

## **ASSIGNMENT OF AND SECOND AMENDMENT TO CDD AGREEMENT**

THIS ASSIGNMENT OF AND SECOND AMENDMENT TO CDD AGREEMENT (the "**Amendment**") is made and entered into as of September 18<sup>th</sup>, 2013, between the CORY LAKES COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes* (the "**District**"), KOLTER ACQUISITIONS, LLC, a Florida limited liability company ("**Assignor**"), AND KLP CORY LAKES, LLC, a Florida limited liability company ("**KLP**");

### **BACKGROUND AND PURPOSE**

Assignor and the District entered into that certain CDD Agreement dated November 2, 2012, as amended by that certain First Amendment to CDD Agreement dated April 17, 2013 (collectively, the "**CDD Agreement**").

KLP, an entity which is controlled by or under common control with Assignor, is now the fee simple owner of the Phase 7 Parcel (as defined in the CDD Agreement), therefore, Assignor desires to assign the CDD Agreement to KLP as permitted by the CDD Agreement, as provided below.

KLP and the District desire to amend the CDD Agreement as provided below. Unless otherwise defined herein, all capitalized terms in this Amendment shall have the meaning ascribed to them in the CDD Agreement.

NOW, THEREFORE, in consideration of the agreements, promises and mutual covenants contained herein, the parties agree as follows:

### **OPERATIVE PROVISIONS**

1. Assignment of CDD Agreement. Effective as of the date hereof: (a) Assignor hereby assigns, transfers, and otherwise sets over unto KLP, its successors and assigns, the CDD Agreement and all of Assignor's rights, title, interest and obligations thereunder, to have and to hold without restriction; (b) KLP hereby accepts the assignment of the CDD Agreement and all of Assignor's rights, title, interest and obligations thereunder; and (c) the defined term "Kolter" as used in the CDD Agreement and this Amendment shall mean and refer to KLP.

2. Amenity Expansion. With regard to the Pool Project, notwithstanding anything to the contrary contained in the CDD Agreement, including (without limitation) Section 5 thereof, the parties hereby agree as follows:

(a) Funding. Section 5(a) of the CDD Agreement, and the last three (3) sentences of Section 3 of the First Amendment to CDD Agreement, are hereby deleted in their entirety, and the following is hereby inserted in lieu thereof:

“The District and Kolter agree that the funds for construction of a resort-style pool and bath facilities, including fencing and landscaping, (collectively, the **“Pool Project”**) to enhance the existing amenity facility serving the Community (**“Amenity Facility”**) will be held in an escrow account by Escrow Agent (**“Pool Construction Fund”**), funded (a) in part, from Kolter’s Tax Deed Purchase in the amount of \$900,000.00 as provided in Section 2(b)(i)(A) and 2(b)(ii) above, and (b) in part, from funds deposited in the Pool Construction Fund by the District and Kolter as set forth below. The current budget for the Pool Project is \$1,179,000.00 (the **“Approved Budget”**). Within five (5) days after receipt by the Contracting Party of the Permits as set forth in Section 5(c) hereof, Kolter shall deposit the amount of \$65,000.00 into the Pool Construction Fund and the District shall deposit the amount of \$214,000.00 into the Pool Construction Fund, such that the total Pool Construction Fund shall equal the Approved Budget. The parties understand that: (i) the Approved Budget includes the cost of a payment and performance bond for construction of the swimming pool only; and (ii) the Approved Budget includes an allowance in the amount of \$5,000.00 for an access control device to restrict access to the pool amenities (the **“Access Control”**), but the plans for the access control device have not yet been finalized. Therefore (1) in the event that a payment and performance bond(s) is required for any other portion(s) of work included within the Pool Project, the Approved Budget shall be automatically increased by the cost of such additional bond(s), and the District shall deposit such additional cost into the Pool Construction Fund within ten (10) days after the District becomes aware of the need for such additional bond(s); and (2) in the event that the actual cost of the Access Control exceeds \$5,000.00, the Approved Budget shall be automatically increased by the additional cost thereof, and the District shall deposit such additional cost into the Pool Construction Fund within ten (10) days after the final cost for same is determined. The Approved Budget, as defined above, shall constitute the **“Budget”** component of the term **“Approved Plans and Budget”** as such term is used in this Agreement. The District’s payments to the Pool Construction Fund as set forth above, shall be a condition to the obligations of Kolter with respect to the Pool Project. Notwithstanding anything to the contrary contained herein, if the actual cost of the Pool Project exceeds the Approved Budget, the District and Kolter shall each deposit into the Pool Construction Fund one-half of the additional funds required to complete the Pool Project (the **“Additional Funds”**) as a condition to the obligations of Kolter with respect thereto. Notwithstanding anything to the contrary contained herein, upon completion of the Pool Project and final payment of all amounts due with respect thereto, any funds remaining in the Pool Construction Fund shall be disbursed to the District and/or Kolter as follows: (a) if no Additional Funds were required to be deposited by Kolter into the Pool Construction Fund pursuant hereto, then the balance of any funds remaining in the Pool Construction Fund shall be disbursed immediately to the District; or (b) if any Additional Funds were required to be deposited by Kolter into the Pool Construction Fund pursuant hereto because the Approved Budget was not sufficient to complete the Pool Project, then any funds remaining in the Pool Construction Fund shall be divided and disbursed equally (50/50) to the District

