

DEVELOPMENT AGREEMENT
SCATTERED SITE INFILL HOUSING

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the date the last party signs this Agreement ("Effective Date") by and among:

**FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY**, a Community
Redevelopment Agency created pursuant to Chapter
163, Part III, Florida Statutes, hereinafter referred to
as "Agency";

and

GESMAC DEVELOPMENT INC., a Florida for
Profit Corporation hereinafter referred to as the
"Developer".

W I T N E S S E T H:

WHEREAS, the City Commission adopted Resolution No. 95-86 on June 2, 1995, finding the existence of slum and blight conditions in that area of the City of Fort Lauderdale, Florida (the "City") known as the Northwest-Progresso-Flagler Heights Community Redevelopment Area, as more particularly described in that resolution, (such area, as may be amended from time to time, being referred to herein as the "Redevelopment Area") and declared the City Commission to be the Community Redevelopment Agency for that area; and

WHEREAS, by adoption of Resolution 95-170, the redevelopment plan for the Redevelopment Area was approved by the City Commission on November 7, 1995 and was amended in 2001 by Resolution 01-86, in 2002 by Resolution 02-183, in 2013 by Resolution 13-137, in 2016 by Resolution 16-52 and in 2018 by Resolution No. 18-226 (the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan contemplates the redevelopment for single-family residential use in that part of the Redevelopment Area known and referred to as Sweeting Estates (the "Project Area"); and

WHEREAS, the Agency owns certain vacant parcels described in Exhibit A that are slated for construction of nine to eleven detached single-family homes for sale at an Approved Purchase Price (defined herein) to and for occupancy by Eligible Homebuyers (as defined herein); and

WHEREAS, the Agency published a request for proposals ("RFP"), Solicitation No. 12385-105 (the "RFP") for the development of single family homes or townhomes

in the Redevelopment Area; and

WHEREAS, Developer submitted a proposal for the development of the Property (the "Developer's Proposal") that, subject to such restrictions, terms and conditions as set forth herein, shall be conveyed to the Developer by the Agency; and

WHEREAS, on June 15, 2021, by Resolution No. 21-05 (CRA), the Board of Commissioners of the Agency approved an award of the Project to the Developer subject to the terms of this Development Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each of the parties hereto, the parties agree as follows:

ARTICLE 1 DEFINITIONS

As used in this Agreement the following terms shall have the following meanings:

"Affiliate", "Affiliated" or "Affiliated Person" means, when used with reference to a specific person:

- (1) Any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person;
- (2) Any Person that is an officer of, partner in, member of, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, partner, member, or trustee, or with respect to which the specified Person serves in a similar capacity;
- (3) Any Person that, directly or indirectly, is the beneficial owner of 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class or equity securities or other form of ownership, or in which the specified Person has a substantial beneficial interest (10% or more); or
- (4) A relative or spouse of the specified Person.

As used in this definition, the term "relative" shall include all the relationships specified in § 732.103, Florida Statutes (intestate succession) as they pertain to the Person or the

Person's spouse, instead of decedent (e.g. the term includes brother-in-law or father-in-law).

"Agency" means the Fort Lauderdale Community Redevelopment Agency created pursuant to Part III of Chapter 163, Florida Statutes and by City of Fort Lauderdale Resolution No. 95-86 adopted by the City Commission on June 20, 1995.

"Agreement" means this Development Agreement by and between the Agency and the Developer.

"Agency Documents" means this Agreement together with a Developer's and Eligible Homebuyer's Restrictive Covenant, Commercial Contract with Addendum, Promissory Note, Mortgage and Security Agreement to be executed by the Developer and Eligible Homebuyer in favor of the Agency to secure the stipulated value of the land, improvements and other obligations under this Agreement and such other certifications, affidavits and other instruments reasonably requested by the Agency.

"Approved Purchase Price" means the sale, transfer and closing on a Single Family Home with an Eligible Homebuyer for a purchase price that shall not exceed the sales price for each model as set forth in Exhibit "B". The Executive Director, or his designee, is delegated authority, in his sole discretion, to approve increases in the Approved Purchase Price, not to exceed ten percent (10%), provided the Developer proffers satisfactory evidence in writing of market increases in labor and material construction costs related to Vertical Improvements. The Developer must provide notice and documentation of a proposed increase at least sixty (60) days before closing on a Single Family Home with an Eligible Homebuyer. The difference in the final purchase price and the Approved Purchase Price may result in a recapture of a prorata portion of the value of the land in the event the increase is not approved.

"Authorized Representative" means as to the Agency, the Executive Director or his designee and Antonio Gestido, Jr. or his designee, as to the Developer.

"Builder" means Contractor.

