

**AGREEMENT ANCILLARY TO
REVOCABLE LICENSE AGREEMENT
("AGREEMENT")**

THIS AGREEMENT ANCILLARY TO REVOCABLE LICENSE AGREEMENT (hereinafter, "Agreement") is entered into this ____ day of _____, 2014, by and between:

RELIANCE PROGRESSO ASSOCIATES, LTD., a Florida limited partnership, its successors and assigns, hereinafter "RELIANCE PROGRESSO",

and

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida having a principal address at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 (hereinafter "CITY").

R E C I T A L S

WHEREAS, RELIANCE PROGRESSO is a Florida limited partnership that was created by two single asset entities, Broward Workforce Communities, Inc. and Reliance Progresso LLC. for the purpose of constructing Progresso Point, an affordable workforce housing development located at 619 North Andrews Avenue, Fort Lauderdale ("Progresso Point"); and

WHEREAS, the sole general partner of RELIANCE PROGRESSO is Broward Workforce Communities, Inc., which is a Florida corporation established by Building Better Communities, Inc., a not-for-profit to insure the development of affordable workforce housing in Broward County; and

WHEREAS, in order to finance the construction of Progresso Point, the co-developers Building Better Communities Inc. and Reliance Housing Services, LLC were granted tax credits from the Florida Housing Finance Corporation; and

WHEREAS, as required by the Tax Credit Exchange Program, the twenty percent (20%) of the dwelling units are required to be set aside for individuals who earn below 28% average median income ("AMI"), and the other eighty percent (80%) of the dwelling units are required to be set aside for individuals who earn sixty percent (60%) or less of AMI (the "Income Restriction"); and

WHEREAS, the entire Progresso Point development is subject to the Income Restrictions for a period of not less than fifty (50) years, and as such, the development entity, RELIANCE PROGRESSO, is committed to maintaining the Progresso Point development as an affordable housing development for at least fifty (50) years; and

WHEREAS, the CITY and RELIANCE PROGRESSO are about to enter into a Revocable License Agreement (hereinafter, “RLA”) with Broward County, a political subdivision of the State of Florida (hereinafter, “COUNTY”) relative to RELIANCE PROGRESSO’s installation and maintenance of certain landscaping and related improvements in the right of way for North Andrews Avenue, the installation and maintenance of such improvements being subject to certain terms and conditions, a copy of such RLA being attached hereto as **Exhibit “A”**; and

WHEREAS, pursuant to the Florida Transportation Code, North Andrews Avenue is within the County Road System; and

WHEREAS, there are a number of provisions within the RLA that cast obligations on the CITY that exceed that of the CITY accepting the obligation of ongoing maintenance of the landscaping, irrigation, and other related improvements in the event RELIANCE PROGRESSO fails to perform in accordance with the RLA; and

WHEREAS, in order to induce the CITY into entering into the RLA with the COUNTY and RELIANCE PROGRESSO, as a condition precedent to executing the RLA, the CITY is requiring RELIANCE PROGRESSO to provide the CITY with the Agreement hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the sufficiency and adequacy of which is hereby acknowledged, RELIANCE PROGRESSO hereby agrees as follows:

1. **Recitals.** The foregoing Recitals are true and correct.
2. **Defined Terms.** The following terms, as used and referred to herein, shall have the meanings set forth below, unless the context indicates otherwise.

City Manager means CITY’s Chief Executive Officer, its CITY Manager, or his or her designee.

Contract Administrator means the City Engineer of the CITY, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

Day(s). In computing any period of time expressed in day(s) in this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

Effective Date means the effective date of this Agreement, which shall be the date upon which both (i) this Agreement is executed by the proper corporate officials for RELIANCE PROGRESSO and (ii) CITY and (iii) the RLA is executed by all parties thereto.

License Area means that area identified as “Property” in the RLA, being more particularly described in that Sketch and Description attached thereto as **Exhibit “B”**.

Permit means either a Building Permit issued by the Building Official pursuant to The Florida Building Code and Broward County Administrative Amendments thereto or an Engineering Permit issued by the Office of the CITY Engineer, or both, whichever the case may be.