and Kolter. The District shall operate and maintain the expanded Amenity Facility, including the pool and bath house, as District property at the District's sole cost and expense. As provided in Section 8(c) below, in the event this Agreement is terminated or Kolter defaults in its obligations under this Agreement, the Pool Construction Fund shall be released by the Escrow Agent to the District to be used for purposes of completing the Pool Project and for no other purposes."

(b) Pursuant to Section 5(b) of the CDD Agreement, the District has reviewed and approved the final plans for the Pool Project, which final plans are listed below (the "Approved Plans"):

- i. Civil Engineering Construction Plans, prepared by Clearview Land Design, P.L., sheet numbers 1-6, last revision date 3-5-13;
- ii. Architectural Pool House Facility Plans, prepared by Kean M. Bafekr Architect, sheet numbers G000-G004, A001, A100, A101, A200, A300, A301, A400, A500, A501, A600, S001, S002, S1-S5, M001, M100, M200, P001, P100, E001, E100, last revision date 4-10-13;
- iii. Pool Engineering Plans, prepared by GB Collins Engineering PA, sheet numbers 1-9, last revision date 4-12-13; and
- iv. Hardscape, Landscape & Irrigation Plans, prepared by Land Arts Design Studio, LLC, sheet numbers LP01, LP02, GP01, GP02, HP01-HP03, HD01-HD09, SL01, LA01-LA06, IR01-IR03, last revision date 4-10-13.

The District shall, within ninety (90) days after the date hereof, determine the exact type of Access Control it desires to be installed as part of the Pool Project, which shall be subject to reasonable approval by Kolter. Thereafter, Kolter shall have same added to the Approved Plans, and if necessary, the Approved Budget shall be adjusted as set forth in Section 2 above.

Notwithstanding anything to the contrary contained in such Section 5(b) of the CDD Agreement, the District shall not be permitted to request or make any changes to the Approved Plans; however, prior to commencement of construction of the Pool Project only, the District may (through the Approving Party) select options relating to the Pool Project, provided that same will not require modifications to the Approved Plans or any of the Permits, or delay commencement or completion of the Pool Project. In the event that any options selected by the District increase the cost of the Pool Project above the amount of the Approved Budget, the District agrees to and shall immediately deposit into the Pool Construction Fund such additional amount as a condition to the obligations of Kolter with respect thereto and such amount shall automatically become the Approved Budget.

The Approved Plans, as defined above, shall constitute the "Plans" component of the term "Approved Plans and Budget" as such term is used in the CDD Agreement.

(c) Notwithstanding anything to the contrary contained in Section 5(c) of the CDD Agreement, the District has selected Kolter to manage construction of the Pool Project. Kolter shall be the Contracting Party as defined in the CDD Agreement, provided, however, all

contracts shall be between the District and the contractors engaged to perform the work. Simultaneously with the execution of this Amendment, the District and Kolter shall enter into a management agreement in the form attached hereto as **Exhibit "A"** (the "**Management Agreement**"), pursuant to which the District shall engage Kolter to supervise and coordinate the design, development and construction of the Pool Project, all as more particularly set forth in the Management Agreement. To the extent that the District's professional engineer has any right to manage, oversee or approve any aspects of the Pool Project pursuant to the terms of any of the construction contracts or otherwise, the District shall or shall, cause its professional engineer to, delegate such rights to Kolter.

(d) The last five (5) sentences of Section 5(c) of the CDD Agreement are hereby deleted in their entirety and replaced with the following:

