AGREEMENT

THIS AGREEMENT (**"Solivita Concrete Project 2022"**) is made and effective this (17) day of May, 2022, by and between **Powell Concrete, LLC (Vendor)**, and **Solivita Community Association, Inc. (Association)**an Florida not for-profit corporation.

AGREEMENT

1. **SCOPE**. Vendor agrees to provide certain services ("Sidewalk, Cart Path, Root Pruning Removal & Replacement") to the Association in accordance with the proposal set forth as **Exhibit "A"** attached hereto and incorporated herein (the "Proposal"). The total costs for the Services shall be **$206,814.00** for the removal and repair of **22,092** sqft of concrete and the grinding of **3,993** total linear feet as set forth in vendors proposal. This also includes the pruning, removal and disposal of all tree roots that have caused the lifting of the cart path or sidewalk. This Agreement shall supplement the Proposal and shall be construed to be part of the Proposal. If applicable, the Services shall be performed in accordance with the specifications attached hereto as **Exhibit "B"** and made a part hereof. The acceptance of the Proposal shall be deemed an acceptance of each provision of this Agreement. In the event of any conflict between this Agreement and the Proposal, the terms of this Agreement shall control.

2. **SERVICES PRICE; TERMS OF PAYMENT**. The Services Price is inclusive of all charges that will be paid by Association to Vendor, including, but not limited to, charges for permits, taxes, and other miscellaneous fees as assessed by any governmental agency or municipality. Vendor shall send an invoice to Solivita Community Association, Inc. once work has been completed and inspected by the BOD or a representative appointed by said BOD, which shall be due within thirty (30) days of receipt of the invoice by the Association.

3. **CHANGE ORDERS**. Association may change the scope of the Services by altering or adding to the Services to be performed. Any such request for change shall be approved in writing and delivered to the Vendor in accordance with Section 15. If Association requests such changes, Vendor shall deliver to Association a supplemental proposal setting forth an adjustment to the Services and the Services Price for the requested change. Association shall provide written acceptance to Vendor of the Supplemental Proposal prior to the commencement of the additional services requested by Association. Each Supplemental Proposal, if any, shall become a binding modification to the Services Price and scope of Services and shall be incorporated herein by reference.

4. **PERMITS; ACCESS; SAFETY**. Vendor shall secure all site-related approvals, permits, licenses and consents necessary to commence and complete the Services and Association shall execute any necessary site access licenses. Any and all costs for such site-related approvals, permits, licenses and consents shall be included in the Services Price. Association hereby grants a right of entry to Vendor, its agents and employees, for the purpose of performing the Services. Vendor shall be responsible for supervision and site safety measures of its agents and employees present in the community. There will be a site designated for the vendor within the community to use as a base location for equipment, debris but said vendor is responsible for the removal and clean up once the project is complete.

5. **AUTHORIZATIONS**. Each party to this Agreement represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the State of Florida

and has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. Each party has taken all action necessary to authorize its execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby.

6. **COMPLETION OF SERVICES**. Vendor shall notify Association upon substantial completion of the Services, at which time Association shall have a period of thirty (30) days to inspect the Services and to request repairs or corrections to same. Unless Association waives the Inspection Period or Vendor fails to make repairs or corrections requested by Association during the Inspection Period, the Services shall be deemed accepted by Association on the thirtieth (30th) day of the Inspection. In the event Association waives the Inspection Period, the Acceptance Date shall be the day Association delivers written notice of such waiver to Vendor.

7. **INSURANCE**. Vendor to carry worker's compensation insurance with statutory policy limits, liability insurance with policy limits in an amount not less than $1,000,000 per occurrence, $2,000,000 aggregate, and auto insurance $100,000 per occurrence and $300,000 aggregate. Such insurance shall name **Solivita Community Association, Inc.** and **Evergreen Lifestyles Management, LLC** as additional insureds. If certificates of such insurance policies are not already on file, they shall be delivered to Association prior to the commencement of the Services and must be kept current and renewed in a timely manner during the entire period of this Agreement.

8. **LICENSED CONTRACTOR**. Vendor represents and warrants that Vendor is a licensed contractor in good standing with the Registrar of Contractors of the State of Florida and other licensing entity, if any, as may be required for the Vendor's industry.

