

AMENDED AND RE^NSTATED
DEVELOPMENT AGREEMENT

INSTR # 104734104
OR BK 39063 Pages 461 - 472
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BROWARD COUNTY COMMISSION
DEPUTY CLERK 1032
#17, 12 Pages

for

FIRST DEVELOPMENT FUND, LLC

This First Amendment to the Development Agreement is entered into this 6 day of July, 2004, between First Development Fund, LLC (hereinafter "FDF") and the City of Hallandale Beach a municipal corporation organized and existing under the laws of the State of Florida.

FINDINGS OF FACT

This agreement is predicated upon the following facts:

- a. City of Hallandale Beach Zoning and Land Development Code, Article III, Section 32-174.1 allows the City to enter into binding Development Agreements for the development of real property with persons having legal or equitable interests in such real property;
- b. Pursuant to The Zoning and Land Development Code, Section 32-174 "PDD" Planned Development District and the Design Guidelines Manual, the City has adopted rules and regulations establishing procedures and requirements for Development Agreements;
- c. FDF has requested the City of Hallandale Beach to consider entering in a Development Agreement and proceedings have been taken into accordance with the aforementioned City of Hallandale Beach rules and regulations as recited above;
- d. The Hallandale Beach City Commission has found that this Amended Development Agreement is consistent with the Comprehensive Plan, the Major Development Plan, the land development regulations and all other applicable requirements except as otherwise provided for in this agreement;
- e. The Hallandale Beach City Commission on July 6, 2004 approved a one year extension of the Major Development Plan for Application #99-02-DB, the proposed project for the site.

NOW THEREFORE, THE PARTIES AGREE:

1. Definitions. For the purpose of this agreement, unless the context otherwise

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requires

- a. "Project" shall mean the Major Development Plan approved by the City of Hallandale Beach for construction of a high rise condominium located at 601 Old Federal Highway, including parking and landscape improvements, as more specifically set forth in the plans for these projects which have previously been submitted to the City.
 - b. "Owner" shall mean FDF and includes the property owner's successors, assignees, tenants, agents, contractors, subcontractors and parties in interest.
2. Description of Real Property. The legal description of the property which is the subject of this agreement is described and contained in Exhibit "A" attached hereto and made a part hereof.
- a. The name of the project is Aquamarina Condominium located at 601 Old Federal Highway.
 - b. The name of the applicant is First Development Fund, LLC.
3. Specific Restrictions on Development of Real Property. The project shall be undertaken and carried out in accordance with all City Codes and Ordinances in effect on the effective date of this agreement, except for those exceptions and variations as set forth in this agreement or any Exhibit attached hereto. All additional Code Amendments adopted after the date of this agreement and not conflicting with the exceptions and variations enumerated in this agreement shall be applicable to the project. The City and the Owner agree that the development of the project will be governed in conformance with the following agreement, limitations, and modifications:
- a. Permitted Uses. The project may include all those uses permitted by the RM 25 Zoning District and all uses permitted under this agreement and in accordance with the Hallandale Comprehensive Plan High Density-2 Land Use Designation.
 - b. Permitted Development. 147 residential condominium units, as shown on the site plans, surveys and development plans on file in the Development Services Department.
 - c. Parking. A minimum of 289 parking spaces shall be provided.
 - d. Setbacks, maximum height, open space and landscaping and other

applicable site development standards of the project shall be as shown on the approved site plan and development plans on file received dated November 26, 2002, in the Development Services Department.

- e. All plans shall provide detailed design data subject to final approval by the City Manager during the building permit process. Should the City Manager require revisions after the building permit is issued but before the certificate of occupancy is issued, including but not limited to facade treatment, signage, additional landscaping, revised walkways, etc., then details must be revised to meet the City Manager's approval of the design at the most conservative basis, even though such designs may be more conservative or demanding than the Florida Building Code or other Codes, but only if such changes are approved by the City Commission.
- f. Completion of Project. Owner agrees to diligently prosecute to completion the construction of the Project.

4. Special Conditions.

- a. See attached Exhibit "B" for list of conditions.
- b. Satisfaction of Conditions. The Owner may notify the City asserting the completion of any of the conditions of this Agreement and, as necessary, furnish evidence of same. The City shall then consider such notice, inspect the work or proof of completion and, within 21 days, notify the Developer that such conditions have either been found to be completely satisfied, or found to be not completed and the City will provide the Developer with a list of deficiencies.