"The Contracting Party shall use commercially reasonable efforts and proceed with all diligent prosecution to cause the Pool Project to (a) be commenced within a reasonable period of time after receipt of all necessary permits, approvals and consents for same from applicable governmental and quasi-governmental authorities ("**Permits**"), and (b) be completed, as evidenced by the City's issuance of a certificate of occupancy for the swimming pool, on or before the date which is seven (7) months after receipt of the last of the Permits, subject to extension due to events of Force Majeure (hereinafter defined) (the "**Outside Completion Date**"). Upon completion of the Pool Project, and final payment of all amounts due with respect thereto, the Contracting Party shall notify the Escrow Agent, and the balance of any funds remaining in the Pool Construction Fund shall be disbursed to the District and/or Kolter in the manner set forth in Section 5(a) for same. If the Contracting Party fails to cause the Pool Project to be completed on or before the Outside Completion Date, then the Approving Party shall deliver written notice to the Contracting Party of same, and the Contracting Party shall have thirty (30) days from the date it receives such notice in which to cause the Pool Project to be completed, subject to extension due to events of Force Majeure (the "**Extended Outside Completion Date**"). If the Contracting Party fails to cause the Pool Project to be completed on or before the Extended Outside Completion Date, then at any time thereafter (but prior to completion of the Pool Project), unless the Approving Party has agreed in writing to extend the Extended Outside Completion Date, the Approving Party shall be entitled to notify the Escrow Agent, with a copy to the Contracting Party, demanding the release of any funds remaining in the Pool Construction Fund, in which event such funds will be released to the District for purposes of completing the Pool Project and for no other purpose, and the District shall be required to complete the Pool Project within a reasonable period of time thereafter. Escrow Agent shall disburse such funds upon receipt of such notice. The District shall not be liable for any damages or costs if the Pool Project is not completed by the Outside Completion Date. The term "Force Majeure" as used herein shall include labor disputes, inability to obtain any necessary materials or services, acts of God, weather conditions that are unusually severe or exceed average conditions for that time of year, persistent inclement weather, war, terrorist acts, insurrection, delays

caused by governmental permitting or regulations, or other similar events beyond Contracting Party's reasonable control. If Contracting Party shall be delayed in the performance of its obligations hereunder due to an event of Force Majeure, then the time for performance of such obligation shall be automatically extended (on a day for day basis) for a period equal to the period of such delay."

(e) Notwithstanding anything to the contrary contained in the CDD Agreement:

- i. Kolter shall bid all portions of the Pool Project work, other than construction of the actual swimming pool component (which shall be publicly bid as set forth in (ii) below because such amount is anticipated to exceed \$300,000) in accordance with Florida law, provided that Kolter shall diligently pursue three (3) qualified contractors/subcontractors for such portion of the work each of which shall be reasonably acceptable to the Approving Party. Such bids shall be reviewed by the Approving Party and Kolter, then presented to the District's board of supervisors by the Approving Party for final approval, which approval shall not be unreasonably withheld, conditioned or delayed. Kolter acknowledges and agrees that any bids received by Kolter pursuant to this section are public records and are subject to public inspection.
- ii. Kolter shall coordinate the public bidding of construction of the actual swimming pool which is part of the Pool Project, with support from District staff. Such bids shall be reviewed by the Approving Party and Kolter, then presented to the District's board of supervisors by the Approving Party for final approval, which approval shall not be unreasonably withheld, conditioned or delayed.
- iii. Upon approval of each bid for any portion of the Pool Project work, the District shall promptly enter into a construction contract with the winning bidder for same, subject to approval of such contract by Kolter.

(f) The District hereby designates Tonja Stewart, as District engineer, and Bruce St. Denis, as District manager, collectively, as the Approving Party as defined in the CDD Agreement. Any notice required to be delivered to or by the Approving Party may be delivered to or by either of Tonja Stewart or Bruce St. Denis. The District hereby agrees that to the extent the District has any approval or other rights relating to the Pool Project pursuant to the CDD Agreement, as amended hereby, the Approving Party has full right and authority to exercise such rights on behalf of the District, and that any approvals given and/or other decisions made by the Approving Party shall be binding upon the District, except for approval of bids and final construction contracts for the Pool Project, which must be approved by the District's board of supervisors. Kolter and the District agree that all communications from the District to Kolter relating to the Pool Project will be made through the Approving Party.

(g) Prior to issuance of the Permits for the Pool Project, the District shall, at its sole cost and expense, remove all playground equipment located within the area in which the Pool Project is to be constructed.

3. Ratification. Except as modified by this Amendment, the terms and conditions set forth in the CDD Agreement remain unmodified and unamended, and in full force and effect, and the parties hereby ratify and reaffirm the same.

4. Counterparts; Facsimile/Electronic Signatures. This Amendment may be executed in one or more separate counterparts and may be delivered by facsimile or other electronic means, all of which, when taken together, shall constitute one and the same instrument, binding on the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day and year first above written.

**CORY LAKES COMMUNITY  
DEVELOPMENT DISTRICT**, a local  
unit of special-purpose government established  
pursuant to Chapter 190, *Florida Statutes*

By: Judith Beck - Chair  
Name: JUDITH BECK  
Title: CHAIRMAN CORY LAKES CDD  
Date: 9/18/13

**KOLTER ACQUISITIONS, LLC**,  
a Florida limited liability company

By: [Signature]  
Name: JAMES P. HARVEY  
Title: VICE PRESIDENT  
Date: 9-24-13

**KLP CORY LAKES, LLC**,  
a Florida limited liability company

By: [Signature]  
Name: JAMES P. HARVEY  
Title: VICE PRESIDENT  
Date: 9-24-13