

Prepared by and when recorded return to:

City Clerk
City of New Port Richey
5919 Main Street
New Port Richey, FL 34652

UTILITIES SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between the City of New Port Richey, a municipal corporation organized and existing under the laws of the State of Florida (the CITY) and, Two Guys Holding Corporation (the DEVELOPER)(collectively, the PARTIES).

WITNESSETH

WHEREAS, the DEVELOPER is anticipating the development of a project to be known as Fairway Professional Park, LLC, which is located within the City of New Port Richey Utility Service Area as depicted on **Exhibit A** attached hereto and legally described as set forth on **Exhibit B** (the DEVELOPMENT); and

WHEREAS, the Parties desire to enter into this Agreement to provide for central water, wastewater treatment services, potable water, and sanitary sewer services to the DEVELOPMENT; and

WHEREAS, in order to provide such services to the DEVELOPMENT, water lines and services, fire hydrants, gravity sewer and laterals, manholes, lift stations, force mains, appurtenances, treatment facilities, and required rights-of-way or easements will need to be installed and utilized (collectively, "lines").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good a valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS. The above recitals are true and correct and incorporated herein by reference.
2. DEVELOPER COVENANTS.
 - a. DEVELOPER shall construct and install all lines and water or wastewater treatment facilities necessary for the DEVELOPMENT to have potable water and sanitary sewer service (the "Improvements"), and will bear all costs and

expenses thereof, including engineering fees, permitting fees, legal fees, labor, and materials.

b. The DEVELOPER shall, if necessary, construct and install lines outside the boundaries of the DEVELOPMENT to connect the Improvements with existing CITY facilities and shall bear all costs and expenses thereof including engineering fees, permitting fees, and construction costs. These off-site facilities shall be located in existing CITY easements or right-of-way or in easements or right-of-way acquired by the DEVELOPER and dedicated to the CITY.

c. DEVELOPER shall not commence installation of the Improvements or any off-site lines until all plans and specifications therefor have been submitted to and approved in writing by the CITY and such other agencies having jurisdiction.

d. The DEVELOPER shall be solely responsible for complying with all federal, state, county, and local laws, rules and/or regulations, and lawful orders of public authorities that, in any manner, bear on the installation and construction of the Improvements. The DEVELOPER shall be responsible for obtaining all necessary permits and licenses required to install and construct the Improvements, at its sole costs and expense.

e. The DEVELOPER agrees to not directly or indirectly engage in the operation of a potable water or sanitary sewer system within or serving the DEVELOPMENT.

3. CITY COVENANTS.

a. Upon completion of the Improvements and certification by the DEVELOPER's engineer of such completion, the CITY will inspect the Improvements. Upon determination by the CITY that the Improvements have been properly installed by the DEVELOPER in accordance with approved plans and specifications, the CITY will provide service to such lines, further provided the DEVELOPER has performed and fulfilled all other obligations imposed on the DEVELOPER under the terms of this Agreement and by all applicable laws, rules, regulation, and ordinances of the municipality, county or such other agency having jurisdiction. Subject to the conditions precedent of this paragraph, service

will be commenced at the time the DEVELOPER receives the first Certification of Occupancy for a dwelling unit within the DEVELOPMENT.

4. TRANSFER OF INFRASTRUCTURE. The Parties agree that at such time as the Improvements, or any portion thereof, are connected to, accepted by and become a part of the CITY's subregional water and sewer system, all real and personal property both tangible and intangible, including the water and sewer lines, the easements, permits, and construction drawings, shall become the property of the CITY and title and ownership shall automatically vest in the CITY upon its acceptance, free and clear of all liens and encumbrances without the necessity of any separate instrument of assignment or transfer. Notwithstanding the foregoing, the CITY and the DEVELOPER shall execute an acknowledgement of the date of such completion and automatic transfer, which shall be appended to this Agreement.

5. MAINTENANCE. After ownership and title to any portion of the Improvements is vested in the CITY, all responsibility for repair and maintenance of such part or portion as have been installed in appropriate easements or right-of-way shall be the responsibility of the CITY, provided that the CITY shall not have the responsibility to repair and maintain any part or portion until the CITY has made a determination that such part or portion has been properly installed in accordance with the approved plans and specifications. Nothing in this Agreement shall waive or otherwise affect or diminish the CITY's rights and remedies under any maintenance bond, developer letter of credit, or other guarantee of performance regarding such lines which has been provided the CITY. The DEVELOPER shall further assign to the CITY, for the use and benefit of the CITY and successors and assigns of the CITY, each and every construction warranty obtained by the DEVELOPER in connection with the Improvements. It is understood and agreed upon by the Parties that the CITY does not accept any ownership or maintenance responsibility of any part of the Improvements or utility lines located on private property and does not accept maintenance responsibility until after the acceptance of the Improvements by the CITY.

6. MAINTENANCE BOND. A maintenance bond shall be provided by the DEVELOPER to the CITY for the Improvements, including all lines and facilities, for the

one-year period immediately following acceptance by the CITY.

7. CITY CODES AND ORDINANCES. The DEVELOPER agrees and expressly acknowledges that the DEVELOPMENT is located within the CITY's Utility Service Area as depicted on Exhibit A and, therefore, the Improvements and all matters associated thereto shall be subject to and governed by the City's codes of ordinances and land development regulations.

8. EXECUTION OF ADDITIONAL DOCUMENTS. If the DEVELOPER fails to execute any of the appropriate documents necessary to carry out this Agreement, the CITY may seek specific enforcement for the execution of such documents, without exclusion of any and all other remedies available to the City.

9. REVENUES. The CITY shall be solely entitled to all revenues generated by the customers connected to the water and sewer system in the DEVELOPMENT pursuant to the schedule of fees and revenues established by the New Port Richey City Council.

