

**RESOLUTION No. 18-195**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT TO THE PUBLIC PRIVATE PARTNERSHIP AGREEMENT WITH TERRA DORAL COMMONS, IN SUBSTANTIALLY THE FORM PROVIDED, SUBJECT TO APPROVAL AS TO FORM AND LEGAL SUFFICIENCY BY THE CITY ATTORNEY, FOR THE ENHANCEMENT OF A LAKEFRONT BOARDWALK AMENITY AT DORAL GLADES PARK; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Doral (the "City") developed Doral Glades Park (the "Park") as a place in which the community can gather to enjoy nature in a safe environment that is representative of the beautiful City of Doral. Covering roughly 25 acres, the park will be located on NW 74<sup>th</sup> Street between NW 97<sup>th</sup> Avenue and NW 104<sup>th</sup> Avenue, will encourage conservation and outdoor recreation, and include amenities such as: viewing platform, fishing pier, kayak launch, educational boardwalk, nature center, interpretive signs, and native plantings; and

**WHEREAS**, during the final design phase of the project, the City was approached by Terra Doral Commons with the idea of partnering to improve the design of the Park with the purpose of developing a lakefront boardwalk amenity within the park. After conversations with City staff, Terra Doral Commons developed a conceptual site plan design for the boardwalk along the south side of the lake (the "Boardwalk"); and

**WHEREAS**, on February 13, 2018, the City Council approved Resolution #18-25 approving the current Public Private Partnership Agreement between the City of Doral and Terra Doral Commons which requires that Terra bare all costs associated with the design and construction of the Boardwalk and adjacent area; and

**WHEREAS**, the proposed amendment to the current agreement still requires that Terra bare all costs associated with the design and construction of the Boardwalk and adjacent area but shifts the responsibility to Terra to fully construct the Boardwalk and adjacent area; and

**WHEREAS**, staff respectfully requests approval to authorize the City Manager to execute the amendment to the current Public Private Partnership Agreement with Terra Doral Commons, subject to approval as to form and legal sufficiency by the City Attorney, for the enhancement of a lakefront boardwalk amenity at Doral Glades Park.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

**Section 2. Approval.** The amendment to the current Public Private Partnership Agreement for the enhancement of a lakefront boardwalk amenity at Doral Glades Park between the City of Doral and Terra Doral Commons, in substantially the form attached hereto as "Exhibit A", which is incorporated herein and made a part hereof by this reference, is hereby approved, subject to approved as to legal form and sufficiency.

**Section 3. Authorization to Procure Services.** The City Manager is hereby authorized to finalize and execute the amendment to the current Public Private Partnership Agreement with Terra Doral Commons, subject to approval as to form and legal sufficiency by the City Attorney, for the enhancement of a lakefront boardwalk amenity at Doral Glades Park. This Authorization does not create or confer any rights to Terra Doral Commons.

**Section 4. Implementation.** The City Manager and the City Attorney are hereby authorized to take such action as may be necessary to implement the provisions of this Resolution.

**Section 5. Effective Date.** This resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Cabrera who moved its adoption. The motion was seconded by Councilmember Rodriguez and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Claudia Mariaca	Yes
Councilman Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED this 1 day of November, 2018.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
CONNIE DIAZ, CMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

  
\_\_\_\_\_  
LUIS FIGUEREDO, ESQ.  
CITY ATTORNEY

# EXHIBIT “A”

**AMENDMENT #1  
TO THE  
PUBLIC PRIVATE PARTNERSHIP AGREEMENT  
BY AND BETWEEN  
THE CITY OF DORAL  
AND  
TERRA DORAL COMMONS RESIDENTIAL, LLC  
AND  
DORAL COMMONS COMMERCIAL, LLC  
FOR  
DEVELOPMENT OF DORAL GLADES PARK BOARDWALK**

