

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 2, 2010

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment to Construction, Joint Use and Easement Agreement (R2008-1863) with developer GL Homes, d/b/a Boynton Beach Associates X, LLP and Boynton Beach Associates XVIII, LLP (GL Homes).

Summary: On October 21, 2008, the County and GL Homes entered into a Construction, Joint Use and Easement Agreement which set forth the requirements and obligations of each party for the construction and maintenance of the recreational elements located on the 10.8 acre Canyon Town Center civic site. The current Agreement requires the County to maintain the bathrooms and for GL Homes to reimburse the County approximately 50% of the cost for this service. The County is now seeking approval of a First Amendment to the Agreement which requires GL Homes to maintain the bathrooms and the County to reimburse GL Homes 50% of the cost. GL Homes is able to provide amphitheater bathroom maintenance as part of a larger shopping center contract for substantially less than the County can contract out for similar services. First Amendment also requires GL Homes to assume responsibility for the fire alarm monitoring for the amphitheater and the County will reimburse GL Homes 100% of the cost. GL Homes has secured fire alarm monitoring for a term of one year at the cost of \$40 per month, which is substantially less than the County can contract out for similar services. The cost of this amendment to the agreement is \$2,805 for 2010. District 5 (HJF)

Background and Justification: In 2007, the Board approved modifications to GL Homes' Canyon Traditional Marketplace Development, including conditions of approval which required GL Homes to construct a multi-purpose recreational field, and an amphitheater. In 2008, County and GL Homes entered into a Construction, Joint Use and Easement Agreement to address the County and GL Homes responsibilities regarding construction, maintenance and operation of the recreational amenities. The intent of this Amendment is to reassign the responsibility for the bathroom maintenance from the County to GL Homes and to have the County reimburse GL Homes a portion of the cost. GL Homes is able to provide these bathroom services as part of a larger contract for substantially less than the County can contract out for similar services. While fire alarm monitoring was not directly addressed in the original Agreement, GL Homes is currently providing fire monitoring for the amphitheater and the County is reimbursing them 100% of the cost of this service. The County would have to incur substantial capital costs and operational costs in order to take over the alarm monitoring including installation of two dedicated phone lines with associated monthly fees, installation of an electrical control panel and a contract with a service provider. GL Homes is able to provide fire alarm monitoring for substantially less than the County can contract out for similar services.

Attachment: First Amendment to Construction, Joint Use and Easement Agreement

Recommended by: 
Department Director

1/8/10
Date

Approved by: 
Assistant County Administrator

2/1/10
Date

Prepared by and Return to:

Sheitelman Law P.A.
3858-S Sheridan Street
Hollywood, Florida 33021
Attn: Michael S. Sheitelman

(Space Reserved for Clerk of Court)

FIRST AMENDMENT TO CONSTRUCTION, JOINT USE AND EASEMENT AGREEMENT

THIS FIRST AMENDMENT TO CONSTRUCTION, JOINT USE AND EASEMENT AGREEMENT (the "Amendment") is entered into as of the ____ day of _____, 2009 (the "Amendment Effective Date") by and between BOYNTON BEACH ASSOCIATES XVIII, LLLP, a Florida limited liability limited partnership, having an address of 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323 (the "BBAXVIII"), and PALM BEACH COUNTY, a political subdivision of the State of Florida, having an address of 301 North Olive Avenue, West Palm Beach, Florida 33401-4791 (the "County"). BBAXVIII and the County are sometimes referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, BOYNTON BEACH ASSOCIATES X, LLLP, a Florida limited liability limited partnership ("BBAX"), BBAXVIII and the County are parties to that certain Construction, Joint Use and Easement Agreement recorded in Official Records Book 22999, Page 1396 of the Public Records of Palm Beach County, Florida (the "Agreement"); and

WHEREAS, the County Property has been conveyed to the County and, as such, BBAX has been released and discharged from the Agreement pursuant to Paragraph 9(i) thereof; and

WHEREAS, the Parties now seek to amend the Agreement as provided hereinafter below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, do hereby agree as follow:

1. The foregoing recitals are true and correct and incorporated herein by this reference. Any capitalized term used but not defined in this Amendment shall have the same meaning given to such term in the Agreement.
2. Paragraph 2(c)(iii)(A) of the Agreement is hereby deleted in its entirety, and the following is inserted in pace thereof:

