



CONSTRUCTION AGREEMENT

**STAPLETON MASTER COMMUNITY ASSOCIATION
AVIATOR POOL
8054 E. 29th AVE,
DENVER, CO 80238**

AGREEMENT

This AGREEMENT is made and entered into this 3rd day of February, 2010 by and between Master Community Association, hereinafter referred to as the ASSOCIATION, and HAVANA CONSTRUCTION, hereinafter referred to as the CONTRACTOR. It is hereby mutually agreed and understood that for and in consideration of the sum or sums to be paid to the CONTRACTOR by the ASSOCIATION, as set forth in this contract, the said CONTRACTOR shall furnish all labor, permits, equipment, accessories, and material and shall perform all work in a good, substantial, timely and workmanlike manner, in accordance with the provisions and specifications of this AGREEMENT.

BASE FEE & SCOPE: See Attached

EXHIBIT A (Aviator Pool Repair & Retrofit RFP)

EXHIBIT B (Current Aviator Pool Drawings)

EXHIBIT C (Project Design Drawings)

EXHIBIT D (Havana Construction Proposal 2/2/2010)

PERFORMANCE OF WORK

The CONTRACTOR shall furnish all labor and shall perform all work necessary to meet contract requirements in a good, substantial, and workmanlike manner, in accordance with the contract specifications contained herein. The CONTRACTOR shall furnish, at no additional charge, any equipment, necessary OSHA required safety equipment for confined space, supplies, and accessories necessary for the proper construction of EXHIBIT A through D

PAYMENT

Total payment under this agreement is \$33,000.00

Payment will be made monthly as follows:

Payment	Amount	Approx Date	Work Completed
1	\$5000	2/8/2010	Down Payment
2	\$9,000		Remove Sun Pads and pour new step
3	\$6,000		Remove Existing Coping
4	\$6,000		Install New Flagstone Coping
5	\$7,000	5/15/2010	Re-plaster new area and Buff Shallow floor

PAYMENT AUTHORIZATION

Payments will be released between the 10 days following the date of scheduled completed work. The CONTRACTOR agrees not to contact the Managing Agent requesting payment prior to due dates. All contract invoices must be received by the first of the month in order to be paid that month. Any bills for services,



supplies, or equipment, which are not included in this agreement to be provided by the CONTRACTOR and have not had the prior approval of the MANAGING AGENT, will not be authorized for payment.

FINAL PAYMENT RESTRICTION

Final payment will not be made until a joint inspection conducted by the CONTRACTOR and the MANAGING AGENT and all conditions are found to be satisfactory. Final payment will not be made until all logs are received.

PENALTIES

The following penalties apply for negligence or non-performance as specified:

The CONTRACTOR will be responsible for repairing or replacing any equipment which is damaged or broken by the CONTRACTOR'S personnel at no cost to the ASSOCIATION, said repair or replacement to be as soon as possible.

If, due to the negligence of the CONTRACTOR, it is necessary to close the pool during the season in the opinion of the MANAGING AGENT or ASSOCIATION, a penalty of \$100.00 per day will be assessed.

In the event that a response is not made in a timely manner, the CONTRACTOR recognizes that the MANAGING AGENT may authorize another contractor to perform any emergency work and recognizes that the cost of such emergency work will be deducted from the next payment due under this contract.

ADMINISTRATION AND MANAGEMENT

CONTRACTOR agrees to provide the ASSOCIATION with professional managed administrative support such as itemized billing and invoices. Including but not limited to detailed description of services contained in each payment cycle.

COOPERATION WITH MANAGING AGENT

The CONTRACTOR recognizes that the ALEC HILL is the MANAGING AGENT for the ASSOCIATION and is responsible for overseeing the performance of the CONTRACTOR under this agreement. The CONTRACTOR agrees to cooperate fully with the MANAGING AGENT.

