

**RESOLUTION No. 18-25**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE A PUBLIC PRIVATE PARTNERSHIP AGREEMENT WITH TERRA DORAL COMMONS, IN SUBSTANTIALLY THE FORM PROVIDED, FOR THE ENHANCEMENT OF A LAKEFRONT BOARDWALK AMENITY AT DORAL GLADES PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, CREATE THE NECESSARY DEPOSIT ACCOUNTS, AND EXPEND RECEIVED FUNDS IN FURTHERANCE HEREOF; AUTHORIZING THE CITY MANAGER TO INCREASE THE GUARANTEED MAXIMUM PRICE FOR THE CONSTRUCTION OF DORAL GLADES PARK BY THE CORRESPONDING AMOUNT; 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 (“Terra”) 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 developed a conceptual site plan design for the boardwalk along the south side of the lake (the “Boardwalk”); and

**WHEREAS**, the proposed Public Private Partnership Agreement between the City and Terra, in substantially the form attached hereto as Exhibit “A” (the “P3 Agreement”),

would require that Terra bare all costs associated with the design and construction of the Boardwalk and adjacent area. This includes any costs incurred associated with the design and construction coordination by the City's design team and contractor to execute the Boardwalk work; and

**WHEREAS**, the City previously entered into a similar arrangement with Millenia Atlantic University ("MAU") to enhance a green space at the Police substation into a pocket park. There, MAU similarly provided the funds for design and construction of the enhancement and the City folded the new scope of work into its agreement with the project contractor; and

**WHEREAS**, funds received from Terra for this work will be deposited into an account and utilized to pay the City's design team and contractor to execute the work.

**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 Public Private Partnership Agreement for the enhancement of a lakefront boardwalk amenity at Doral Glades Park between the City and Terra, 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 such non-material changes as may deemed necessary by the City Manager to further the interests of the City and approval by the City Attorney as to form and legal sufficiency.

**Section 3. Authorization.** The City Manager is hereby authorized to finalize and execute the P3 Agreement with Terra. This Authorization does not create or confer

any rights to Terra Doral Commons. The City Manager is further authorized to create the necessary financial accounts to receive and expend funds in furtherance hereof.

**Section 4. Construction Budget.** The City Manager is further authorized to execute documents to increase to the Guaranteed Maximum Price for the construction of Doral Glades Park by the corresponding amount necessary to complete the boardwalk improvement contemplated in the P3 Agreement, acknowledging that same is being paid directly to the City by Terra.

**Section 5. 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 6. Effective Date.** This resolution shall take effect immediately upon adoption.

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

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

PASSED AND ADOPTED this 13 day of February, 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:

  
\_\_\_\_\_  
WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.  
CITY ATTORNEY

# EXHIBIT “A”

**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 PUBLIC PRIVATE PARTNERSHIP AGREEMENT (the “Agreement”) 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, the City has a fee simple interest on a certain parcel of land owned by the State of Florida, located at 9774 NW 74 Street, Doral, Florida (the “Property”), which land shall serve as a City Park named Doral Glades Park (the “Park”); and

WHEREAS, during the construction of the Park, Terra – at the request of residents of the adjoining Terra-developed community – approached the City with idea of partnering to improve the design of the Park with the purpose of developing an enhanced lakefront amenity within the Park and mitigating the adverse impacts and potential nuisance from the currently proposed walking path along the south side of the lake;

WHEREAS, with input from City staff, Terra developed a conceptual site plan design for a boardwalk along the south side of the lake (the “Boardwalk”), along with enhanced landscaping and security measures (the “Boardwalk Conceptual Site Plan”), which was approved by the City Council on January 10, 2018; and

WHEREAS, the City and Terra have a mutual desire to develop the Park by having the City provide the Property and to construct the Park and for Terra to design and cover the costs of constructing the Boardwalk in accordance with the Boardwalk Conceptual Site Plan; and

WHEREAS, after considerable negotiations, the City and Terra have reached an agreement on terms of the Boardwalk-related improvements for the Park, which are memorialized in this Agreement.

## AGREEMENT

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. **City Obligations.**

(a) *The Property:* An accurate legal description of the Property and a map of the area comprising the Park and Boardwalk Conceptual Site Plan are attached hereto as Exhibit "A". The City represents and warrants that it has the requisite interest in, and sole possession and control of, the Property to enter into this Agreement and accomplish the development of the Boardwalk Conceptual Site Plan within the Park. To the best of the City's knowledge, development of the Boardwalk Conceptual Site Plan will not violate any applicable statute, law, ordinance, code, rule or regulation or any restriction or agreement binding upon or otherwise applicable to the Park or the Property.

