

FIRST AMENDMENT TO SETTLEMENT AND REMEDIATION AGREEMENT

This First Amendment to the Settlement and Remediation Agreement (the “Agreement”), made and entered into as of this ___ day of _____, 2014 (“Effective Date”), by and between the **CITY OF FORT LAUDERDALE**, a municipal corporation organized and existing under the laws of the State of Florida (“CITY” or “City”), and **Fort Lauderdale Country Club, Inc.**, a Florida not-for-profit corporation (“FLCC”) (the City and FLCC may each be referred to as a “Party” and shall collectively be referred to as the “Parties”).

WHEREAS, FLCC and City entered into a Settlement and Remediation Agreement dated June 19, 2013 to address remediation activities on the Subject Property; and

WHEREAS, after further discussions with City staff, FLCC prepared and Broward County approved an addendum to the Remedial Action Plan (“RAP”) for the Subject Property which is attached hereto as **Exhibit 1**; and

WHEREAS, in order to accelerate and enhance remediation of the environmental conditions for the continued protection of the groundwater, CITY desires to enter into this First Amendment to the Settlement and Remediation Agreement; and

NOW, THEREFORE, in consideration of the mutual promises and covenants set out below, the parties agree as follows:

1. Section 1 of the Settlement and Remediation Agreement is hereby amended as follows:

1. Remediation: The Parties agree to jointly fund the implementation of the Broward County approved Remedial Action Plan for the Subject Property.

A. The Parties agree to accept a cost estimate of ~~\$800,000~~ \$500,000 for the RAP Implementation Costs which shall include all costs associated with the implementation of the approved RAP, including but not limited to: engineering fees, environmental consulting fees, project management, labor and equipment, excavation services, demolition and restoration construction services and materials, permitting fees, inspection fees, soil disposal, transportation, fuel, electrical contractor, plumbing contractor, environmental sampling and analysis, and other professional and governmental fees and costs related to implementation of the RAP and achieving conditional closure for the Subject Property (hereafter “RAP Implementation Costs”). All significant changes or amendments to the RAP that result in an increase or decrease in estimated implementation costs of

\$100,000 or more shall be incorporated into an amendment to this Agreement to be executed by both Parties. All minor changes to the RAP resulting in an increase or decrease in estimated implementation costs of less than \$100,000 shall not require an amendment to this Agreement and may be approved by the City Manager as provided in Section 1.1.C.1 below.

B. The Parties shall each be responsible for 50% of the RAP Implementation Costs and each agrees to fund such costs in accordance with the terms and conditions contained herein.

C. FLCC shall engage, through a competitive process, and directly oversee, a remediation contractor(s) with proper licensing (hereinafter “Contractor”), which Contractor shall be approved in advance by the City through its City Manager. The City approval of the Contractor shall not be unreasonably withheld, conditioned or delayed.

1. Through this Agreement, the City has consented to the amended RAP approved by Broward County and the activities to be conducted thereunder. FLCC shall be responsible for the implementation of the remediation substantially in accordance with the approved RAP as may be amended upon the advance written approval of the Parties and Broward County. The City, acting by and through the City Manager, shall review and approve, prior to submittal to Broward County, if applicable, all amendments or revisions to the RAP and implementation, which approval shall not be unreasonably withheld, conditioned or delayed.

2. FLCC shall submit to the City Manager a proposed project schedule at least fourteen (14) calendar days prior to Contractor commencing implementation work. The schedule submittal shall be subject to review and comment by the City Manager. Subsequent to such review of said schedule, the accepted schedule will serve as the baseline schedule for the Project. An updated schedule, which will track the Project against the baseline schedule, will be submitted with each funding draw request. The City Manager will not approve a draw request without submittal of an updated schedule.

3. FLCC shall submit reasonably detailed invoices to the City Manager for all RAP Implementation Costs (each an “Invoice”), along with reasonable substantiating documentation, as requested by the City Manager. Provided the work described in the Invoice has been performed, the City shall pay to FLCC an amount equal to fifty percent (50%) of

each Invoice submitted (“City’s Funding Portion”) within fourteen (14) days of FLCC’s submittal of an Invoice. If the City disputes any Invoice, it shall advise the FLCC in writing no later than fourteen (14) days after receipt of such Invoice and provide such information as reasonably requested by FLCC relating to the dispute. The Parties agree to thereafter promptly meet in good faith to resolve any such dispute, provided that, pending resolution, the Parties shall continue funding the undisputed amount. FLCC shall substantiate its expenditures of the FLCC contribution for the RAP.

D. In addition to the City’s Funding Portion, upon FLCC’s delivery of an Invoice to the City Manager, the City shall also fund to FLCC in accordance with Section 1(C)(3) hereof, the remaining 50% balance of each Invoice, such amount representing FLCC’s one-half (1/2) portion of such Invoice (“FLCC’s Funding Portion”), up to a maximum of ~~\$200,000~~ \$125,000. FLCC agrees to repay the City for the FLCC’s Funding Portion which has been funded by the City at the rate of ~~\$40,000~~ \$25,000 per year for 5 years (to the extent such amounts have actually been funded by the City), at an interest rate of 0%, with the first payment due twelve (12) months from the date of this Agreement, as more particularly set forth in the promissory note to be executed by FLCC upon execution of this Agreement and prior to any disbursements and which shall be in substantially the form as set forth in **Exhibit 3** (“Promissory Note”).