THIS Amendment #1 (the “Amendment”) to the Public Private Partnership Agreement by and between the City of Doral and Terra Doral Commons Residential, LLC and Doral Commons Commercial, LLC for Development of Doral Glades Boardwalk ( is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between the CITY OF DORAL, a municipality of the State of Florida, the principal and mailing address of which is 8401 NW 53<sup>rd</sup> Terrace, Doral, FL 33166 (the “City”), and Terra Doral Commons Residential, LLC, a Florida Limited Liability Company, the principal and mailing address of which is 2655 South Bayshore Drive, Suite 1020, Miami, FL 33133, and Terra Doral Commons Commercial, LLC, a Florida Limited Liability Company, the principal and mailing address of which is 2655 South Bayshore Drive, Suite 1020, Miami, FL 33133 (collectively, Terra Doral Commons Residential, LLC and Terra Doral Commons Commercial, LLC are “Terra”). The City and Terra may be referred to individually as a “Party” or collectively as the “Parties”.

**RECITALS**

WHEREAS, on February 13, 2018, the City Council approved Resolution #18-25 approving the current Public Private Partnership Agreement between the City of Doral and Terra Doral Commons (the “Agreement”) which requires that Terra bare all costs associated with the design and construction of a boardwalk (the “Boardwalk” or the “Project”) feature in Doral Glades Park (the “Park”); and

WHEREAS, following approval of the Agreement, the City and Terra engaged in further discussions regarding implementation, which resulted in mutually desired arrangement regarding financial oversight of the Boardwalk; and

WHEREAS, this Amendment still requires that Terra bare all costs associated with the design and construction of the Boardwalk and adjacent area but shifts the responsibility to Terra to fully construct the Boardwalk and adjacent area and pay the corresponding contractors directly; and

WHEREAS, the City and Terra desire to amend the Agreement has stated herein.

**NOW, THEREFORE**, in consideration of the foregoing recitals, which are true, correct, and incorporated herein and made a part hereof by this reference, for the mutual promises specified herein, and other good and valuable consideration, the sufficiency of which are hereby acknowledged by the Parties, the City and Terra hereby agree as follows:

1. **Amendment.** The Agreement is hereby amended effective as of the date hereof as follows

a. Section 2(b) is hereby deleted in its entirety and the following is hereby substituted in its place:

**2. Terra Obligations.**

\* \* \*

*“(b) Construction.*

(i) Upon finalizing the design of the Boardwalk, Terra shall prepare a final cost estimate for construction of same (the “Draft Final Cost Estimate”) and deliver the same to the City. The City shall have five (5) business days from receipt of the Draft Final Cost Estimate to approve or reject same, which City shall provide notice of in writing to the Terra. If rejected, City shall state its reasons for said rejection and the Parties shall agree to meet and confer regarding the Draft Final Cost Estimate within five (5) business days of the Terra’s receipt of the City’s rejection (the “Meet and Confer”). Should the Parties fail to reach a mutually acceptable resolution at the Meet and Confer regarding the Final Cost Estimate, the Parties shall, within fifteen (15) business days, obtain two (2) independent cost estimates for said construction ( the “Independent Cost Estimates”). Either the approved Draft Final Cost Estimate or, if the Draft Final Cost Estimate is rejected by the City, the lower of the Independent Cost Estimates, shall serve as the basis for the “Construction Sum” The final approved Construction Sum shall be attached hereto as Exhibit “C”.

(ii) Following approval of the Change Order, and the satisfaction of any relevant conditions, Terra shall secure within fifteen (15) days thereof the performance bond in the amount 100% of the Construction Sum, which shall be in the form of standard Performance Bonds in the construction industry and cover the faithful performance of the Contract (the “Bond”). The Bond shall be executed by a surety that is licensed in the State of Florida and shall remain in effect as required by law and the Contract Documents. The Bond shall be effective as of the date on which construction of the Project is to commence, and shall cover all work and obligations under the Agreement, this Amendment, and the permitted plans and specifications for the Project (the “Plans”). The Agreement, this Amendment, and the Plans, and any exhibit thereto, shall constitute the “Contract Documents.” Notwithstanding anything in the Agreement or the Amendment to the contrary, if the Bond is required the Surety’s obligations

under the Performance Bond relating to warranty work shall be for a period of one (1) years from Final Completion of the Project. The Bonds shall display the Surety's bond number, and, as applicable, shall attach a rider containing the following provisions:

