all temporary structures, used materials and equipment, rubbish and waste materials resulting from operations. The Memorial Fund agrees to correct any construction or installation deficiencies within a reasonable period of time upon notice from the County. Upon completion of work and permit approvals, the Memorial Fund shall deliver to the County a digital record drawing of completed work suitable for inclusion with County's baseline drawings for additional work at the Park.

7. **Costs.** The Memorial Fund will pay all costs arising from this License Agreement, including, but not limited to, permit fees, utilities, applicable taxes, construction, installation, insurance, inspection and mitigation costs.

8. **Alteration or Removal.** After completion, the Memorial Fund may not alter or remove the Tower or Park Grounds Improvements without prior approval from the County.

9. **Indemnification.** The Memorial Fund agrees to indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses,

and costs, including, but not limited to, reasonable attorney's fees and costs up to and including any such fees and costs incurred for appeals, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Memorial Fund, including its agents, officers, employees, contractors, subcontractors, and other persons employed or utilized by the Memorial Fund for the Tower construction and Park Grounds Improvements.

10. **Insurance.** The Memorial fund will maintain Commercial General Liability (CGL) insurance coverage in an amount of not less than \$1million per occurrence and \$2 million aggregate. The Certificate Holder will read Charlotte County Board of County Commissioners, and the Certificate Holder will be named as an additional insured on the CGL policy. The Memorial Fund will submit to the County evidence of coverage at least ten (10) days prior to beginning any construction activities.

11. **Construction Date.** Construction of the TPG Improvements, including inspections by the relevant government agencies if necessary, will be completed by a date no later than one year from the effective date of this License Agreement, or at any other time as may be agreed to in writing by the Parties. Failure to construct the TPG Improvements on or before the Construction Date shall constitute a default under this License Agreement.

12. **Notice.** All notices under this License Agreement shall be delivered to the Parties in writing at the following addresses or such other addresses designated by the Parties:

If to the County:

Director
Community Services Department
1120 Centennial Boulevard
Port Charlotte, FL 33953

If to the Memorial Fund:

Michael A. Gaines, Director
3280-55A Tamiami Trail, Unit 121
Port Charlotte, Florida 33952

With a copy to:

County Attorney
18500 Murdock Circle, Suite 573
Port Charlotte FL 33948

13. **Termination.** This License Agreement may be terminated by either party only for material breach of its terms, provided, however, that the non-breaching party must provide written notice of the breach to the breaching party and allow the breaching party no less than (10) days in which to cure the breach prior to termination. An uncured termination shall automatically authorize the County to enter into an agreement with another non-profit entity to raise private funds to pay for maintenance of the TPG Improvements and the Memorial Fund shall cease all fundraising related to the Park.

14. **Public Records.** Pursuant to Section 119.0701 of the Florida Statutes, Contractors acting on behalf of the County must comply with the public records laws,

specifically: a) keep and maintain public records required by the County to perform the contracted services; b) upon request from the County's custodian of public records, provide the County 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 in Chapter 119 of the Florida Statutes or as otherwise provided by law; c) ensure that public records that are exempt or confidential 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; and d) upon completion of the contract, keep and maintain all public records required by the County to perform the service, and meet all applicable requirements for retaining public records.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO RETAIN AND PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (941) 743-1441, E-MAIL TO RECORDS@CHARLOTTECOUNTYFL.GOV, 18500 MURDOCK CIRCLE, BLDG. B, Suite 109, PORT CHARLOTTE, FLORIDA 33948.

15. **Applicable Law.** This License and the rights and obligations of the Parties will be interpreted in accordance with the laws of the State of Florida, with venue in Charlotte County, Florida.

16. **Severability.** If any provision of this License Agreement, or the application of its provisions to any person or circumstance, is adjudicated as invalid or unenforceable to any extent, the remainder of this License Agreement, and the application of such provision to other persons or circumstances, shall remain in effect to the fullest extent practicable.

17. **Counterparts.** This License Agreement may be signed in one or more counterparts, each of which will be considered an original and all of which, when taken together, constitute one and the same instrument.

18. **Assignment.** This License Agreement may not be assigned to another party without the prior written consent of the County.

19. **Entire Agreement, Amendments.** This License Agreement is the entire agreement between the Parties and may not be modified except by written agreement executed by both parties, and no oral representation of any officer or employee of the County constitutes an amendment to this agreement. No representations or warranties have been made, or relied upon, except as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement in Charlotte County, Florida as of the date last written below.

ATTEST:

Roger D. Eaton, Clerk of the Circuit Court and Ex-Officio Clerk to the Board of County Commissioners

By: *Laurie Plinston*
Deputy Clerk
AGR 2023-015

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By: *William G. Truett*
William G. Truett, Chairman

Date: February 8, 2023

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: *Janette S. Knowlton*
Janette S. Knowlton, County Attorney
LR 20-0147 *OK*

WILLIAM R. GAINES JR., VETERAN
MEMORIAL FUND, INC.

By: *Michael A. Gaines*
Michael A. Gaines, Director

Date: 1/27/2023

WITNESS:

By: *Morgan A. Cook*

Date: 1/27/2023