BBAXVIII shall enter into a maintenance agreement with a third party provider for the maintenance of the Bathrooms (any such maintenance agreement whether now or hereafter existing is referred to herein as a "Bathroom Maintenance Contract"), and the Parties shall equally share all fees, costs and expenses payable thereunder. BBAXVIII shall have the right (without any prior consent of or approval by the County) to either renew or replace any Bathroom Maintenance Contract upon its expiration or earlier termination provided the amount payable under any such renewal or replacement Bathroom Maintenance Contract does not exceed the amount payable under the Bathroom Maintenance Contract being renewed or replaced by more than 5%; otherwise, the County shall have the right to approve or disapprove any such renewal or replacement Bathroom Maintenance Contract. The County shall reimburse BBAXVIII its half of the all amounts payable under a Bathroom Maintenance Contract (the "Bathroom Maintenance Reimbursement Amount") within 45 days after: (i) the expiration or

earlier termination of the Bathroom Maintenance Contract; (ii) BBAXVIII provides the County with a copy of the Bathroom Maintenance Contract; and (iii) BBAXVIII provides the County with copies of all invoices sent to BBAXVIII by the third party provider for services rendered under the Bathroom Maintenance Contract, together with proof of payment of all such invoices. The County shall not require, nor shall BBAXVIII be required to provide, any other or further documentation than that required above as a prerequisite to the County's obligation to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount as provided in this paragraph. Except for BBAXVIII's payment of its half of all amounts payable under a Bathroom Maintenance Contract, BBAXVIII shall have no further responsibility or obligation to pay for any repairs or replacements to the Bathrooms, or to pay for any upkeep or maintenance of the Bathrooms outside the scope of the Bathroom Maintenance Contract.

3. BBAXVIII has entered into a Bathroom Maintenance Contract with a term of one year pursuant to which a third party provider maintains the Bathrooms for \$250.00 per month during the term thereof. The County hereby approves such Bathroom Maintenance Contract and agrees to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount as provided in paragraph 2 above. The Parties hereby agree that the County's obligation to reimburse BBAXVIII the Bathroom Maintenance Reimbursement Amount shall commence as of the date on which the "Civic Site" was conveyed to the County; such date being April 23, 2009.

4. The County is responsible for maintain, repairing, replacing and monitoring the fire alarm system for the Amphitheater (including, without limitation, arranging and obtaining all inspections and certifications required in connection therewith). Although the County has such responsibility, BBAXVIII shall enter into an agreement with a third party provider for fire alarm monitoring of the Amphitheater (any such agreement whether now or hereafter existing is referred to herein as a "Fire Alarm Monitoring Contract"), and the County shall pay all fees, costs and expenses payable thereunder. The Parties hereby acknowledge and agree that the Fire Alarm Monitoring Contract shall only cover monthly monitoring and any required county inspections of the fire alarm system; it shall not cover any maintenance, repair or replacement services. BBAXVIII shall have the right (without any prior consent of or approval by the County) to either renew or replace any Fire Alarm Monitoring Contract upon its expiration or earlier termination provided the amount payable under any such renewal or replacement Fire Alarm Monitoring Contract does not exceed the amount payable under the Fire Alarm Monitoring Contract being renewed or replaced by more than 5%; otherwise, the County shall have the right to approve or disapprove any such renewal or replacement Fire Alarm Monitoring Contract. The County shall reimburse BBAXVIII all amounts payable under a Fire Alarm Monitoring Contract (the "Fire Alarm Monitoring Reimbursement Amount") within 45 days after: (i) the expiration or earlier termination of the Fire Alarm Monitoring Contract; (ii) BBAXVIII provides the County with a copy of the Fire Alarm Monitoring Contract; and (iii) BBAXVIII provides the County with copies of all invoices sent to BBAXVIII by the third party provider for services rendered under the Fire Alarm Monitoring Contract, together with proof of payment of all such invoices. The County shall not require, nor shall BBAXVIII be required to provide, any other or further documentation than that required above as a prerequisite to the County's obligation to reimburse BBAXVIII the Fire Alarm Monitoring Reimbursement Amount as provided in this paragraph.

