

## **AMENDMENT TO AGREEMENT**

THIS AMENDMENT TO AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Hollywood Ocean Group, LLC ("Developer"), the City of Hollywood ("City"), the Hollywood, Florida Community Redevelopment Agency ("CRA") and The Villas of Positano Condominium Association, Inc. ("Association").

WHEREAS, the Developer and the City did enter into a Maintenance Agreement (the "Agreement") dated June 6, 2007 with respect to which a Memorandum of Maintenance Agreement was recorded on June 8, 2007 in Official Records Book 44159, Pages 1429-1430, of the Public Records of Broward County; and

WHEREAS, the Association did subsequently receive control and ownership of the property which is the subject of the Agreement and became obligated thereunder as the successor to the Developer; and

WHEREAS, the Developer and the City enter into this Amendment for the purpose of adding the CRA and the Association as parties and to amend other terms and conditions of the Agreement as stated below; and

WHEREAS, the CRA and the Association enter into this Amendment in order to become parties to the Agreement, as amended; and

WHEREAS, the Developer currently owns or controls certain property in Broward County, Florida described in Exhibit I hereto (the "Property") and which property is intended to be controlled through the Positano Beach Condominium Association, Inc. upon the recordation of a Declaration of Condominium by the Developer.

NOW, THEREFORE, for and in consideration of the covenants contained in this Amendment, it is mutually agreed between the Developer, the City, the CRA and the Association as follows:

1. The recitals above are true and correct and are incorporated herein by this reference.
2. The Developer, and except as otherwise provided herein, its successors and assigns, agree to maintain in perpetuity the fountain and dolphin Statue as constructed within the Thomas streetend. It is understood by all Parties that the Association shall have no responsibility or liability arising out of this Developer obligation.

3. The City shall allow the streetend fountain and dolphin statue to be connected to the City's metered water and electric service, and/or the CRA shall take over this obligation to provide water and electricity to the fountain and the dolphin statue as is currently provided. The Developer, with the cooperation of the Association, shall complete the water connection within six (6) months of the effective date of this Amendment and will complete the electrical connection as soon as practicable after Florida Power & Light Company (FPL) provides the service necessary to make the connection. Upon completion of these water and electrical connections, the developer or its successor, Positano Beach Condominium Association, Inc., shall have the same rights to access that certain Permanent Easement recorded on May 22, 2007 in Official Records Book 44078, Pages 1473-1477, of the Public Records of Broward County, Florida, as was granted by the Association to the City for access to provide utility service to the streetend fountain and statue. Thereafter, the City and/or CRA shall provide, furnish, and pay for the utilities necessary to provide water and electricity to the fountain and electricity to the street lights along Thomas Street within the maintenance area, all of which had previously been provided by the Association.

4. The Developer shall immediately convey by Deed of Gift unto the City its ownership rights in the Dolphin Statue by Wyland and the City shall accept same. A copy of the Deed of Gift to be delivered to the City is attached hereto as Exhibit II.

5. If at any time after the execution of this Amendment it comes to the attention of the City that the Developer or/its successor, Positano Beach Condominium Association, Inc., is not properly maintaining the fountain and Dolphin Statue pursuant to the terms of this Amendment, the City may at its option issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the Developer or its successor, Positano Beach Condominium Association, Inc., as appropriate, to place the Developer or its successor, Positano Beach Condominium Association, Inc., on notice thereof. Thereafter, the Developer or its successor, Positano Beach Condominium Association, Inc., as appropriate, shall have a period of thirty (30) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the City may at its option, proceed as follows:

(a) Service and maintain the streetend fountain and dolphin statue, or a part thereof, with City or contractor's personnel, and invoice the Developer or its successor, Positano Beach Condominium Association, Inc., for expenses incurred, and if not paid within 30 days of invoice, the City may place a lien against the Property for the amount thereof,

(b) Terminate the Developer's obligation to maintain the fountain and dolphin statue and remove all or a portion, by City or contractor's personnel, of the fountain and/or the dolphin statue and charge the Developer the reasonable cost of such removal and appropriate restoration to pavers, and if not paid within 30 days of invoice, the City may place a lien against the Property for the amount thereof; or

(c) Invoke any rights and remedies allowed at law, in equity or otherwise as to the Developer or its successor, Positano Beach Condominium Association, Inc.

6 The parties agree that this Amendment to Maintenance Agreement and Exhibits, upon execution of same, shall be recorded by Developer among the public records of Broward County, Florida. When so recorded, owners and occupants of the Property shall be on notice of each and every provision of this Agreement, and this Agreement shall be of the same force and effect as if said owners and occupants had joined with the parties to this Agreement in the execution hereof, and the acquisition or occupancy of any part of the Property shall be deemed conclusive evidence of the fact that the owners have consented to and accepted the Agreement herein contained and have become bound hereby.

7. All other provisions of the Agreement shall be and remain the same.

IN WITNESS THEREOF, the parties have executed this Amendment to Maintenance Agreement as of the day and year first above written.

Signed, sealed and delivered  
In the presence of:

**Developer**

HOLLYWOOD OCEAN GROUP, LLC,  
a Florida limited liability company

Ellen Lewis  
Print Name: Ellen Lewis

By: [Signature]  
LON TABATCHNICK  
Its: Managing Member

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

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 9 day of Jan, 2015, by Lon Tabatchnick as Managing Member of Hollywood Ocean Group, LLC.