COMMUNICATION

The CONTRACTOR shall cooperate fully with the ASSOCIATION and immediately report any problems directly to the MANAGING AGENT. The CONTRACTOR will be available daily during the entire project. During normal business hours, CONTRACTOR shall return phone calls from the ASSOCIATION or its MANAGING AGENT within two hours for non-emergency problems. In the event of an emergency, calls shall be returned within thirty (30) minutes and if a response is not made within one (1) hour, the CONTRACTOR accepts that the ASSOCIATION may authorize another CONTRACTOR to perform emergency work and accepts that the cost of such emergency work may be deducted from the payments due under this AGREEMENT at the discretion of the ASSOCIATION. In the event the cost of such work exceeds the outstanding payments, CONTRACTOR shall remit payment to the ASSOCIATION within fifteen (15) days of receipt of notice of the balance due. Failure to make such payment shall constitute a breach of this AGREEMENT.

EMPLOYEES OF CONTRACTOR

All personnel hired for the purpose of providing services described herein shall be considered employees of the CONTRACTOR and shall be properly supervised by CONTRACTOR. Under no circumstances will the ASSOCIATION be responsible for payroll of the CONTRACTOR.



SUB-CONTRACTORS

The CONTRACTOR shall list herein any subcontractor, which may be used during the term of this AGREEMENT.

NAME

SERVICE PROVIDED

N/A

If sub-contractors are used CONTRACTOR will be solely responsible for their actions and will indemnify the ASSOCIATION against any liens or claims, whatsoever which may arise from the use of a subcontractor. The CONTRACTOR will submit verification of Worker's Compensation and General Liability insurance, per this AGREEMENT, for all subcontractors prior to commencing work. If no sub-contractors are anticipated at the time of bidding, but are determined to be used during the term of this AGREEMENT, complete information, per this paragraph, will be submitted in writing to the ASSOCIATION. The use of a sub-contractor without disclosure may be cause for immediate termination.

INSURANCE

The CONTRACTOR agrees to carry a policy of liability insurance with limits of at least \$1,000,000, which policy shall name the ASSOCIATION as an additional insured. The CONTRACTOR also agrees to carry Worker's Compensation Insurance in the minimum amount of **Statutory Limits**. The CONTRACTOR shall submit certifications of insurance and evidence of ASSOCIATION as an additional insured to ASSOCIATION prior to commencing work. In the event ASSOCIATION has not received the certificates within the time constraints indicated above, or in the event that ASSOCIATION receives written notice from the insurer that CONTRACTOR'S insurance has not been renewed or has been cancelled, then it is agreed that ASSOCIATION may procure the insurance coverage required by this Paragraph and charge all premiums and deduct such sum from all amount due CONTRACTOR or terminate this AGREEMENT.

DAMAGE BY CONTRACTOR

Damages caused by the CONTRACTOR or subcontractors, shall be repaired or replaced by the CONTRACTOR or subcontractor at no charge to the ASSOCIATION within five (5) days of notice. Damage applies to, but not limited to, the following general categories.

Damage Due to Use of Equipment – CONTRACTOR is responsible for any damage to ASSOCIATION property and any improvements thereon, including but not limited to buildings and structures, sidewalks, driveways, parking areas, signs, railings, fencing, plant materials and irrigation system due to improper use of or operation of equipment used by CONTRACTOR.

Damage Due to Untimely Response – CONTRACTOR shall be responsible for any damage or costs incurred by the ASSOCIATION as a result of the CONTRACTORS failure to meet the timeframe stated in Paragraphs above or as otherwise determined by the ASSOCIATION.

REPAIRS

Upon authorization from the MANAGING AGENT repairs will be made as soon as possible. Any additional labor or materials used to make repairs under the terms of this provision shall be charged to the ASSOCIATION and shall not be considered to be included in the contract price as set forth herein. The rate for labor will be \$N/A per hour. No repairs, other than emergency repairs, will be done without prior authorization from the MANAGING AGENT.



MODIFICATION/AMENDMENT

No modification, amendment, or alteration may be made to the agreement unless mutually agreed, in writing, by both parties. This AGREEMENT may not be assigned without written approval of the ASSOCIATION.

CONFLICTS

If there is a conflict between this AGREEMENT and any other documentation which the CONTRACTOR may have submitted with their proposal, this AGREEMENT will govern.

INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, protect, and hold harmless the ASSOCIATION, its employees, offices, directors, agents, and MANAGING AGENT (hereinafter "ASSOCIATION Parties") from and against claims, damages, loss, and expenses of every kind and nature whatsoever, including but not limited to attorneys' fees incurred in defense of any such claim or loss arising out of, resulting from, or in any manner directly or indirectly connected with the work to be performed under this AGREEMENT, howsoever caused, regardless of any negligence of ASSOCIATION or its agent or servants, be it active or passive, including but not limited to ASSOCIATION'S supervision of the work to be performed under this AGREEMENT and/or the work place, except the sole negligence or willful misconduct of the ASSOCIATION or its agents or servants; and provided, further, that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the work itself), including loss of use and/or economic damages resulting therefrom. All of the work performed at or for the construction site by CONTRACTOR or its suppliers or subcontractor or in preparing or delivering materials or equipment to the site by CONTRACTOR or its suppliers or subcontractor shall be exclusively at the risk of CONTRACTOR. This indemnification shall include, but not be limited to, any claims of any members of the ASSOCIATION for any loss or damage to their personal property and/or Unit based up CONTRACTOR'S performance of the work identified in this AGREEMENT.

ASSIGNMENT

CONTRACTOR may not assign any of its obligations of this AGREEMENT without the prior written consent of the ASSOCIATION.

TERMINATION

Notwithstanding any other provisions of this AGREEMENT to the contrary, either party may terminate this AGREEMENT, with or without cause, upon thirty (30) days written notice to the other party. If terminated, final payment will be due within 15 days of the termination date, and will be based upon a pro-ration of the fee due for that month through the date of termination, such payment to be considered payment in full for services preformed under this AGREEMENT.

DEFAULT

If either party fails to perform any of its responsibilities or obligations as required by this AGREEMENT, the non-defaulting party may terminate this AGREEMENT as of any specified date and the defaulting party will be responsible for all costs incurred by the non-defaulting party in enforcement of the AGREEMENT, including reasonable attorney's fees.

NOTICES

All notices, requests, demands, waivers, and other communications given as provided in this AGREEMENT will be in writing, and, unless otherwise specifically provided in this AGREEMENT, will be deemed to have been given if delivered in person, or mailed by certified or registered mail, postage prepaid, and addresses to either party at the following addresses, unless either party changes the address of either party by giving written notice to change to the other. The addresses for notice are:



Notice to ASSOCIATION: Stapleton Master Community Association 2823 Roslyn Street Denver, CO 80238	Notice to CONTRACTOR: Havana Construction 1010 W. 45 th St. Loveland, CO 80538
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GENERAL PROVISIONS

Wavier; Remedies – No wavier of any default as provided in this AGREEMENT or delay or omission in exercising any right or power either will be considered a wavier of any other default as provided in this AGREEMENT. No exercise or failure to exercise any right or power of either party as provided in this AGREEMENT will be considered to exhaust that right or power. The exercise of or failure to exercise any one of the rights and remedies of either party as provided in this AGREEMENT will not be deemed to be instead of, or a wavier of, any other right or remedy as provided in this AGREEMENT.

Time of Essence – Time is of the essence in the performance of all the terms of this AGREEMENT.

Modification – This AGREEMENT and any term as provided in this AGREEMENT may be modified, amended, discharged, changed, or wavier only in writing signed by the party against which the enforcement of the modification, amendment, discharge, change, or wavier is sought.

Binding Effect – This AGREEMENT is binding upon, and inures to the benefit of the parties, their successors, assigns, transferees, heirs, devisees, surviving joint tenants, trustees, and personal representatives.

Entire AGREEMENT – This Agreement constitutes the entire AGREEMENT of the parties and supersedes all previous agreements, written or oral, between parties. No statement, promise, or inducement made by either party, or the agent of a party, either written or oral, which is not provided in this AGREEMENT, is binding upon that party.

Governing Law – The validity, meaning, and effect of this AGREEMENT will be determined a provided the law of the State of Colorado applicable to agreements made and to be performed in the State of Colorado.