"Building Code" means the code which governs design and construction of infrastructure improvements, building and construction standards, review of plans for construction and infrastructure improvements, issuance of building permits, inspections for compliance with construction standards, issuance of Certificate of Occupancy, issuance of Certificate of Completion and other matters pertaining to construction of structures in the City.

"Building Permit" means, for each part of the infrastructure and improvements to be constructed on the Project, any building permit or development approval issued by the appropriate department, office or official of the City (or other governmental authority having jurisdiction over the Project) charged with reviewing the plans, specifications, drawings, details and other construction documents for compliance with the Building Code and other similar codes applicable to that part of the Project being constructed

thereon, and having the authority to issue building permits or development approvals for infrastructure improvements or construction of buildings, structures or other improvements in accordance with construction documents therefor reviewed and approved by such department, office or official. All Building Permits for Vertical Improvements shall be issued by the appropriate governing jurisdiction within 180 days from the Effective Date of this Agreement.

"Contractor" means one or more individuals or firms constituting a general contractor properly licensed by Broward County, the State of Florida or other appropriate jurisdiction to the extent required by applicable law to perform contracting services to construct the Improvements, bonded to the extent required by applicable law and contract specifications. For purposes of this Agreement, the Contractor is Antonio Gestido, Jr.

"Certificate of Occupancy or C/O" means wherever this term is used herein it shall refer to a final certificate of occupancy for a Single Family Home issued by the City's building official pursuant to the Florida Building Code.

"City" means the City of Fort Lauderdale, a municipal corporation of the state of Florida.

"City Commission" means the elected officials and governing body of the City.

"Closing Date" means the date the Developer closes on its construction loan with a lender approved by the Agency, which approval shall not be unreasonably withheld, delayed or conditioned or provides satisfactory evidence it has sufficient funds to perform its obligations under this Agreement, which date shall be not later than 180 days from the Effective Date of this Agreement.

"Commencement Date" means, for purposes of this Agreement, commencement of construction no later than sixty (60) days after a Building Permit is issued by the governing authority over construction of the Improvements.

"Completion Date" means the date on which a Certificate of Occupancy is issued for all Single Family Homes and the Developer has closed on the Single Family Home with an Eligible Homebuyer which date shall be no later than two (2) years after the Effective Date, subject to Force Majeure (as defined in 15-6) and extensions approved by the Executive Director.

"Contract Administrator" means the Executive Director of the Agency or his or her designee. For purposes of approval under Article 5, the Area Manager of the Redevelopment Area is the Contract Administrator.

"CRA Advisory Board" means the City of Fort Lauderdale Northwest-Progresso-Flagler Heights Community Redevelopment Agency Advisory Board appointed by the City Commission to advise the City and CRA Board regarding community redevelopment matters affecting the Redevelopment Area.

"CRA Board" means the governing board of the Agency.

"Developer" means GESMAC Development Inc., a Florida for Profit Corporation.

"Declaration of Restrictive Covenant" (Eligible Homebuyer) means that instrument executed by the Eligible Homebuyer at closing on the Single Family Home in favor of the Agency, and recorded in the public records of Broward County, Florida, in form and content acceptable to the Agency. The Declaration of Restrictive Covenant shall provide, in part, that the Eligible Homebuyer shall reside on the Single Family Home as their permanent place of residence a minimum of seven (7) years. If they fail to do so, then the Eligible Homebuyer may be required to repay the unimproved value of the land as of the date of the default, based on an MAI appraisal paid for by the homebuyer.

"Declaration of Developer Restrictive Covenants" means that instrument executed by Developer at closing in favor of the Agency and recorded in the public records of Broward County, Florida, in form and content attached hereto as Exhibit "C".

"Effective Date" means the last date on which this Agreement is executed by the later of the Developer or the Agency.

"Eligible Homebuyer" means an individual or family approved by the Agency for purchase of a Single Family Home, who provides such information as requested by the Agency, who agrees to reside within the Single Family Home as their principal place of residence, for at least seven years and further agrees to execute a Declaration of Restrictive Covenants (Eligible Homebuyer), Promissory Note, Mortgage and such other documents as requested by the Agency,

"Improvements" means any buildings, structures, infrastructure and other improvements shown in the Developer's Proposal to be constructed on the Property in accordance with this Agreement, including, without limitation, all Single Family Homes, and all other improvements appurtenant to such residential units.

"Person" means any individual, corporation, firm, partnership, trust, association, or other entity of any nature.

"Plans and Specifications" means the documents required for the construction of the Vertical Improvements and infrastructure improvements or connections, as applicable, that may include predesign plans and drawings, preliminary plans and building, electrical and mechanical drawings, schematic design documents, design development documents, together with all amendments and modifications thereof, approved by Agency and the Developer as provided in this Agreement. Plans and Specifications shall include written instructions to the Builder for materials, workmanship, style, color and finishes.