(b) *Construction:* To accomplish the development of the Boardwalk Conceptual Site Plan, the City shall approve a change order to that certain Design-Build Construction Agreement (the "Change Order") with the general contractor for the Park, Pirtle Construction ("Pirtle"), and cause Pirtle to construct the Boardwalk as designed by Terra and approved by the City. The Park and Boardwalk shall be constructed in conformity to the Boardwalk Conceptual Site Plan, attached hereto as Exhibit "B". In addition to the base construction, lighting, fencing, gates, and associated landscaping of the Boardwalk, the Change Order shall include, without limitation, the electrical and plumbing specifications for the Boardwalk to be performed by Pirtle. The City shall conduct construction management oversight to ensure adherence to the Boardwalk Conceptual Site Plan, budget, and appropriateness of construction. The Boardwalk shall be constructed in accordance with the Florida Building and Miami-Dade County and City Codes.

(c) *Security:* The City shall provide appropriate security monitoring and signage along the Boardwalk on an ongoing basis in accordance with the Boardwalk Conceptual Site Plan. Said security measures may include installation and maintenance of cameras, restriction of Boardwalk access from dusk until dawn, and signage prohibiting fishing and loitering on the Boardwalk.

2. **Terra Obligations.**

(a) *Design.* Following City Commission approval of the Boardwalk Conceptual Site Plan, Terra shall have twenty-one (21) business days to submit construction documents for the City's review. It shall be Terra's responsibility to prepare and deliver, or cause to be prepared and delivered, to the City complete construction

documents and specifications for the construction of the Boardwalk, including lighting, fencing, gates, and landscaping associated with the Boardwalk Conceptual Site Plan (the "Construction Documents"), except for any electrical and plumbing specifications to be performed by Pirtle and/or its subcontractor at the direction of the City. The design shall conform to the Boardwalk Conceptual Site Plan. The Parties shall work together to finalize the design of the Boardwalk, but the City shall have final approval of the design of the Boardwalk.

(b) *Construction.* Upon finalizing the design of the Boardwalk, the City shall have Pirtle prepare a final cost estimate for construction of same (the "Draft Final Cost Estimate"), the City shall, within two (2) business days of receipt of the Draft Final Cost Estimate, deliver the same to Terra. Terra shall have five (5) business days from receipt of the Draft Final Cost Estimate to approve or reject same, which Terra shall provide notice of in writing to the City. If rejected, Terra 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 City's receipt of Terra'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 Terra, the lower of the Independent Cost Estimates, shall serve as the basis for the Change Order. The Parties acknowledge that, depending on the final design and cost of the Boardwalk improvements, additional approvals by the City Council may be required before the Change Order may be executed. Terra shall be required to tender payment for the Boardwalk improvements within thirty (30) days of receipt of written notice of the claim of payment of the Change Order by the City. In the event the Change Order, which shall take into account all cost savings resulting from the approval of the Boardwalk Conceptual Plans, Construction Document, and the revisions to Pirtle's scope of work, yields a cost savings to either Party, then the payment to be tendered by Terra shall be adjusted accordingly.

3. **Continuing Financial Obligations.** The Parties hereby agree that on-going costs associated with certain aspects of the operation and maintenance of the Boardwalk, including electrical and water service, garbage collection services at regular intervals, and routine lawn and other landscaping maintenance services, shall be borne by the City and Terra shall have no continuing obligations relating to the Park or the Boardwalk.

4. **Time.** Acknowledging that completion of the Park is expected to occur in the **Spring of 2018**, and that approval of the Change Order prior to completion of the Park is the most efficient and cost effective way to accomplish the construction of the Boardwalk, the Parties agree that time is of the essence with regard to their mutual obligations. It is agreed by the Parties that any work associated with the Boardwalk shall not be considered an impact to the completion of construction of the Park or opening of the Park to the public. The City shall provide all approvals in a timely manner and shall expedite the permitting and inspection process for the Boardwalk improvements.



5. **Cooperation.** The Parties agree to cooperate in the performance of each of their obligations under this Agreement, including, but not limited, design, and construction of the Boardwalk.

6. **Authority.** The Parties have full power and authority to execute, deliver and perform all of the corresponding duties and obligations under this Agreement, and such execution, delivery and performance of this Agreement have been duly authorized by all requisite action on the part of City and Terra.

7. **Insurance.** Include in (sub)contractor agreement?

8. **Mutual Indemnification.** Terra shall indemnify and hold harmless the City, its successors and assigns, harmless from and against any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees (at trial and appeal), for injury (including death) to persons or damage to property or property rights that may arise from or be related to the negligent acts, errors, or omissions of Terra, its agents, invitees, or contractors or by any person under the control or direction of Terra, for any actions associated with Terra's obligations under Paragraph 2. This indemnity shall terminate upon Terra's fulfilling of its obligations under Paragraph 2 of this Agreement. Thereafter, City shall indemnify and hold Terra, its successors and assigns, harmless from and against, any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees (at trial and appeal), for injury (including death) to persons or damage to property or property rights that may arise from or be related to the negligent acts, errors, or omissions of the City, its agents, invitees, or contractors or by any person under the control or direction of City, for any claims arising out of the future operation by the City of the Park. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL THE PARTIES BE LIABLE TO ONE ANOTHER OR ANY OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY LOSS, DAMAGE, COST OR EXPENSE, INCLUDING, WITHOUT LIMITATION, LOSS OF GOOD WILL, LOSS OF BUSINESS PROFITS COMPUTER FAILURE OR MALFUNCTION, DATA LOSS, OR LOST PROFITS AND OPPORTUNITY COSTS. THE FOREGOING LIMITATION WILL NOT APPLY TO DAMAGES AWARDED WITH RESPECT TO THIRD PARTY CLAIMS FOR WHICH THE PARTIES HAVE AN OBLIGATION TO INDEMNIFY UNDER THE AGREEMENT

9. **Modification/Enforcement.** This Agreement may not be modified or terminated except by an instrument mutually executed by the Parties. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity by the Parties, with the prevailing party in any such action entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels.