Independent CONTRACTOR Status – It is the express intention of the parties that CONTRACTOR is an independent CONTRACTOR and not an employee, agent, joint venture or partner of ASSOCIATION. Nothing in this AGREEMENT shall be interpreted or construed as creating or establishing the relationship of employer and employee between ASSOCIATION and CONTRACTOR or any employee or agent of CONTRACTOR. Both parties acknowledge that CONTRACTOR is not an employee for state or federal tax purposes. CONTRACTOR shall retain the right to perform services for others during the term of this AGREEMENT. Nothing in this AGREEMENT shall authorize or empower CONTRACTOR to make any representation, warranty or AGREEMENT on ASSOCIATION'S behalf.

Setoff – ASSOCIATION may withhold such sums from any monies due or to become due to CONTRACTOR hereunder as ASSOCIATION, in its sole discretion, deems necessary to project ASSOCIATION from any loss, damage, or expense relating to or arising out of CONTRACTOR'S performance of the work, or to prevent liens or in response to any claim or threatened claim of which ASSOCIATION becomes aware concerning CONTRACTOR or the performance of CONTRACTOR'S duties hereunder.



SIGNATURES

IN WITNESS WHEREOF, THE ASSOCIATION AND CONTRACTOR HAVE CAUSED THIS AGREEMENT TO BE DULY EXECUTED ON THE EFFECTIVE DATE, ALL COPIES OF WHICH, FOR ALL INTENTS AND PURPOSES, SHALL BE CONSIDERED THE ORIGINAL.

ON BEHALF OF THE ASSOCIATION: Stapleton Master Community Association and Park Creek Metropolitan District

BY: Keven A. Burnett

TITLE: Executive Director

A handwritten signature in black ink, appearing to read "Keven A. Burnett", written over a horizontal line.

SIGNATURE:_____

DATE: **February 4, 2010**

ON BEHALF OF Havana Construction:

BY:

TITLE:

SIGNATURE:_____

DATE:_____



EXHIBIT A

Aviator Pool Repair & Retrofit RFP

Exhibit "A"

Aviator Pool

Improvements & Retrofit:

Date: 1-4-2010

Revised: 2-4-2010

Scope:

1. Demolition and removal of the (2) northern most lily pad decks # 1 & 2 (See exhibit dwg. B)
2. Construct one step **(36' X 4')** along the west, north and east edge (See exhibit dwg. C)
3. Reset (2) underwater light fixtures on new steps wall. (field adjusted)
4. Terminate and cap (3) lights
5. Reset (3) water returns jets, position & determine location for best efficiency. (field adjusted)
6. Replaster all the new and improved area **(400 SF)**
7. Set blue tile line on new step to match existing step style **(36 LF)**
8. Set blue tile line to match, at the depth brake area line **(28 LF)**
9. Install (2) stainless steel handrails to mach the current existing style
10. Remove and replace **(440 LF)** of poured in place coping of the pool perimeter (See exhibit C)
11. Remove and replace **(48 LF)** of poured in place coping of the lily pad #3 (See exhibit C)
12. Design & build a drain to lily pad #3 before installing the new coping replacement
13. Replace any broken blue water line tile, match the existing style
14. Surface buff the diamond bright surface of pool shallow area, reduce abrasiveness **(2,340 SF)**



EXHIBIT B

Current Aviator Pool Design

Exhibit "B"

20 MIL. PVC LINER

5 GRAB RAIL
3/4"=1'-0"

EXCAVATE AS
REQUIRED

10" SCHED. 80
PVC INSPECTION
TUBE

CUT OUT INSPECTION
TUBE FOR ENTRANCE
OF UNDER DRAIN

20 MIL.
PVC LINER

6 UNDER DRAIN
3/4"=1'-0"

SPECIFICATIONS

THE STANCHION ANCHOR IS TO BE OF STAINL
WELDED CONSTRUCTION. THE ANCHOR OVER 4
6 1/8". THE ANCHOR SHALL INCLUDE A 5/16
GROUNDING LUG AND A REMOVABLE TAMPER
LID. ALL MATERIAL AND COMPONENTS TO BE
STAINLESS STEEL.