- (1) Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any other addition, alteration, change, extension of time, backcharge, or other modification of the Contract Documents, or forbearance on the part of either City or Terra to the other, shall not release Surety of its obligations hereunder, and notice to the surety of such matters is hereby waived;
- (2) Surety hereby stipulates and agrees that the obligation of said Surety and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed or any moneys due or to become due thereunder. Surety expressly consents to the payment provisions as provided in this Contract; and
- (3) Performance Bond Surety hereby agrees that if, after the Notices to Terra and Surety required under the Bond, the Terra and Surety do not cure the default as provided in this Section, then the Surety, in addition to Terra, without the need for the City to terminate Terra, shall be liable to the City for any damages the City may sustain and be entitled to pursuant to the Contract and the Performance Bond. No further Notices shall be required by City.

In any event, even if the Surety fails to include such language in its bond, by incorporating this Agreement into the Performance Bonds furnished for this Project, Terra agrees to the provisions of this Article. If Terra fails to perform any of its obligations under the Agreement and the Amendment, including, without limitation, timely performance under the Agreement and this Amendment, the City shall give Terra and Surety a seven (7) calendar day Notice of Default. After receipt of the seven (7) calendar day Notice of



Default provided herein, Terra and Surety shall have the right and opportunity to commence and continue to cure the default(s). If, after the seven (7) calendar day Notice of Default, Terra and Surety do not commence and or make reasonable progress to cure the default as provided in this Section, then the Surety, in addition to the Terra and without the need for City to terminate Terra, shall be liable to City for any damages the City may sustain and be entitled to pursuant to this Amendment and the Performance Bond. No further Notices shall be required by City.

(iii) Terra shall be required to obtain and maintain, and require its contractors and subcontractors to obtain and maintain, such insurance as may be required by the City's risk management division, which shall be no less than industry standard for the scope of the Project.

(iv) Terra shall be responsible to perform, or cause to be performed, all work associated with the construction of the Project (the "Work") and to pay for the entire Construction Sum, which shall include all costs associated with the construction of the Project. Before commencement of the Work, Terra shall furnish to the City a "Project Schedule," which shall dictate the timing, phasing, and progress of the construction of the Project. The Project Schedule, which shall be attached hereto as Exhibit "D", shall be approved by the City prior to becoming an effective document in the implementation of the Project. Time is of the essence. Terra shall manage the Project in such a way as to stay and schedule and avoid delay, recognizing that completion of the Project or the delay thereof may delay the completion of the construction of Glades Park, in which the Project is located. By proffering the Contract Sum and the Project Schedule, Terra agrees that it has read, examined and understands the pertinent Contract Documents and that it is qualified and able to perform this Work; that it has a sufficient number of qualified personnel to assure timely performance of this Work; that it has the proper tools and equipment to perform this Work; and that it is financially capable of fully performing the work. Moreover, Terra agrees that it has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal visual observations with requirements of the Contract Documents. The exactness of grades, elevations, dimensions, conditions, locations and quantities given on any of the Contract Documents, issued by City or the work installed by other contractors, or utilities are not guaranteed by the City and if substantial differences exist from those shown on the plans or specifications, Terra shall advise the City before performing any work for

which reimbursement from the City may be sought. No changes to the scope of the Project beyond the approved design and Construction Sum are permitted except with the express written consent of the City, which may be given or withheld in the City's absolute discretion.