9. **TAXES.** Vendor shall be responsible for payment of all taxes including federal, local taxes arising out of Vendor's activities in accordance with this Agreement, including by way of illustration but not limitation, federal and state income tax, transaction privilege, use, social security tax, unemployment insurance taxes and any other taxes or business license fees required (collectively, "Taxes"). If not on file already, within ten (10) days of the execution of this Agreement, and prior to the commencement of the Services, Vendor shall provide Association a completed and signed Form W-9. In the event Taxes are assessed in any manner against Association, and all or part of the assessment results from the reclassification of Vendor from an independent contractor to an employee, then Vendor shall reimburse Association to the full extent that such increase in Taxes and all penalties and interest thereof is attributable to such reclassification.

10. **LIABILITY**. Vendor shall perform the Services in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions in the same locale ("Standard of Care"). Vendor shall be liable to Association, or to anyone who may claim any right due to any relationship with Association, for any acts or omissions in the performance of the Services on the part of Vendor or on the part of the agents or employees of Vendor when said acts or omissions of Vendor do not meet the Standard of Care.

11. **WARRANTIES**. Vendor shall warranty all material, equipment and labor furnished for a period of **one year (1)** from the Acceptance Date, unless the Vendor is required to provide a longer warranty by law or governmental agency, including, but not limited to, the Florida Registrar of Contractors. This provision shall survive the termination of this Agreement.

12. **INDEMNIFICATION**. Vendor agrees to indemnify, defend and hold Association, its agents and employees harmless for, from and against any and all claims, losses, expenses, damages, obligations, deficiencies, or liabilities of any kind, including, without limitation, costs of investigation, interest, penalties, reasonable attorneys' fees, and any and all costs, expenses and fees incident to any suit, action or proceeding, incurred or sustained by Association resulting from the actions or omissions of Vendor, which arise out of, result from or are related to any and all liabilities or obligations, including, without limitation, liabilities for breach of contract, liabilities arising in tort, liabilities in connection with the Services including, but not limited to, injury or loss sustained by any party from exposure to the Services or for any claims against Association as a generator, disposer or arranger of the Services under federal, state or local law or ordinance, unless due to the gross negligence or willful misconduct of Association. If any claim is asserted against Association that would give rise to a claim by Association against Vendor for indemnification, Association shall promptly give written notice to Vendor concerning such claim, and Vendor shall, at no expense to Association, defend the claim with counsel acceptable to Association.

13. **DISPUTE RESOLUTION**. If any dispute, difference, or disagreement shall arise upon or in respect of the Proposal or this Agreement and the meaning and construction hereof, every such dispute, difference and disagreement shall first be referred to mediation in an effort to resolve such dispute, difference or disagreement without litigation. The parties shall each be responsible for paying one-half (1/2) of any fees and costs relating to the mediation. **EACH OF THE PARTIES AGREES AND UNDERSTANDS THAT THEY SHALL BE REQUIRED TO FIRST SUBMIT ALL CLAIMS TO MEDIATION. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THE PARTIES ARE UNABLE TO RESOLVE THE DISPUTE AFTER PARTICIPATING IN GOOD FAITH IN MEDIATION IN ACCORDANCE WITH THIS SECTION, THE PARTIES MAY LITIGATE ANY DISPUTES.**

14. **TERM; TERMINATION**. The term of this Agreement is for such time as reasonably required to complete the Services or as otherwise specified in the Proposal. Except as otherwise specified herein, either party may terminate this Agreement for any reason with thirty (30) days' written notice to the other party in accordance with Section 15. Notwithstanding the foregoing, in the event the Board of Directors of the Association determines, in its sole discretion, that the Vendor is engaged in harmful activities or willful misconduct which will cause material damage or increased liability to the Association, the Association shall have the right to immediately terminate this Agreement with no further obligation to the Vendor. In the event of termination of this Agreement, if the Vendor fails to perform the Services at any time during the thirty (30) day period after the notice of termination is given, the Association shall not be liable to the Vendor for payment for services not rendered. In addition, in the event that, due to the Vendor's failure to provide Services, the Association must hire an alternative vendor to provide the Services, the Vendor shall be liable to the Association for any amount that exceeds the Services Price.

15. **NOTICES**. All notices, requests, demands, claims and other communications under this Agreement shall be in writing and shall be deemed given if delivered by U.S. Mail, guaranteed overnight delivery (e.g., FedEx) or facsimile transmission if such transmission is confirmed by delivery by U.S. Mail or guaranteed overnight delivery to the addresses and facsimile numbers set forth below:

If to Vendor: Powell Concrete, LLC
Attention: Earl Powell (Owner/Operator)
4755 Laurel Ave
Kissimmee, FL 37459

If to Association: Solivita Community Association, Inc.
Attention: Brenda Taylor (President)
395 Village Dr. Suite C.
Kissimmee, FL 34759

16. **SEVERABILITY**. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed invalid or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition or invalidation, but it shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

17. **MODIFICATION; WAIVER**. No supplement, modification or amendment of any term of the Proposal and this Agreement shall be deemed binding or effective unless in writing and signed by the parties hereto. No waiver of any of the provisions of the Proposal and this Agreement shall constitute or be deemed a waiver of any other provision, nor shall any waiver be a continuing waiver.