9 STANCHION ANCHOR
3/4"=1'-0"

NOTE: REFER
16/SP3 FOR R

CAULK EXPANSION
JOINT, & CONCRETE
BY OTHERS

VARIES
RE: PLAN

20 MIL.
PVC LINER



EXHIBIT C

Project Design Drawings

Exhibit "C"

20 MIL. PVC LINER

5 GRAB RAIL
3/4"=1'-0"

EXCAVATE AS
REQUIRED

10" SCHED. 80
PVC INSPECTION
TUBE

CUT OUT INSPECTION
TUBE FOR ENTRANCE
OF UNDER DRAIN

20 MIL.
PVC LINER

6 UNDER DRAIN
3/4"=1'-0"

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LID. ALL MATERIAL AND COMPONENTS TO BE
STAINLESS STEEL.

9 STANCHION ANCHOR
3/4"=1'-0"

NOTE: REFER
16/SP3 FOR 1

CAULK EXPANSION
JOINT, & CONCRETE
BY OTHERS

VARIES
RE: PLAN

20 MIL.
PVC LINER



EXHIBIT D

Havana Construction Proposal

HAVANA CONSTRUCTION
1010 W 45TH ST.
LOVELAND, CO 80538
(970) 227-9075
HAVANAPOOLES@YAHOO.COM
WWW.HAVANAPOOLES.NET

CONTRACT

2/2/10

PROPOSAL SUBMITTED TO:

2823 Roslyn St.
Denver, CO 80238
Stapleton MCA
Attention to: Alex Hill
Office: (303) 388-0724
Cell: (720) 289-1429
Email: ahill@stapletoncommunity.com

JOB ADDRESS

Aviator Pool
8054 E. 28th Ave
Denver, CO 80238

SCOPE #1:

Replace coping with concrete coping using flagstone. Including new caulking on perimeter of pool.

-484 ft. Perimeter (One sun-pad) {\$12,600.00}

Note: If the flagstone option is chosen, Havana Construction will take the cost of the stegmayer forms (\$900.00) and the deduction of \$400.00 from the buffing of the floor as credit for the purchase of new flagstone.

\$2,805.00	Cost of Stones
-\$1,300.00	Credit
\$1,505.00	New Cost of Stones

SCOPE #2:

Remove 2 sun-pads and replaster area with Diamond Brite including new brake-line tile (420 sq. ft. + one step) {\$15,800.00}

Demolition of 2- 12x12 sun-pads, dispose of concrete, install new steel and concrete on floor and form one new step (36'x4'), 36 +/- lin. ft. of blue step tile, reset 3 water return jets (position and determine location for best efficiency), chip around fittings and lights, chip 2-3 inches below water-line tile, acid wash entire surface, neutralize acid, apply Bondkote for better adherence of new plaster, install brake-line tile (28' +/-), install new Diamond

Brite, expose Diamond Brite. Replace tiles with calcium on lily pad # 3, new depth marks and "No Diving" tiles (added to existing deck).

Note: Havana Construction will assist in the resetting of lights and handrails free of charge. Lights and handrails to be installed and provided by: MCA.

SCOPE #3:

Buffing of shallow floor area (2,340' sq.) {\$4,600.00}

NOTE:

Removal of coping may cause some minor damage to the top of the pool wall or to the tile, repairs are already included in the prices listed above.

After completion of project, an acid wash may be needed to clean (also included in the prices listed above).

Havana Construction will warranty the finished product until July 1st, 2011 upon completion.

TOTAL:

\$12,600.00

\$15,800.00

\$4,600.00

\$33,000.00

BREAKDOWN:

Down Payment	\$5,000.00
Remove Sun-pads and pour new step	\$9,000.00
Remove existing coping	\$6,000.00
Install new flagstone coping	\$6,000.00
Re-Plaster new area & buff shallow floor	\$7,000.00

X _____
EDUARDO A. BATLLE

X _____
MCA