Ellen Lewis  
Notary Public, State of Florida

Personally Known      OR Produced Identification       
Type of Identification Produced \_\_\_\_\_



Signed, sealed and delivered  
In the presence of:

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

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

**Association**

THE VILLAS OF POSITANO  
CONDOMINIUM ASSOCIATION,  
INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ as \_\_\_\_\_ of THE VILLAS OF POSITANO CONDOMINIUM ASSOCIATION, INC., to me personally known or produced identification \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**City**

**City of Hollywood, Florida**

By \_\_\_\_\_  
**Peter Bober, Mayor**

Dated: \_\_\_\_\_, 2015

**ATTEST:**

\_\_\_\_\_  
**Patricia A. Cerny, MMC**  
**City Clerk**

**Approved as to form and legality**  
**For the use and reliance of the City**  
**of Hollywood only**

\_\_\_\_\_  
**Jeffrey P. Sheffel, City Attorney**

**CRA**

**HOLLYWOOD, FLORIDA COMMUNITY  
REDEVELOPMENT AGENCY**

**ATTEST:**

\_\_\_\_\_  
Board Secretary

By: \_\_\_\_\_  
Peter Bober, Chair

Approved by: \_\_\_\_\_  
Executive Director for CRA

**APPROVED AS TO FORM & LEGALITY  
FOR THE USE AND RELIANCE OF THE  
HOLLYWOOD, FLORIDA COMMUNITY  
REDEVELOPMENT AGENCY, ONLY**

\_\_\_\_\_  
Jeffrey P. Sheffel, General Counsel

**STATE OF FLORIDA**

**COUNTY OF BROWARD**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2015, by Peter Bober, Chair of the Hollywood, Florida Community  
Redevelopment Agency.

\_\_\_\_\_  
Notary Public, State of Florida

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_



EXHIBIT I

PROPERTY

LEGAL DESCRIPTION: PARCEL I

Lots 5, 6, 7, 11, 12 (less the Westerly 12.60 feet thereof), 13, 14, 15 and the East 45 feet of the North 19 feet of Lots 16, Block 10, of HOLLYWOOD BEACH SECOND ADDITION, according to the Plat thereof as recorded in Plat Book 4, Page 6, of the Public Records of Broward County, Florida.

AND

PARCEL II

Lot 1, Block 10, of HOLLYWOOD BEACH SECOND ADDITION, according to the Plat thereof, as recorded in Plat Book 4, Page 6 of the Public Records of Broward County, Florida;

AND

PARCEL III

The North 20.00 feet of Lot 51, and all of Lots 52, 53 and 54, Block "B" of HOLLYWOOD BEACH SECOND ADDITION, according to the Plat thereof recorded in Plat Book 4, Page 6, of the Public Records of Broward County, Florida.

LESS:

A strip of land over, thru and across Lot 54, Block B, HOLLYWOOD BEACH SECOND ADDITION, according to the Plat as recorded in Plat Book 4, Page 6, of the Public Records of Broward County, Florida, in Section 12, Township 51 South, Range 42 East; said strip lying West of and adjacent to the East line of said Lot 54; said strip measuring 12.6 feet on the South line of said Lot 54, and 15.63 feet on the North line of said Lot 54.

AND LESS:

The Easterly 12.6 feet (12.5 feet per Florida Department of Transportation right of way map) of the North 20 feet of Lot 51 and the Easterly 12.6 feet (12.5 feet per Florida Department of Transportation right of way map) of Lots 52 and 53, all in Block B, of HOLLYWOOD BEACH SECOND ADDITION, according to the plat as recorded in Plat Book 4, Page 6, of the Public Records of Broward County, Florida, in Section 12, Township 51 South, Range 42 East, being that part of said lots lying within 35 feet of the Baseline of Survey according to the Right of Way Map of Section 86030-2503, State Road A-1-A. (Dated 12-30-64.)

AND LESS:

The West 5.0 feet thereof.

**EXHIBIT II**

**DEED OF GIFT**

Hollywood Ocean Group, LLC, (hereinafter referred to as "Donor"), does hereby donate to the City of Hollywood, Florida (the "City") as a permanent part of its collection of records and materials the following described material:

A bronze sculpture entitled "Bottlenose Dolphins of the Atlantic" (the "Artwork") created by Wyland (the "Artist") as located within Thomas Street between Surf Road and the Boardwalk ("Streetend")

Donor hereby warrants that it is the title owner of the Artwork which is free and clear of all encumbrances. Upon transfer of the Artwork to the City, title shall vest in the City and shall be complete and irrevocable. Further, the City, its officers, agents, and employees shall not be responsible or liable for any claims, actions or judgments of any kind relating to the above-described Artwork prior to the transfer of title and delivery of the above-described property to the City.

Dated this 9 day of Jan, 2015.

Signed, sealed and delivered  
In the presence of:

Ellen Lewis  
Print Name: Ellen Lewis

HOLLYWOOD OCEAN GROUP, LLC,  
a Florida limited liability company

By: [Signature]  
LON TABATCHNICK  
Its: Managing Member

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

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 9 day of Jan, 2015 by Lon Tabatchnick as Managing Member of Hollywood Ocean Group, LLC.

Ellen Lewis  
Notary Public, State of Florida