Person means any individual, firm, partnership (general or limited), corporation, company, association, joint venture, joint stock association, estate, trust, business trust, cooperative, limited liability corporation, limited liability partnership, limited liability company or association, or body politic, including any heir, executor, administrator, trustee, receiver, successor or assignee or other person acting in a similar representative capacity for or on behalf of such Person.

Plans and Specifications means the signed and sealed engineering drawings, plans, specifications, schematics, drawings, details, and topographic survey for the Project Improvements to be installed, constructed, operated, maintained, repaired within and removed from the License Area(s), which such plans, specifications, drawings, details, etc. are on file in the Building Department under **Master Permit No. 10081291**.

Project means the implementation, construction, installation, operation, maintenance, repair and replacement from time to time of the Project Improvements within the designated License Area for the purpose of establishing, operating, maintaining and repairing, from time to time the Project Improvements as more particularly identified in **Exhibit “C”** to the RLA. The term *Project* also includes the ongoing obligation of maintenance and repair of the Project Improvements within the designated License Area, including reconstruction, repair or reinstallation of Project Improvements from time to time and shall also include the operational activities involved in the Project Improvements as more particularly set forth in the RLA. The term *Project* shall not include the possession, use or occupancy of the designated License Areas for any other purpose, except as expressly authorized in the Revocable License Agreement. The term *Project* includes any portion thereof.

Project Improvements means the placement, installation, construction, fabrication of certain improvements within the License Area as more particularly identified in the RLA and **Exhibit “C”** to the RLA. The term *Project Improvements* includes any portion thereof. The Project Improvements are demonstrated schematically on **Exhibit “C”** to the RLA.

Property means the real property identified as the “Burdened Parcel” in the RLA, a Sketch and Description of which is attached as **Exhibit “A”** to the RLA.

3. Compliance and Default. RELIANCE PROGRESSO hereby agrees to comply with each and every term and condition set forth in the RLA and this Agreement and failure to so comply shall constitute a default under this Agreement. Any acts or omissions by RELIANCE PROGRESSO or RELIANCE PROGRESSO'S contractors, agents or employees that are not in compliance with the terms and conditions of the RLA shall constitute a default under this Agreement.

4. Indemnification and Hold Harmless.

(a) RELIANCE PROGRESSO shall protect, defend, indemnify and hold harmless the CITY, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses charged or incurred, including reasonable attorney's fees actually incurred, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of RELIANCE PROGRESSO under the RLA and this Agreement, conditions contained therein, the location, construction, repair, maintenance use or occupancy by RELIANCE PROGRESSO of the License Area, Project Improvements or Project, or the breach or default by RELIANCE PROGRESSO of any covenant or provision of the RLA or this Agreement, except for any occurrence arising out of or resulting from the intentional torts or negligence of the CITY, its officers, agents and employees. Without limiting the foregoing, any and all such charges, claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the License Area by RELIANCE PROGRESSO or others, including but not limited to costs, charges and other expenses charged or incurred, including reasonable attorney's fees and costs actually incurred or liabilities arising out of or in connection with the rights, responsibilities and obligations of RELIANCE PROGRESSO under the RLA and this Agreement, or any actual violation of any applicable and known statute, ordinance, administrative order, rule or regulation or decree of any court by RELIANCE PROGRESSO, is included in the indemnity.

(b) RELIANCE PROGRESSO further agrees that upon proper and timely notice of probable RLA violations to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by the CITY, RELIANCE PROGRESSO shall assume and defend not only itself but also the CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to CITY, provided that the CITY (exercisable by the CITY's Risk Manager) The City shall retain the right to select counsel of its own choosing as deemed appropriate. This indemnification shall survive termination, revocation or expiration of the RLA and this Agreement and shall cover any acts or omissions occurring during the term of the RLA and this Agreement, including any period after termination, revocation or expiration of the RLA and this Agreement while any curative acts are undertaken.

5. Insurance. At all times during the term of the RLA and this Agreement, RELIANCE PROGRESSO, at its expense, shall keep or cause to be kept in effect the insurance coverages set forth in the RLA and RELIANCE PROGRESSO shall cause such coverage to be

extended to CITY as an additional insured and shall furthermore provide Certificates of Insurance to CITY at least fourteen (14) days prior to the commencement of the License Term and annually thereafter on the anniversary date of the policies.