5. Waiver of Sales Trailer Restriction. The City agrees to grant a waiver of Code Section 32-450, which prohibits the placing of a sales trailer on the property until a building permit has been issued. The City agrees to permit a sales trailer to be placed on the property upon approval of the Major Development Plan (site plan) by the City. FDF agrees to remove the trailer at their expense if construction does not commence by the expiration date (March 18, 2005) of the Major Development Plan approval by the City Commission.

6. Public and Private Dedications, Reservations and Conveyances. The owner shall dedicate a ten (10) foot wide public use easement running the length of the property on SE 7th Street. Said easement shall run parallel to SE 7th Street and shall be shown on the site plan and survey.

7. Exhibits and Controlling Documents. The following documents are made a part thereof by this reference:

- a. The Code of Ordinances of the City of Hallandale Beach.
 - b. The Development Plans and Specifications filed with the City in the Development Services Department.
1. In the event that the Major Development Department and/or any of its contents are found to be in conflict with this Development Agreement, the applicable provision of this Development Agreement shall prevail.
 2. There shall be strict adherence to this Development Agreement and the Major Development Plan. Any substantive change or amendment to the aforementioned Exhibits shall be addressed in conformance with Zoning and Land Development Code, Article III, Section 32-174(j)(1)-(3).
8. Amendments. Any amendment to this agreement shall not be approved unless all parties subject to this agreement agree to the amendment and such amendment is incorporated into the agreement. All amendments not requiring City Commission approval shall be subject to the final approval by the City Manager on behalf of the City.
9. Building Permits and Certificates of Occupancy. The City agrees to issue to the Owner, upon application and approval, all required building permits, approvals or other required permits and Certificates of Occupancy for the construction, use and occupancy of the project, subject to compliance with the permit applications, this agreement and the most current Florida Building Code, as amended from time to time.

It is further understood and agreed that failure to fulfill any provision of this Agreement, the Major Development Plan, or the conditions of approval, which are conditions of a specific building permit, may result in non-issuance of certificates of Occupancy, Certificates of Completion, or other regulatory approvals until such time as all conditions of the specific building permit or this Agreement are complied with, and that the City shall not be liable for any direct, indirect and/or consequential damages claimed for such non-issuance.

Fees. Approvals are also based upon payment of the City's usual and customary fees and charges for such applications, permits or services, in effect at the time of issuance of the permit or approval, and any financial contribution identified as part of this agreement.

10. Binding Effect of Agreement. This agreement shall be binding upon the Owner and the City and upon any successive owners, their respective assignees, successors, including any mortgagees who acquire title by deed or foreclosure, legal representatives, heirs and beneficiaries (as applicable) upon acquiring any interest in the property and shall run with the land.

Breach of Agreement. In the event that the Owner has materially breached the Development Agreement, prior to issuance of the Certificate of Occupancy the Owner shall commence to cure the breach within thirty (30) days of notice by the City. If the Owner is unable or unwilling to cure the breach and abide by the Agreement, the City shall exercise its right to take appropriate legal action for the purpose of curing the breach and enforcing this agreement.

Hold Harmless. Owner agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise from the direct or indirect operations of the Owner or those of the property owner's contractor, subcontractor, agent, employee, or other person acting on his behalf which relate to the project. Property owner agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of property owner's activities in connection with the Project.

Monitoring Official. The City of Hallandale Beach City Manager or his designee is appointed as the City's monitoring official of this agreement. The City's representatives shall monitor the activities specified in such a manner to ensure that all requirements of this agreement are met.

Surety. Bonding shall be as provided in the Code and applicable ordinances and regulations. Irrevocable letters of credit in such form and issued by such institution as may be acceptable by the City may serve as appropriate surety against failure to perform. However, nothing herein shall prevent the City, in its discretion, from accepting bonds or letters of credit in lieu of any specific improvements, on site or off site, being completed within a specified time period.