(v) Terra shall supervise and direct the Work using the Terra's best skill and attention. Terra shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work. Terra, as soon as practicable after execution of the Agreement and before work commencement, shall furnish in writing to the City, the names of subcontractors or suppliers for each portion of the Work. Terra shall not contract with any subcontractor or supplier to whom the City has made a timely and reasonable objection. The City has the responsibility to ensure that all material and equipment suppliers, manufacturers, and Subcontractors, and their respective agents and employees adhere to the requirements of the Contract Documents, and that they order and provide all materials, equipment and supplies in a timely manner. Terra shall coordinate its Work with that of all others under its control or City's control working on or supplying the Project. Terra shall be responsible for coordination, locations, and routing of all material and equipment as agreed to by the City. In areas and locations where the proper and most effective location and routing cannot be made as indicated or coordinated, Terra shall contact the City in writing and meet with all others involved before proceeding with installations, to plan the most effective and efficient method of overall installation. Unless otherwise provided in the Contract Documents or agreed to in writing by the City, Terra shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work. Terra shall enforce strict discipline and good order among the Terra's employees and other persons carrying out the Work. Terra shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

(vi) If Terra fails to correct Work which is not in accordance with the Contract Documents, the The City may direct Terra in writing to stop the Work until the correction is made.

(vii) It is recognized that the City has engaged Pirtle Construction to construct Glades Park and that Terra is constructing element of Glades

park. The City reserves the right to perform construction or operations related to the Glades Park with the City's own forces or Pirtle Construction, and to award separate contracts in connection with other portions of the Glades Park, which may be adjacent, abutting or in the Project area. Terra shall coordinate and cooperate with the City's own forces and separate contractors employed by the City.

(viii) Terra warrants to the City that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents and Specifications shall be issued in the name of the City, or shall be transferable to the City, and shall commence from the date of Final Completion. Terra represents and warrants that the construction means, methods, procedures and techniques necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable, laws, codes, orders and ordinances which bear upon Terra's performance of the Work. Terra represents and warrants to The City that all labor, materials and/or services furnished, and all Work performed by Terra, will be free of defects for a period of \_\_\_\_\_ (\_\_\_\_) year(s), unless otherwise provided herein for a longer period, from the date of Final Completion. Terra represents and further warrants to perform inspections every \_\_\_\_\_ (\_\_\_\_) months and to perform any required corresponding repairs in order to maintain the warranty, at no cost to the City. These warranties are not in lieu of, but are in addition to any other warranties, express or implied, which may be provided by law and by manufacturers, Subcontractors, and suppliers. Contractor shall provide to The City all original warranties and guarantees from all Subcontractors, suppliers, manufacturers of equipment and materials installed in connection with the Project, together with any other warranties and guarantees required by the Contract Documents. All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the City, or shall be transferable to the City, and shall commence as of the date of Final Completion. Terra shall obtain warranties, for a period of one (1) year from all contractor and subcontractors. As an express condition precedent to Substantial

Completion, Terra shall provide to the City with one (1) bounded copy of: (1) All Subcontractor and manufacturers' warranties fully executed in the form approved by the City; Terra's warranty; a list of all Subcontractors, Sub-subcontractors and suppliers who performed work on the Project or who furnished materials for use in the Project, such list to include the business name, address, telephone number, email address and the name and complete contact information for all responsible persons at all such entities. The delivery, endorsement or assignment of such warranties shall not release Terra from obligations pursuant to the Contract Documents. The warranty obligations of this Article shall survive completion and Final Payment or termination of the Agreement and Amendment for the Work performed to the date of termination.