6. Removal of Project Improvements and, Restoration of License Area.

(a) Except as may otherwise be expressly provided herein, it is agreed that upon termination of RLA, in whole or in part, as to the License Area, RELIANCE PROGRESSO shall remove all or any part of the Project Improvements and any components thereof and upon demand of COUNTY for removal of all or any part of the Project Improvements as to the License Area, and RELIANCE PROGRESSO shall restore the surface of the such License Area to conditions acceptable to the COUNTY as to the roadway and conditions acceptable to the CITY as to the sidewalk area and any impacted public utilities. Such removal and restoration shall be at RELIANCE PROGRESSO's sole cost and expense. In the event RELIANCE PROGRESSO fails to begin to remove all or any part of the Project Improvements contemplated herein with thirty (30) days after written demand by the COUNTY or CITY, the CITY is hereby authorized to remove such Project Improvements that interfere with the easement rights or the public's use of dedicated rights-of-way and restore the respective License Area to conditions acceptable to the COUNTY as to the roadway and conditions acceptable to the CITY as to the sidewalk area and any impacted public utilities, and all reasonable costs associated with the removal and restoration thereof shall be fully reimbursed by RELIANCE PROGRESSO.

(b). In the event RELIANCE PROGRESSO fails to remove the Project Improvements and CITY finds it necessary to remove the Project Improvements in accordance with the foregoing, then the total expense incurred by the CITY in removing the Project Improvements and the reasonable administrative costs associated therewith shall be considered a special assessment and lien upon the Property. RELIANCE PROGRESSO shall have sixty (60) days from the date of the statement of the total expenses incurred by the CITY and the administrative costs associated therewith within which to pay or contest to the CITY the full amount due. Failure to timely pay the amount due or serve upon the CITY Manager a written letter contesting the statement of assessed expenses and administrative costs after an adequate review of no less than sixty (60) days will result in the matter being scheduled before the CITY Commission for consideration of and adoption of a Resolution assessing against the Property the expenses and administrative costs associated with the CITY's removal of the Project Improvements. The Resolution may also impose a special assessment lien against the Property for the expenses and costs so assessed. A Notice of the Special Assessment assessed by the CITY Commission for the unpaid expenses and costs as stated above shall be recorded with the CITY Clerk and in the Public Records of Broward County, Florida. The assessed expenses and costs and the lien provided for herein may be foreclosed in the manner provided by law.

7. Emergencies. If an emergency situation arises with respect to the License Areas where the License Areas or any condition thereof presents an imminent threat to the health or safety of Persons or property, the CITY shall make reasonable efforts to provide telephone and fax or email notice to RELIANCE PROGRESSO's Contact Person. If, following that notice, RELIANCE PROGRESSO fails to take timely action to correct the emergency situation, and allowing the emergency situation to continue would pose an imminent threat to health or safety

to Persons or property, CITY may undertake such limited actions as are necessary to eliminate the emergency; and CITY shall be entitled to recover its reasonable costs of cure from RELIANCE PROGRESSO in accordance with provisions hereof. For the purposes of this Paragraph, RELIANCE PROGRESSO's Contact Person shall be **Olga Vazquez**, telephone number **(954 463-9110)**; and e-mail address: progressopoint@pmiflorida.com. In the event the RELIANCE PROGRESSO's Contact Persons or any other information pertaining to the RELIANCE PROGRESSO's Contact Person shall change, such change shall be provided to the CITY Engineer in writing.

8. Damage to Public Property. In the event the use, operation, maintenance, repair, construction, demolition or reconstruction of the Project Improvements cause(s) any damage whatsoever to any other public property, then RELIANCE PROGRESSO shall be responsible for the cost of repair and shall, at CITY's option, make said repairs, subject to CITY's reasonable satisfaction.

9. Notices.

(a) Except as provided in subparagraph (c) below, whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to any matter set forth in this Agreement, each such notice, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand delivery, or by a nationally recognized overnight courier, or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as RELIANCE PROGRESSO may from time to time designate by notice as herein provided.

(b) All notices, demands, requests or other communications hereunder shall be deemed to have been given or served for all purposes hereunder upon receipt if by hand delivery, or upon one (1) business day after deposit with such overnight courier as required above, or upon two (2) business days after deposit with the United States mail, postage prepaid, in the manner aforesaid, provided, however, that for any distance in excess of five hundred (500) miles, air mail service or Federal Express or similar carrier shall be utilized, if available.