18. **TIME**. Time is of the essence in each and every provision of the Proposal and of this Agreement.

19. **ATTORNEYS' FEES**. In any action or law or in equity to enforce any of the provisions or rights under the Proposal or this Agreement, the unsuccessful party to such action, as determined in a final judgment or decree, shall pay the successful party all costs, expenses and reasonable attorneys' fees incurred by the successful party (including, without limitation, costs, expenses and fees on any appeal).

20. **HEADINGS; CONSTRUCTION**. The headings of sections contained in this Agreement are provided for convenience only and will not affect its construction or interpretation.

21. **COUNTERPARTS**. This Agreement may be executed in one or more counterparts, by facsimile, or by a scanned signature transmitted electronically, for the convenience of the parties and any such counterpart, facsimile or electronic signature shall be deemed an original. All such counterparts shall be construed as being one and the same document.

22. **SUCCESSORS; ASSIGNMENT**. The Proposal and this Agreement shall be binding upon the parties, their executors, administrators, legal and personal representatives and successor personal representatives, successors, and assigns. Neither party may assign or delegate the Proposal and this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party.

23. **GOVERNING LAW; VENUE**. The Proposal and this Agreement shall be deemed to be made under, and shall be construed in accordance with and governed by, the laws of the State of Florida, and a lawsuit to enforce any provision of the Proposal and this Agreement or to obtain any remedy with respect hereto shall be brought within the county in which the Services were to be performed, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction of said Court.

[signatures on following page]

IN WITNESS WHEREOF, Vendor and Association have executed this Agreement as of the date first written above.

VENDOR:
Powell Concrete, LLC,
a Florida limited liability company

By: _____
Name: Earl Powell
Its: Owner & Operator

ASSOCIATION:
Solivita Community Association, Inc.
A Florida non-profit corporation

By: _____
Name: Brenda Taylor
Its: Board President of Directors of the Association

Exhibit A "Accepted Proposal"
See Below

Exhibit "B"

SPECIFICATIONS

Scope for work:

- **All repairs must be made to meet ADA requirements.**
- **Contractor will provide updates of schedules changes if needed immediately to the Association Manager.**
- **All tree roots will be cut and removed in the immediate area of repair/replacement. Debris must be removed before end of business day as to avoid tripping hazards.**
- **Area of work will be cautioned off to prevent resident access if not completed that same day.**
- **Concrete material shall be between 2500 and 3500 PSI for all related work.**
- **Concrete finish must be broom finish.**
- **Contractor is responsible for adding soil/grading as needed to keep current thickness of concrete that was removed in the stated section.**
- **Care must be taken to avoid damage to irrigation system as much as possible.**
- **New section must match current degree of level and or must allow for any rain water to sheer off due to surrounding environments.**

1015 Warren Brothers Rd
Haines City, FL, 33844
321-250-0233

Powell Concrete LLC

Estimate

For: Solivita Community Association, Inc.
395 Village Dr. suite C Kissimmee, FL 34759

Estimate No: 705
Date: 04/27/2022

Ship To: 395 Village Dr. Suite C Kissimmee, FL 34759

Tracking No
Ship Via
FOB

Description	Quantity	Rate	Amount
Description of work: Proposal for Solivita Community Association, Inc. This proposal covers a total of 22,092 sqft at a discounted price of $9.00 per sqft that includes sidewalks and cart path throughout the community. This also covers a total of 3993 linear feet of grinding @ $30 per hr for 266 hrs. to remove tripping hazard. Due to aggressive price discount, this estimate is only valid for (17) business days from 4/27/22 due to cost of material. Concrete color will be natural gray with a broom finish. Removal of slabs & tree root disposal is included in this price. Thickness of new concrete will match with what was removed at every location.	22,092	$9.00	$198,828.00*
Description of work: Grinding of 3,993 linear feet to remove tripping hazard.	7,986	$1.00	$7,986.00*
Total not to exceed 12 storm drains repairs/patching.	12	$0.00	$0.00

*Indicates non-taxable item

Subtotal	$206,814.00
TAX 7%	$0.00
Shipping	$0.00
Total	$206,814.00

Total **$206,814.00**