Notices. Any notice, demand or other communication required or permitted under the terms of this Agreement shall be in writing, made by delivery or certified mail, return receipt requested, and shall be deemed to be received by the addressee one (1) business day after sending by overnight delivery service, and three (3) business days after mailing, if sent by certified mail. Notices shall be addressed as provided below:

(A) If to the City:

City of Hallandale Beach
Attn.: City Manager
400 South Federal Hwy.
Hallandale Beach, FL 33009
(954) 457-1300 - phone

(954) 457-1342 - fax

(B) If to the Owner:

Carlos Rajlin, President
First Development Fund, LLC
1330 West Avenue, Suite 2202
Miami Beach, FL 33193
(305) 532-0944

(C) and a copy to:

Steven A. Geller, Esquire
Geller, Geller and Garfinkel, L.L.P
2111 Hollywood Boulevard
Hollywood, FL 33020
(954) 920-2300

16. Effective Date of the Agreement. This agreement shall become effective upon the Hallandale Beach City Commission approval and execution by the Owner and City Manager of the City.
17. Recording. This Agreement or a memorandum shall be recorded in the public records and shall run with the land.

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18. Severability. In the event that any portion or section of this agreement is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this agreement, which shall remain in full force and effect.

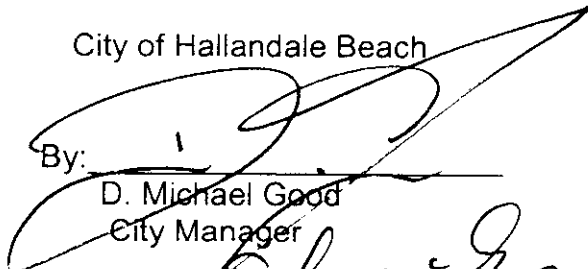
IN WITNESS WHEREOF THIS Agreement has been executed by the parties on the day and year first above written.

Approved as to form:



David Jove
City Attorney

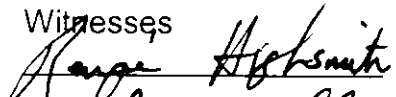
City of Hallandale Beach

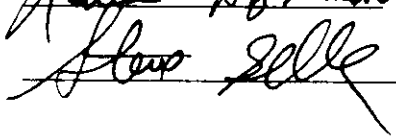
By: 

D. Michael Good
City Manager

Attest: 

Witnesses



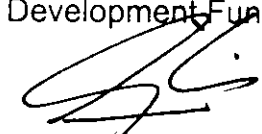


Corp.,

LLC
STATE OF FLORIDA

COUNTY OF BROWARD

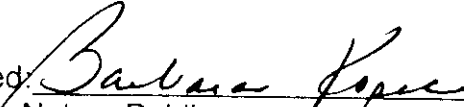
First Development Fund, LLC

By: 

Carlos Rajlin, President
First Development Fund

as General Partner of
First Development Fund,

The foregoing instrument was acknowledged before me on this 22 day of Sept., 2004, by Carlos Rajlin, as President of First Development Fund Corp., as General Partner of First Development Fund, LLC. He is personally known to me or has produced _____ as identification and did (did not) take an oath.

Signed: 

Notary Public
State of Florida

Print: Barbara Kopec
My Commission Expires: _____

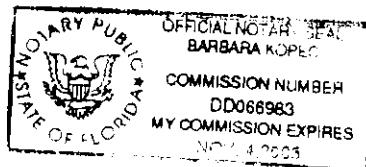


EXHIBIT "A"

FULL LEGAL DESCRIPTION

Part of Section 27, Township 51 South, Range 42 East in Broward County, Florida, being also part of Lot 3 in Block 11 of W.C. Valentines Map of the Town of Hallandale, recorded in Plat Book B at Page 13 of the Public Records of Miami-Dade County, Florida, more particularly described as follows:

Beginning at the Southeast corner of said Lot 3, run Westerly on the South boundary of said Lot, 501.05 feet to the centerline of the County Road as the road was located May 22, 1952, being also the West line of the property described in Mortgage to Daisy Reese dated May 22, 1952 filed June 10, 1952 under Clerk's File No. 469043 and in Mortgage Book 400 at Page 1 of the Broward County Records; thence run Northeasterly on said road centerline 828.85 feet to the Point of Intersection with the East boundary of said Lot 3 at a point 14.05 feet South of the Northeast corner of said Lot 3; thence, run Southerly on said East boundary 658.27 feet to the Point of Beginning.