E. The Parties agree to cooperate in controlling the RAP Implementation Costs, and to avoid costs overruns, to the extent reasonable and feasible. In the event the RAP Implementation Costs exceed the remediation cost estimate of ~~\$800,000~~ \$500,000 (“RAP Costs Overruns”), the Parties agree that each Party shall be responsible for 50% of the RAP Costs Overruns. The Parties shall jointly fund any additional RAP Costs Overruns in accordance with the mechanisms described in Section 1(C)(3) and 1(D) hereof. The City further agrees to fund FLCC’s 50% portion of any RAP Costs Overruns in accordance with the terms set forth in Section 1(D) hereof and such additional funds advanced by the City toward FLCC’s 50% portion of the RAP Costs Overruns shall be added to the outstanding principal balance of the Promissory Note attached as **Exhibit 3**. The Parties agree to cooperate with one another to amend the Promissory Note, if necessary, to reflect any additional advances made by the City which are attributable toward FLCC’s 50% portion of the RAP Costs Overruns and the repayment of such advances shall be consistent with the repayment terms set forth in Section 1(D) hereof.

2. Exhibit 2 of the Settlement and Remediation Agreement is hereby amended to incorporate the Addendum and Supplemental information as attached hereto as Exhibit 1.
3. Exhibit 3 of the Settlement and Remediation Agreement is hereby deleted and replaced with Exhibit 3 attached hereto.
4. All other terms and provisions of the original Settlement and Remediation Agreement between the parties are hereby ratified, reaffirmed and shall remain in full force and effect.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: City of Fort Lauderdale through its City Commission, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, 2014; and FLCC through its officer authorized to execute this Agreement.

Witness

Print Name

Witness

Print Name

ATTEST:

Jonda K. Joseph, City Clerk

CITY OF FORT LAUDERDALE, a
municipal corporation

By: _____
John P. "Jack" Seiler, Mayor

By: _____
Lee R. Feldman, City Manger

Approved as to form:

By: _____
Assistant City Attorney

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by JOHN P. "JACK" SEILER, Mayor of CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He/she/they is/are () personally known to me or () has/have produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
Print Name:
Commission No.:
My Commission Expires:

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by LEE FELDMAN, City Manager of CITY OF FORT LAUDERDALE, a municipal corporation of Florida. He/she/they is/are () personally known to me or () has/have produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
Print Name:
Commission No.:
My Commission Expires:

**Fort Lauderdale County Club Inc., a
Florida not for profit corporation**

Witness

Print Name

Witness

Print Name

Witness

Print Name

Witness

Print Name

By: _____
Jean Smith, President
____ day of _____, 2014

By: _____
Joseph Angella, Secretary
____ day of _____, 2014

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____, as _____ of Fort Lauderdale County Club, a Florida not-for-profit corporation, on behalf of the corporation. He/she/they is/are () personally known to me or () has/have produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida
Print Name:
Commission No.:

My Commission Expires:

STATE OF FLORIDA)

)

COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by _____, as _____ of Fort Lauderdale County Club, a Florida not-for-profit corporation, on behalf of the corporation. He/she/they is/are () personally known to me or () has/have produced _____ as identification.

(NOTARY SEAL)

Notary Public, State of Florida

Print Name:

Commission No.:

My Commission Expires:

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EXHIBIT 1

REMEDIAL ACTION PLAN ADDENDUM II (RAPA II)

EXHIBIT 3

PROMISSORY NOTE

(Fort Lauderdale Country Club, Inc./City of Fort Lauderdale)

\$125,000.00

As of _____, 2014
Fort Lauderdale, Florida

FOR VALUE RECEIVED, the undersigned promises to pay to the order of CITY OF FORT LAUDERDALE, a municipal corporation organized and existing under the laws of the State of Florida, its successors and assigns (“Lender”) at 100 North Andrews Avenue, Fort Lauderdale, Florida 33301, or at such other place as may be designated by the holder hereof, the principal sum of One Hundred and Twenty Five Thousand and 00/100 Dollars (\$125,000.00), or so much thereof as may have been advanced by Lender, without interest.

The entire principal balance of this Note then unpaid shall be due and payable in full on the fifth (5th) anniversary of the date of this Note (“Maturity Date”).

The undersigned is executing this Note pursuant to the terms and conditions of that certain Settlement Agreement of even date herewith executed by the undersigned and Lender (“Settlement Agreement”). Subject to the restrictions and limitations set forth herein and in the Settlement Agreement, the total amount of indebtedness hereunder may increase or decrease from time to time.

Provided Lender has advance to the undersigned an amount equal to or great than the “Annual Payment” (as hereinafter defined), during the term hereof, the undersigned shall pay installments of principal, only, in the amount of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) per annum (each an “Annual Payment”), commencing on the first anniversary of the date this Note, with subsequent installments due on the same day each and every calendar year thereafter, until the Maturity Date. The outstanding principal balance may be prepaid, in whole or in part, at any time without penalty.

This Note will be considered in default when any payment required to be made hereunder shall not have been made within fifteen (15) days after the undersigned’s receipt of written notice from Lender that a payment has not been made on the due date.

In the event of default not cured within the applicable notice and cure period, Lender may, at its option, declare the entire unpaid principal balance of this Note immediately due and payable without notice or demand.

The undersigned hereby waives demand, notice of non-payment and protest and agrees that if this Note goes into default and is placed in the hands of an attorney for enforcement of the undersigned’s obligations hereunder, and if the Lender shall prevail in an enforcement action, the undersigned shall pay reasonable attorneys’ fees and all other costs and expenses incurred in making such enforcement, including but not limited to reasonable attorneys’ fees and costs on appeal of any judgment or order.

This Note shall be construed and enforced in accordance with the laws of the State of Florida.

FORT LAUDERDALE COUNTRY CLUB,
INC., a Florida not-for-profit corporation

By: _____

Name: _____

Title: _____

Address: 415 Country Club Circle
Plantation, Florida 33317

By: _____

Name: _____

Title: _____

Address: 415 Country Club Circle
Plantation, Florida 33317