AS TO CITY: City Manager
 City Fort Lauderdale
 100 North Andrews Avenue
 Fort Lauderdale, FL 33301

With copy to: City Attorney
 City of Fort Lauderdale
 100 North Andrews Avenue
 Fort Lauderdale, FL 33301

AS TO RELIANCE PROGRESSO:

Reliance Progresso Associates, Ltd.
613 N. Andrews Avenue
Fort Lauderdale, FL 33301
Need new address of property.

With a copies to: Ann Deibert, Assistant Secretary
Broward Workforce Communities, Inc.
4780 North State Rd 7Lauderdale Lakes, FL 33319

And:

David N. Tolces
Goren, Cherof, Doody & Ezrol, P.A.
3099 E. Commercial Blvd., #200
Fort Lauderdale, FL 33308

(c) As to activities under Paragraph 7, Emergencies, notice need not be given in accordance with subparagraph (a) above, but notice shall be sufficient if given to the Contact Person pursuant to Paragraph 11, Emergencies.

10. Independent Contractor. As between CITY and RELIANCE PROGRESSO, RELIANCE PROGRESSO is an independent contractor under this Agreement. In providing such services, neither RELIANCE PROGRESSO nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to RELIANCE PROGRESSO or RELIANCE PROGRESSO'S agents any authority of any kind to bind CITY in any respect whatsoever.

11. Joint Preparation. Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

12. Interpretation of Agreement; Severability. This Agreement shall be construed in accordance with the laws of the State of Florida. If any provision hereof, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Agreement or the application of the remainder of the provisions, shall not be affected. Rather, this Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Agreement, unless otherwise expressly provided. All terms and words used in this Agreement, regardless of

the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

13. Successors. This Agreement shall be binding on and inure to the benefit of the parties, their successors and assigns.

14. No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

15. No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based on this Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

16. Non-Discrimination. RELIANCE PROGRESSO shall not discriminate against any Person in the performance of duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

17. Records. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Chapter 119, Florida Statutes as applicable, and any resultant award of attorney's fees of non-compliance with that law.

18. Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

19. Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

20. Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement any controversies or legal problems arising out of this

Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **By entering into this Agreement, CITY and RELIANCE PROGRESSO hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement or any acts or omissions in relation thereto.**

21. Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds alone on the part of RELIANCE PROGRESSO be deemed Force Majeure.

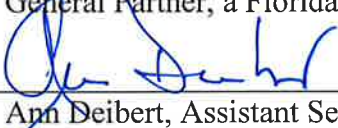
22. Recording. This Agreement shall be recorded in the Public Records of Broward County, Florida. CITY shall record the Agreement, subject to RELIANCE PROGRESSO reimbursing CITY for the cost thereof. A copy of the recorded Agreement shall be provided to RELIANCE PROGRESSO and filed with the CITY Clerk's Office of the CITY of Fort Lauderdale.

23. Term. This Hold Harmless Agreement shall continue in full force and effect until such time as the RLA becomes null and void by operation of law, or is terminated by a court order or mutual agreement between RELIANCE PROGRESSO, COUNTY and CITY and no obligations lying thereunder survive such termination.

IN WITNESS WHEREOF, the undersigned does hereby swear or affirm and warrant that they are authorized to enter into this Agreement by Reliance Progresso, a Florida limited liability partnership and the CITY OF FORT LAUDERDALE, and we have hereunto set our hands and seals this ___ day of _____, 2014.

RELIANCE PROGRESSO ASSOCIATES, LTD.

By: Broward Workforce Communities, Inc., its
General Partner, a Florida corporation

By: 
Ann Deibert, Assistant Secretary

STATE OF FLORIDA)
)SS
COUNTY OF BROWARD)

The foregoing instrument was acknowledged before me this 30 day of April, 2014, by Ann Deibert, Assistant Secretary of Broward Workforce

Communities, Inc., a Florida corporation, who is known to me or who has produced _____, as identification.



R. Szugajew
NOTARY PUBLIC

Type or Print Name

Commission No. EE 72750

My Commission Expires: 3-10-15