

SECOND AMENDMENT TO DEVELOPER'S AGREEMENT

THIS IS A SECOND AMENDMENT TO DEVELOPER'S AGREEMENT, made and entered into this 16th day of June 2015 by and between:

CITY OF FORT LAUDERDALE, a municipal Corporation of the State of Florida, (hereinafter referred to as "City")

and

Recreational Design & Construction, Inc.
A Florida corporation, (hereinafter referred to as "Developer").

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of September 18, 2012 authorized the proper officials by motion to execute a Developer's Agreement between Developer and City for the renovation of the Fort Lauderdale Aquatic Complex (the "Agreement"); and

WHEREAS, the parties executed a First Amendment to the Developer's Agreement on May 7, 2013; and

WHEREAS, at its meeting of June 16, 2015, the City Commission, by motion, authorized the proper City Officials to execute this Second Amendment to Developer's Agreement; and

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, do agree as to the following:

Section 1. That Section 3.10 of the Agreement is hereby replaced and amended to read as follows:

THE GUARANTEED MAXIMUM PRICE (GMP) CANNOT EXCEED TWENTY FIVE MILLION FIVE HUNDRED SIXTY FOUR THOUSAND NINE HUNDRED AND FIFTY DOLLARS (\$25,564,950.00) FOR THE PUBLIC IMPROVEMENTS (AS DELINEATED ON THE PROJECT PROGRAM SUBMITTED TO THE CITY OF FORT LAUDERDALE ON MARCH 28, 2012) AND EIGHT MILLION NINE HUNDRED SEVENTY TWO THOUSAND FOUR HUNDRED AND EIGHTY FOUR DOLLARS (\$8,972,484.00) FOR THE PARKING GARAGE, BOTH ELEMENTS INCLUSIVE OF THE COSTS FOR DESIGN SERVICES, DESIGN FEE AND DEVELOPER'S FEE, OR A TOTAL GMP OF THIRTY FOUR MILLION FIVE HUNDRED THIRTY SEVEN THOUSAND FOUR HUNDRED AND THIRTY FOUR DOLLARS (\$34,537,434.00).

ONCE THE CONSTRUCTION PHASE HAS COMMENCED, DEVELOPER AGREES THAT IT WILL BE RESPONSIBLE FOR PAYING ALL COSTS OF COMPLETING THE

WORK WHICH EXCEEDS THE GMP, AS MAY BE ADJUSTED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

Section 2. That Section 3.10.4 of the Agreement is hereby replaced and amended to read as follows:

Included within the GMP is the Developer's Fee. The Developer's Fee is hereby established as \$4,710,577.80 based on a fixed percentage of 16.45% of the original GMP as agreed upon by the parties. The fixed percentage of 16.45% is calculated by taking the established Developer Fee of \$4,710,577.80 less payment of Developer Fee thru Pay Application 24 for each of the parking garage component and for the swimming pool component of the Project (the Developer's Fee), calculated on all amounts reflected in the GMP Sum (revised per Section 1 of the Second Amendment), more particularly described in Exhibit "B", excluding permits, payment and performance bond, builder's risk insurance, project specific E & O policy, Developer's Contingency and Owner's Contingency. The sum of the Cost of the Work, cost of Design Services, the Design Fee and the Developer's Fee shall not exceed the GMP also referred to as the Contract Sum. The Developer's Fee shall constitute Developer's total compensation for profit and overhead for Construction Services. The Developer's Fee is to be included in the Developer's monthly Application for Payment, in accordance with Article 9.1.4 of this Agreement, and shall be proportional to the percentage of Work completed, less payments of the Developer's Fee previously made.

Section 3. In all other respects, the original Developer's Agreement between the parties dated September 18, 2012, including Amendment One, is hereby ratified, reaffirmed and shall remain in full force and effect as provided by its terms.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGES FOLLOW]**

IN WITNESS THEREOF, the above parties have executed this instrument, the name of each party being affixed and these present duly signed by its undersigned representative, pursuant to authority of its governing body, attesting to the City Commission's approval of the final GMP, not to exceed \$34,537,434.

WITNESSES:

CITY

CITY OF FORT LAUDERDALE, a
municipal corporation of the State of
Florida

[Witness signature]

By _____
JOHN P. "JACK" SEILER, Mayor

[Print Name]

By _____
LEE R. FELDMAN, City Manager

[Witness signature]

[Print Name]

ATTEST:

JONDA K. JOSEPH, City Clerk

Approved as to form:

RHONDA MONTOYA HASAN
Assistant City Attorney

DEVELOPER

WITNESSES:

Recreational Design & Construction, Inc., a Florida corporation

By _____
JOSEPH CERRONE, III
President

Print Name

Print Name

(CORPORATE SEAL)

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by JOSEPH CERRONE, III as President of Recreational Design & Construction, Inc., a Florida corporation, on behalf of the corporation. Who is: Personally Known or Produced Identification: Type of ID Produced _____

Notary Public, State of Florida

(SEAL)

Name of Notary Typed, Printed or Stamped