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EXHIBIT "B"

1. Contributions. Pursuant to negotiations with the City, FDF agrees to make the following contributions in the City of Hallandale Beach:
 - a FDF agrees to construct or pay to have constructed approximately 1,220 linear feet of sidewalk on the north side of Southeast Seventh Street from U.S. 1 to SE 1st Avenue at an approximate maximum cost of \$20,000.00. In the event that the estimated cost is more than \$20,000.00, FDF shall have the option of paying this \$20,000.00 to the City for the construction of the sidewalk on the north side of Southeast Seventh Street from U.S. 1 to Dixie Highway, and the City shall be responsible for the construction of the

3. All of the following conditions are intended to be requirements of the final design as submitted for and approved during construction document preparation and issuance of building permits. The conditions may include or supplement general requirements of the Zoning and Land Development Code, South Florida Building Code, the City Design Guidelines Manual, any other applicable Code, and the approved Major Development Plan.

The listed conditions incorporates conditions as stipulated in the Development Services Staff Report on Application #99-02-DB dated February 28, 2003 and June 22, 2004. Also included are conditions agreed to by FDF at the City Commission Meeting of July 6, 2004.

- (1) Recertification by the Broward County Planning Council of the City's land use plan amendment changing the land use designation to Residential High Density-2.
- (2) The property shall be replatted prior to the issuance of the building permit as required by the City and Broward County.
- (3) Provide a turn-around area in the dead-end parking corridor by eliminating a parking space and designating it as no parking zone to be used as a maneuvering area.
- (4) The dumpster enclosure for the development shall be of masonry construction and landscaped in a manner to obscure same and enhance the development to the satisfaction of the City. The enclosure shall be painted to match the perimeter fence/wall.
- (5) The transformer on site shall not exceed 6 feet in height and shall be screened by the fence.
- (6) The developer shall pay for the purchase of sewer capacity in the amount of \$74,400.00 to the City prior to or at the time of issuance of the building permit for the building.
- (7) A 10 foot public use easement shall be provided along SE 7 Street for installation of a public sidewalk by the developer.
- (8) Roof- mounted mechanical equipment shall be screened from view,

- engineered and screened to reduce noise from roof equipment.
- (9) The entry gate on SE 7 Street shall be moved to the tip of the landscaped island and a gate-arm installed in lieu of a swing fence.
 - (10) The developer shall, at his expense, re-fly and generate an aerial photography of the SE quadrant meeting the City's specifications after construction has been completed. The estimated cost is \$5,000.00.
 - (11) The temporary sales center shall be removed at the owner's expense if construction does not commence by the expiration date (March 18, 2005) of the Major Development Plan approval by the City Commission.
 - (12) Submission of hydraulic analysis of water system and sewer system showing adequate provision of fire and domestic use demand or upgrading the existing systems to the satisfaction of the City Engineer.
 - (13) Drainage calculations will be required at time of permitting. Must comply with DNRP regulations and City criteria to retain 5 year 1 hour storm on-site.
 - (14) The maximum number of units in the development shall not exceed 147 units.
 - (15) No required tree shall be less than 12 feet in overall height.
 - (16) The entire property shall be enclosed with a 6 foot high decorative masonry wall/picket fence as detailed in the proposal. The ornamental concrete bowls, shall be deleted from the fence.
 - (17) Signage shall be limited to two 16 square foot backlit signs on the entrance feature walls.
 - (18) A Knox box switch at the entrance gates shall be provided as requested by the Fire Marshal.
 - (19) The developer shall pay to the City \$42,000.00 for park expansions

and improvements as further stipulated in Exhibit "B", item 1(b) of this agreement.

- (20) The developer shall install or pay the City \$20,000.00 to install approximately 1,220 linear feet of additional of additional sidewalk on the north side of SE 7th Street from US 1 to SE 1st Avenue and sodding of swale as necessary, as further stipulated in Exhibit "B", item 1(a) of this agreement.
- (21) All financial contributions shall be paid to the City or required public improvement completed prior to the issuance of the Certificate of Occupancy for the development, except for item 1(d) which shall be paid prior to the issuance of the building permit for the Project. Payment for the item listed in 1(c) shall either be waived pursuant to Exhibit "B", item 2, or if the application is rejected by the County, payment shall be paid prior to the issuance of the Certificate of Occupancy for the building.
- (22) Execution of a Developer's Agreement pursuant to Section 32-174(d)(2), stipulating agreed conditions of the negotiated process satisfactory to the City.