5. BBAXVIII has entered into a Fire Alarm Monitoring Contract with a term of one year pursuant to which a third party provider monitors the fire alarms for the Amphitheater for \$40.00 per month during the term thereof. The County hereby approves such Fire Alarm Monitoring Contract and agrees to reimburse BBAXVIII the Fire Alarm Monitoring Reimbursement Amount as provided in paragraph 4 above. The Parties hereby agree that the County's obligation to reimburse BBAXVIII the Fire Alarm Monitoring Reimbursement Amount shall commence as of the date on which the "Civic Site" was conveyed to the County; such date being April 23, 2009.

6. The Parties hereby re-acknowledge and re-affirm that, except for BBAXVIII entering into the Fire Alarm Monitoring Contract for and on behalf of the County as provided in paragraph 4 above: (i) the County, at its sole cost and expense, is responsible for and shall provide all security (including,

without limitation, personnel and other measures) at all times for and with respect to the Fields, Temporary Parking Improvements and Amphitheater (including, without limitation, during any program, activity or event at or in connection with the Fields, Temporary Parking Improvements and/or Amphitheater); and (ii) BBAXVIII shall have no right, duty, responsibility, obligation or liability whatsoever with respect to any matters regarding any security at or in connection with the Fields, Temporary Parking Improvements and/or Amphitheater.

7. The Parties expressly acknowledge that the parcel of property known as Canyon Town Center TMD Pod B, is owned by Palm Beach County as a public civic site and is currently being utilized as an amphitheater and a temporary multi-purpose recreational field. In the future, County expressly reserves the right to modify and/or change the temporary multi-purpose recreational field to other traditional governmental uses.

8. Any notices to be given under this Amendment shall be in writing and shall be deemed given if delivered by hand, sent by recognized overnight courier (such as Federal Express), or mailed by certified or registered mail, return receipt requested, in a postage pre-paid envelope, and addressed as follows:

Notices to BBAXVIII shall be sent to 1600 Sawgrass Corporate Parkway, Suite 400, Sunrise, Florida 33323, Attention Kevin Ratterree, Vice President.

Notices to the County shall be sent to 2700 6th Avenue South, Lake Worth, Florida 33461, Attention, Director, Palm Beach County Parks and Recreation Department.

Notices personally delivered or sent by overnight courier shall be deemed given on the date of receipt; and notices sent via certified mail shall be deemed given 3 days after being deposited in the U.S. Mail and receipt of an United States Postal Service tracking record evidencing receipt. The place to which any Party is entitled to receive any notice may be changed by such Party by giving notice thereof in accordance with the foregoing provisions.

9. The Agreement, except as expressly amended by this Amendment, remains unchanged and in full force and effect, and the Parties hereby re-affirm all of the terms and provisions thereof as amended hereby. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but together shall constitute one instrument.

[signatures and notary acknowledgments follow on next page]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates set forth after their respective signatures below.

Signed, Sealed and Delivered
in the Presence of:

BBAXVIII:

BOYNTON BEACH ASSOCIATES XVIII, LLLP, a Florida
limited liability limited partnership

By: Boynton Beach XVIII Corporation, a Florida
corporation, its general partner

By: N. Maria Menendez
N. Maria Menendez, Vice President

Date: DECEMBER 4 2009

Kevin Ratterree
Print: KEVIN RATTERREE
Gladys Dzikolamio
Print: GLADYS DZIKOLAMIO

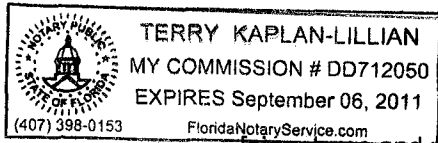
STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by N. Maria Menendez, a Vice President of Boynton Beach XVIII Corporation, a Florida corporation, the General Partner of Boynton Beach Associates XVIII LLLP, a Florida limited liability limited partnership, freely and voluntarily on behalf of such corporation and partnership. She is personally known to me, or has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 4 day of December 2009.

Terry Lillian
Notary Public
TERRY LILLIAN
Typed, Printed or Stamped name of Notary Public

My Commission Expires:



[signatures and notary acknowledgments continue on next page]

IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the dates set forth after their respective signatures below.

COUNTY:

PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chairman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

APPROVED AS TO TERMS AND CONDITIONS

BY:  _____
Department Director