(ix) Terra shall obtain and pay for any building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work, unless a subcontractor's price otherwise provides for the payment of corresponding permit fees. Terra shall comply with and give notices required by agencies having jurisdiction over the Work. If Terra performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Terra shall assume full responsibility for such Work and shall bear the attributable costs. Terra shall promptly notify the Project Manager in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

(x) To the fullest extent permitted by law, Terra shall defend, indemnify and hold harmless the City, and City's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees at trial or appellate levels, arising out of or resulting from Terra's performance of the Work, or any entity for whom Terra is responsible or liable. In any and all claims against the Indemnified Parties by any employee of Terra, or anyone for whose acts any of them may be liable, the indemnification obligation under this provision of this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or on behalf of Terra or any Subcontractor under Workers Compensation Acts, Disability Benefit Acts or other employee benefit acts. The Parties hereto acknowledge and agree that, to the extent any portion of the indemnification provisions contained herein is deemed void or unenforceable in any action or

proceeding, then such portion shall be considered severed such that it will not affect the remaining portions of these indemnification provisions. The Indemnitors' indemnity obligations under this Section shall also specifically include, without limitation, all claims, fines, penalties, damages, liability, costs, fees, expenses (including, without limitation, reasonable attorneys' fees and expenses), arising out of, or in connection with or attributable to, any claims made against the Indemnified Parties for (i) bodily injury, sickness, disease, death, or destruction of tangible property caused by Contractor and/or any of its Subcontractors and/or Sub-subcontractors, (ii) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by Terra, and/or any of the Indemnitors, or any person or entity for whom they are responsible, (iii) Contractor's failure to comply with any provision of the Contract Documents including Warranty obligations, and obligations to correct damaged and defective work, (iv) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and/or (v) failure to secure permits, fees, approvals, licenses, and inspections as required under this Contract and/or the other the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by Terra, a Subcontractor, or any person or entity for whom either is responsible. Terra shall indemnify and hold harmless all of the Indemnified Parties from and against any costs and expenses (including reasonable attorneys' fees for all trial and appellate levels) incurred by any of the Indemnified Parties in enforcing any of Terra's defense, indemnity and hold-harmless obligations under this Contract. Terra shall include in all Subcontracts provisions by which each Subcontractor agrees to defend, indemnify and hold harmless Contractor and the Indemnified Parties from and against liability, damages, losses and costs, including, but not limited to, reasonable attorneys' fees for all trial and appellate levels, arising out of, in connection with, or resulting from the performance of the Work or any Subcontractor's obligations under the Contract Documents to the same extent and in the same manner as Terra is liable to City pursuant to this provision. The provisions of this Section shall survive final completion and final payment or termination of the Agreement and this Amendment."

\* \* \*

2. Except as expressly amended or modified by the terms of this Amendment, all terms of the Agreement as amended by the First Amendment shall remain in full force and effect.

In the event of a conflict between the terms of this Third Amendment and the Agreement or the First Amendment, the terms of this Third Amendment shall prevail and control.

3. The provisions of the Agreement, as amended by the First Amendment, including the recitals, comprise all of the terms, conditions, agreements, and representations of the parties with respect to the subject matter hereof.

4. This Amendment may be executed in one or more counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

6. Each party represents and warrants that the representative signing this Amendment on its behalf has all right and authority to bind and commit that party to the terms and conditions of this Third Amendment.

[This space intentionally left blank. Signatures to follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Witnessed by:

Terra Doral Commons Residential, LLC,  
a Florida limited liability company

\_\_\_\_\_  
Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Address: 2655 S. Bayshore Drive, Suite 1020  
Miami, Florida 33133

STATE OF FLORIDA )

) SS:

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_ as \_\_\_\_\_ (office-held) of \_\_\_\_\_ who is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Name: \_\_\_\_\_

Notary Public State of Florida

Commission No.: \_\_\_\_\_

My commission expires:

Attest:

**CITY OF DORAL**

\_\_\_\_\_  
Connie Diaz, CMC, City Clerk

By: \_\_\_\_\_  
Edward Rojas, City Manager

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

Approved As To Form and Legal Sufficiency for the Use  
And Reliance of the City of Doral Only:

\_\_\_\_\_  
Luis Figueredo  
City Attorney



EXHIBIT "C"

Construction Sum

Exhibit "D"

Project Schedule