10. **Default and Termination.** The occurrence of any one or more of the following events or actions will constitute a breach of this Agreement (the "Default" or an "Act of Default") by a Party: (a) Cessation of either Party to conduct business; (b) the filing of a bankruptcy petition, the determination of insolvency by one of the Parties, and/or the appointment of a receiver for administration and disposal of Party's assets; (c) the misrepresentation of any authority or warranty specified herein; and (d) a failure to perform a material covenant, duty, obligation, or representation made under this Agreement. In the event of an Act of Default, the

non-defaulting Party may, immediately after the cure period detailed below, terminate this Agreement with notice of such decision to the Breaching party. If Terra fails to observe or perform any term, covenant or condition set forth in this paragraph, the City shall send notice and Terra shall have a period of cure or remedy of same within thirty (30) days of Terra's receipt of written notice from the City (each, a "Default Notice"). If such default is susceptible to cure but cannot reasonably be cured within said thirty (30) day period, then Terra shall have any additional sixty (60) day period to cure such failure and no Act of Default shall be deemed to exist hereunder so long as Terra commences such cure within the initial thirty (30) day period and diligently and in good faith pursues such cure to completion within such resulting ninety (90) day period from the date of the Default Notice.

11. **No Joint Venture/Agency/Conveyance.** The name of this Agreement notwithstanding, nothing herein shall constitute or be interpreted as establishing a joint venture, partnership, and/or other agency relationship by and between the City and Terra. No Party shall hold itself out contrary to the terms of this Section, and no Party shall become liable by any representation, act, or omission of the contrary to this Section. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any third party. This Agreement shall not in any way constitute or be interpreted to convey any sort of property interest from the City to Terra or be deemed to sublease any portion of the property to Terra.

12. **Construction.** The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.

13. **Notices.** Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand or three (3) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows (or to such other address as either party shall hereafter specify to the other in writing):

If to the City:                                 Edward A. Rojas, City Manager  
City of Doral  
8401 NW 53<sup>rd</sup> Terrace  
Doral, FL 33166

with copy to:                                 Daniel A. Espino, Esq.  
Weiss Serota Helfman Cole & Bierman, PL  
City Attorney  
2525 Ponce De Leon Boulevard, Suite 700  
Coral Gables, FL 33134

If to Terra:                                     Adam Adler  
Terra Doral Commons Residential, LLC  
2655 S. Bayshore Drive, Suite 1020  
Miami, Florida 33133

with copy to: Tracy R. Slavens, Esq.  
Holland & Knight, LLP  
701 Brickell Avenue, Suite 3300  
Miami, FL 33131

with copy to: Victor M. Diaz, Esq.  
VM Diaz & Partners, LLP.  
119 Washington Avenue Suite 402  
Miami Beach, FL 33139

14. **Force Majeure.** Unless otherwise provided in this Agreement, if performance under this Agreement is prevented, restricted or interfered with by reason of any event beyond the reasonable control of the Parties, including but not limited to, fire, flood, epidemic, earthquake, explosion, act of God or public enemy, riot or civil disturbance, strike, labor dispute, war, terrorist threat or activity, any government law, order, or regulation, or order of any court or jurisdiction (a "Force Majeure"), the restricted Party will not be in breach hereof and the performance or obligation of such Party will be excused for a period of time equal to the period during which the Force Majeure prevents such performance. In such event, the Parties will make reasonable efforts to determine sufficient "make goods" allowing the restricted Party to satisfy its obligations hereunder. The financial condition, default, breach, or intentional or negligent act or omission of this Agreement by the Party seeking excuse from performance will not constitute a Force Majeure.

15. **Severability.** In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal, meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed in full force and effect.

16. **Non-Assignment.** The Parties shall not assign or otherwise transfer any of their respective rights and obligations under this Agreement without the prior written consent of the other parties, which consent can be granted or withheld in the non-assigning Party's sole discretion.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and arrangements, both oral and written, between the parties with respect thereto.

18. **Governing Laws.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Terra and the City agree that Miami-Dade County, Florida is the appropriate venue in connection with any litigation between the parties with respect to this Agreement. In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

19. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart will for all purposes be deemed an original, and all such counterparts shall constitute one and the same instrument.

[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: \_\_\_\_\_

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

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

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:

\_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, PL  
City Attorney

**EXHIBIT "A"**

**Legal Description**



**Exhibit "B"**

**Boardwalk Conceptual Site Plan**

