

## FIRST AMENDMENT TO DEVELOPER'S AGREEMENT

THIS IS A FIRST AMENDMENT TO DEVELOPER'S AGREEMENT, made and entered into this 7<sup>th</sup> day of May, 2013 by and between:

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

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, at its meeting of May 7, 2013, the City Commission, by motion, authorized the proper City Officials to execute this First Amendment to Developer's Agreement;

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 3.10.2 of the Agreement is hereby replaced and amended to read as follows:

When the Construction Documents are 90% complete, the City shall utilize the services of an independent cost estimator to verify the final GMP. The City Manager shall submit to the City Commission for review and approval the 90% Construction Documents and the final GMP, not to exceed \$32,437,434. Developer shall provide to the City Commission, as part of their approval of the final GMP, Exhibits 1 through 11 of **Exhibit B** to support the final GMP. After the City Commission's approval of the 90% Construction Documents and final GMP, the Construction Documents shall not be modified to include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment. If these modifications are required, all of which, if required, shall be incorporated by Change Order and shall increase the Contract Time and/or GMP, as appropriate. If the City Commission does not approve the 90% Construction Documents and final GMP, the City Commission reserves the right to terminate the Agreement. In the event the Agreement is terminated, the Owner shall pay the Developer for any non-deficient Work executed up to the date of such termination.

CAM # 13-0639  
EXHIBIT #1

**Section 2.** That Section 3.10.8. of the Agreement is hereby replaced and amended to read as follows:

Included within the GMP is the Developer's general conditions costs ("General Conditions"), which shall be referenced as a separate line item in the Schedule of Values. The Developer's General Conditions are to be included in 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 General Conditions previously made. The General Conditions are a fixed amount and shall not be subject to shared "Savings," as hereinafter defined. Notwithstanding anything contained herein to the contrary, the General Conditions shall be subject to audit by the Owner.

**Section 3.** That Section 11.5.2 of the Agreement is hereby replaced and amended to read as follows:

**Commercial General Liability:** The Developer shall provide minimum limits of \$2,000,000 each occurrence, \$2,000,000 annual aggregate combined single limit for bodily injury and property damage liability. This shall include premises/operations (including explosion, collapse, and underground), independent contractors, products, completed operations, broad form property damage, personal and advertising injury, and contractual liability, specifically confirming and insuring the indemnification and hold harmless clause of the Agreement. This policy of insurance shall be considered primary to and not contributing with any insurance maintained by Owner and shall name Owner as an additional insured. The policy of insurance shall be written on an "occurrence" form. Maximum deductible shall be \$25,000 each claim.

**Section 3.** That Exhibit B, Article IV, titled "Signature," is hereby replaced and amended to read as follows:

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 90% Construction Documents and final GMP, not to exceed \$32,437,434.

**OWNER:**

**City of Fort Lauderdale, Florida**

By: \_\_\_\_\_

Print Name: Lee R. Feldman

Title: City Manager

Date: \_\_\_\_\_

**DEVELOPER:**

**Recreational Design &  
Construction, Inc.**

By: \_\_\_\_\_

Print Name: Joseph C. Cerrone

Title: President

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name/Title: \_\_\_\_\_

**Section 4.** In all other respects, the original Developer's Agreement between the parties dated September 18, 2012, 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 OF THE FOREGOING, the parties have set their hands and seals for this First Amendment to Developer's Agreement the day and year first written above.

**CITY**

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

By \_\_\_\_\_  
JOHN P. "JACK" SEILER, Mayor

By \_\_\_\_\_  
LEE R. FELDMAN, City Manager

ATTEST:

\_\_\_\_\_  
JONDA K. JOSEPH, City Clerk

Approved as to form:

\_\_\_\_\_  
CARRIE L. SARVER  
Assistant City Attorney

**DEVELOPER**

WITNESSES:

Recreational Design & Construction, Inc., a  
Florida Corporation

\_\_\_\_\_

By \_\_\_\_\_

Print Name

Name/Title \_\_\_\_\_

\_\_\_\_\_

ATTEST:

Print Name

BY: \_\_\_\_\_

\_\_\_\_\_  
Print Name of Corporate Secretary

(CORPORATE SEAL)

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ and  
\_\_\_\_\_ respectively, 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