

**FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT, PROMISSORY NOTE, SECURITY AGREEMENT, DISBURSEMENT AGREEMENT AND PERFORMANCE AGREEMENT**

THIS FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT, PROMISSORY NOTE, SECURITY AGREEMENT, DISBURSEMENT AGREEMENT AND PERFORMANCE AGREEMENT (the "First Amendment"), dated as of November \_\_, 2014, is among PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION, ("Borrower"), CAPITAL ONE, N.A. ("Lender"), CITY OF PFLUGERVILLE, TEXAS ("City"), and HAWAIIAN FALLS-PFLUGERVILLE, LLC ("Corporation").

RECITALS:

A. Borrower and Lender entered into that certain Construction Loan Agreement, Promissory Note and Security Agreement dated as of February 24, 2014 which provided for a loan in the original principal amount of \$23,500,000 from Lender to Borrower.

B. Borrower, Lender and City entered into that certain Disbursement Agreement dated as of February 24, 2014 which provided for the deposits and disbursement of the Sales Tax revenues and payments by the Corporation.

C. Borrower, City and Corporation entered into that certain Performance Agreement dated as of November 11, 2013 which provided for the construction of a Water and Adventure Park in the City.

D. [\$ \_\_\_\_\_] has been advanced to the Borrower under the Construction Loan Agreement and Promissory Note. The parties now desired to increase the principal amount of the Promissory Note to \$25,000,000. Upon execution of this First Amendment, the parties agreed that the remaining [\$ \_\_\_\_\_] will be available to be Advanced.

C. Borrower, City, Corporation and Lender now desire to amend the Construction Loan Agreement, Promissory Note and Security Agreement, Disbursement Agreement and Performance Agreement (collectively, the "Agreements") as herein set forth.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. Capitalized terms used in this First Amendment, to the extent not otherwise defined herein, shall have the same meanings as in the Agreements.

ARTICLE II

AMENDMENTS TO CONSTRUCTION LOAN AGREEMENT

2.1 Amendment to Section 2.01. Section 2.01 of the Construction Loan Agreement is hereby deleted in its entirety and the following is substituted therefor:

2.01 *Commitment to Lend*. Subject to and upon the terms, covenants, and conditions hereof, Lender hereby agrees to lend to the Borrower an aggregate sum not in excess of TWENTY-FIVE MILLION AND 00/100 DOLLARS (\$25,000,000), in Advances, from time to time prior to 2:00 p.m., Austin, Texas, time on the Completion Date. An amount repaid may not be reborrowed.

2.2 Advances. For the purposes of making any further Advances, Lender hereby agrees to waive the requirements in Section 2.06(d), (e) and (f) of the Construction Loan Agreement and all conditions to final Advance in Section 2.04 of the Construction Loan Agreement, provided; however, that Lender reserves the right to request any document prior to making such Advances.

### ARTICLE III

#### AMENDMENT TO THE PROMISSORY NOTE

3.1 Amendment to Promissory Note. The principal amount of the Promissory Note is hereby increased to \$25,000,000.

### ARTICLE IV

#### AMENDMENT TO THE SECURITY AGREEMENT

4.1 Amendment to Section 1(e). Section 1(e) of the Security Agreement is hereby amended to increase the principal amount of the Promissory Note referred to therein to \$25,000,000.

### ARTICLE V

#### AMENDMENT TO THE DISBURSEMENT AGREEMENT

5.1 Amendment to Recital A. Recital A of the Disbursement Agreement is hereby amended to increase the principal amount of the Promissory Note referred to therein to \$25,000,000.

### ARTICLE VI

#### AMENDMENTS TO THE PERFORMANCE AGREEMENT

6.1 Amendment to Section II-1. Section II-1 of the Performance Agreement is hereby deleted in its entirety and the following is substituted therefor:

1. PCDC shall borrow from a private financial institution up to \$25,000,000 for the acquisition of land, construction of onsite and offsite infrastructure and construction of the Facility.

6.2 Amendment to Section II-3. The first sentence of Section II-3 of the Performance Agreement is hereby deleted in its entirety and the following is substituted therefor:

3. PCDC shall issue its own debt obligations (the "Debt Obligation") to finance the construction of the water and adventure park (for the acquisition of land, construction of onsite and offsite infrastructure and construction of the facility), up to \$25,000,000.

6.3 Consent. Corporation hereby consents to the \$25,000,000 loan from Lender to Borrower.

### ARTICLE VII

7.1 Conditions. The effectiveness of this First Amendment is subject to the satisfaction of the following conditions precedent:

(a) Lender shall have received such additional documents, instruments and information as Lender or its legal counsel may request;

(b) Payment of Lender's costs and Lender's counsel's reasonable fees;

(c) No Event of Default shall have occurred and be continuing and no event or condition shall have occurred that with the giving of notice or lapse of time or both would be an Event of Default; and

(d) All corporate proceedings taken in connection with the transactions contemplated by this First Amendment and all documents, instruments, and other legal matters incident thereto shall be satisfactory to Lender and its legal counsel.

## ARTICLE VIII

### RATIFICATIONS, REPRESENTATIONS AND WARRANTIES

8.1 Ratifications. The terms and provisions set forth in this First Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Agreements and except as expressly modified and superseded by this First Amendment, the terms and provisions of the Agreements are ratified and confirmed and shall continue in full force and effect. Borrower, City, Corporation, and Lender agree that the Agreements, as amended hereby, shall continue to be legal, valid, binding and enforceable in accordance with their respective terms.

8.2 Representations and Warranties. Borrower hereby represents and warrants to Lender that (i) the execution, delivery and performance of this First Amendment and any and all other Loan Documents executed and/or delivered in connection herewith have been authorized by all requisite corporate action on the part of Borrower and will not violate the articles of incorporation or bylaws of Borrower, (ii) the representations and warranties contained in the Agreements and any other Loan Document are true and correct on and as of the date hereof as though made on and as of the date hereof, (iii) no Event of Default has occurred and is continuing and no event or condition has occurred that with the giving of notice or lapse of time or both would be an Event of Default, and (iv) Borrower is in full compliance with all covenants and agreements contained in the Agreements.

## ARTICLE IX

### MISCELLANEOUS

9.1 Reference to Agreements. Each of the Loan Documents are hereby amended so that any reference in such Loan Documents to the Agreements shall mean a reference to the Agreements, as amended hereby.

9.2 Severability. Any provision of this First Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this First Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

9.3 Applicable Law. This First Amendment shall be governed by and construed in accordance with the laws of the State of Texas. (without regard to its conflicts of law provisions).

9.4 Successors and Assigns. This First Amendment is binding upon and shall inure to the benefit of Borrower and Lender and their respective successors and assigns.

9.5 Counterparts. This First Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

9.6 Headings. The headings, captions, and arrangements used in this First Amendment are for convenience only and shall not affect the interpretation of this First Amendment.

9.7 SECTION 26.02 NOTICE. THIS FIRST AMENDMENT AND ALL OTHER INSTRUMENTS, DOCUMENTS AND AGREEMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THIS FIRST AMENDMENT EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THIS FIRST AMENDMENT, AND

MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR  
SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

[Signatures begin on next page]

Executed as of the date first written above.

Borrower:

PFLUGERVILLE COMMUNITY DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Lender:

CAPITAL ONE, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

City:

Acknowledged and agreed solely for purposes of ARTICLE V and ARTICLE VI of this First Amendment:

THE CITY OF PFLUGERVILLE, TEXAS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Corporation:

Acknowledged and agreed solely for purposes of ARTICLE VI of this First Amendment:

HAWAIIAN PARKS - PFLUGERVILLE, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_