10. DEVELOPMENT/IMPACT FEES. The DEVELOPER agrees to pay the CITY water and sewer developmental fees/impact fees for all units in the DEVELOPMENT connected to the utility systems contemplated hereunder. Such developmental fees shall be in amounts authorized as of the time payment is required under the terms of the CITY's codes of ordinances.

11. "By execution of this agreement the parties agree that all lands involved in this agreement shall at the sole discretion of the City, be annexed and become part of the boundaries of the City of New Port Richey by ordinance when said property becomes contiguous to the corporate boundaries of the City of New Port Richey. Furthermore, the parties shall do all things necessary to execute any instruments required to effect such annexation, and in the absence thereof, does hereby appoint the City Manager of the City of New Port Richey as attorney-in-fact to sign such documents as are necessary for such annexation on behalf of the parties or their successor or assigns."

12. NOTICES. Any notice, statement, demand, or other communication required or permitted to be delivered or served or given by either party under this Agreement shall be deemed delivered or served or given if mailed in any general or branch United States

Post Office enclosed in a registered or certified envelope addressed to the respective parties as follows:

CITY: City of New Port Richey
Department of Public Works
5919 Main Street
New Port Richey, FL 34652

DEVELOPER: Two Guys Holding Corporation
8300 Massachusetts Ave.
New Port Richey FL 34653

Notwithstanding the foregoing, each party shall be entitled to change such address by notice given pursuant to this paragraph.

13. MISCELLANEOUS.

a. *RECORDING AND COVENANT RUNNING WITH THE LAND.* The Parties agree that this Agreement shall be recorded in the Official Records of Pasco County, Florida by the CITY and all covenants and agreements contained herein shall constitute covenants running with the lands of the DEVELOPMENT, and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

b. *ATTORNEYS' FEES.* Should the CITY be forced to retain an attorney to enforce any provisions of this Agreement, or engage in any litigation over this Agreement, the CITY shall be entitled to recover its reasonable attorneys' fees, costs, charges, and expenses expended or incurred in pursuit of all such claims at every level, including pre-suit, pre-trial, trial, and appeal and including any litigation over entitlement to or amount of attorneys' fees and costs owed.

c. *ENTIRE AGREEMENT AND MODIFICATION.* This Agreement sets forth the entire agreement between the Parties hereto as to the subject matter hereto and there are no other understandings or agreements, written or oral, unless set forth herein. This Agreement may not be amended or modified except in writing executed by the Parties.

d. *SEVERABILITY.* If any one or more of the provisions of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect by a court of

competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and this Agreement shall be treated as though that portion had never been a part thereof.

e. *AUTHORIZATION.* The undersigned represent and warrant that they are duly authorized to execute this Agreement and to bind their respective party hereto without the consent or joinder of any other party.

f. *GOVERNING LAW AND VENUE.* This Agreement shall be construed by and controlled under the laws of the State of Florida. Venue for any state action arising under this Agreement shall be exclusively in the courts located in Pasco County, Florida and for any federal action shall be exclusively in the Middle District Court, Tampa Division.

g. *WAIVER.* No waiver of any default of failure to perform shall be valid unless set forth in writing by the waiving party and shall not constitute a waiver of any other default or failure to perform under this Agreement, or of any rights or remedies to which the CITY may be entitled on account of any such default or failure to perform.

h. *ASSIGNABILITY.* Notwithstanding anything contained herein, the DEVELOPER shall not assign this Agreement except and unless it has obtained prior written consent of the CITY.

i. *NO THIRD PARTY BENEFICIARIES.* This Agreement is entered into solely for the benefit of the Parties and shall not be construed as a benefit to any third-parties or enforceability by the public at large.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

(SEAL)

ATTEST:

THE CITY OF NEW PORT RICHEY,
FLORIDA

By: _____
City Clerk

By: _____
Mayor - Councilman

(Print or Type Name)

(Print or Type Name)

COUNTY OF Pasco
STATE OF FLORIDA :

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,

personally appeared

FRANK P BIANCO

(Print or Type Name)

to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that HE executed the same for the purpose therein expressed.

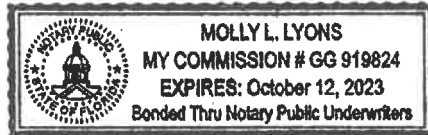
4th WITNESS my hand and official seal in the County and State last aforesaid this day

of JANUARY, 2023.

My Commission Expires: 10-12-2023

(Seal)

Molly L. Lyons



Notary Public

MOLLY L LYONS

(Print or Type Name)

APPROVED AS TO FORM

By _____
City Attorney

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

WITNESSES:

[Signature]

Developer

Lynn C. Galisto

By:

(Print Name) Lynn C. Galisto

(Print Name)

Molly L. Lyons

By:

(Print Name) MOLLY L LYONS

(Print Name)

(Print Address)

COUNTY OF _____ :
STATE OF FLORIDA :

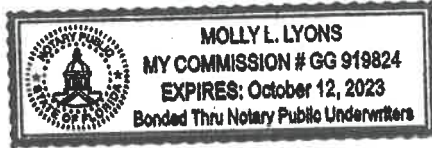
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared

Frank P. Bianco, to me known to be the
(Print or Type Name)

person(s) described in and who executed the foregoing instrument and acknowledged before me that he executed the same for the purpose therein expressed.

WITNESS my hand and official seal in the County and State aforesaid this 4th
day of JANUARY, 2023.

My Commission Expires: 10-12-2023



(SEAL)

Molly L Lyons

MOLLY L LYONS

Notary Public

(Print or Type Name)