"Project" means the financing, marketing, design and construction by the

Developer of Single Family Homes in accordance with the Project Development Plan (defined herein), Project Schedule and Project Budget and the sale and conveyance to Eligible Homebuyers approved by the Agency.

"Project Budget" means the budget prepared by the Developer as described in Exhibit "D" that shows the anticipated line items and the estimated costs for all the items that the Developer expects to incur in connection with design and development of the Project, construction of the Improvements and sale to the Eligible Homebuyers.

"Project Development Plan" means the plan prepared by the Developer as described in Exhibit "E" on which includes the anticipated plot plan, floor plans and elevations for the Vertical Improvements and any infrastructure improvements or connections, as applicable and includes minimum features of each Single Family Home.

"Project Schedule" means the schedule and time frame for the submittal of applications for approvals required by this Agreement, and for the commencement and completion of Improvements pursuant to this Agreement, further described in Exhibit "F" attached to this Agreement

"Property" means the real property legally described in Exhibit "A" attached hereto.

"Reasonable Efforts" means a good faith attempt by a Person to cause a result, but not an assurance or guarantee that such result will be achieved

"Redevelopment Area" means the Northwest-Progresso-Flagler Heights Community Redevelopment Area, as designated by Resolution 95-86, as may be amended from time to time.

"Single-Family Home" means a dwelling unit designed and constructed according to the Project Development Plan, Project Budget and Project Schedule to be occupied by an individual or one (1) family and specifically including only single family dwellings as defined and regulated by the Unified Land Development Regulations of the City of Fort Lauderdale. Each Single Family Home shall have the standard features described in the RFP.

"Vertical Improvements" means above grade buildings and structures for which a building permit is required.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement. Words used herein in the singular shall include the plural and words in the masculine/feminine/neuter gender shall include words in the masculine/feminine/neuter where the text of this Agreement requires.

ARTICLE 2 PURPOSE

2.1 The purpose of this Agreement is to promote implementation of the Redevelopment Plan by providing for conveyance of the Property to the Developer, subject to the terms and conditions set forth herein, for the development and construction of the Project in accordance with the Project Development Plan, Project Schedule and Project Budget to create quality homes for Eligible Homebuyers, to create stable communities and to enhance the quality of life, improve the aesthetic and useful enjoyment of the Redevelopment Area through the elimination of slum and blight, all in accordance with and in furtherance of the Redevelopment Plan and as authorized by and in accordance with the Act.

2.2 After review of the Developer's Proposal, the Agency accepted Developer's Proposal as being in the public interest and in furtherance of the goals, objectives and provisions of the Redevelopment Plan and authorized negotiation of a Development Agreement to set forth the respective duties and responsibilities of the parties pertaining to the terms and condition for development of the Project.

2.3 The RFP and Developer's Proposal are incorporated in this Agreement as if fully set forth herein. In the event of a conflict between the RFP, Developer's Proposal and this Agreement, the terms of this Agreement shall control. Any modification of the Plans and Specifications is subject to the approval procedure in Article 5 of this Agreement.

2.4. Subject to approval of the Board of Commissioners of the Agency, the Agency may award additional RFP parcels to the Developer under the same or similar terms and conditions of this Agreement, the RFP and other documents, after the Developer receives a certificate of occupancy and closes with an Eligible Homebuyer on all Single Family Homes within its grouping according to the terms and conditions of this Agreement and the Developer Declaration of Restrictive Covenants. The Agency reserves the right to impose new or additional terms as a condition of an award of subsequent parcels. Only parcels which were included in the initial RFP but were not awarded to other developers or parcels which have been returned to the Agency from other Developers are eligible for subsequent awards to the Developer. On a first come basis, subject to award by the CRA Board, the Developer must send by certified mail on their letterhead a request for award of additional RFP parcels together with proof that their initial properties have all received certificates of occupancy and have been closed and conveyed to Eligible Homebuyers. All remaining available properties will be collapsed into one group. Selection of not to exceed five (5) properties may be assigned to the Developer by random drawings by an impartial individual. The Developer shall have the right to reject a lot but shall not have to right to receive an alternative lot.

ARTICLE 3
PROJECT IMPLEMENTATION

3.1 **Conditions for Conveyance of Property to Developer.** In consideration of the Developer constructing the Project on the Property as more specifically provided herein, the Agency agrees to convey the Property to the Developer, subject to the terms, conditions and restrictions set forth herein and in the Commercial Contract and Addendum.. Upon closing the Agency shall execute a Special Warranty Deed, which deed shall incorporate a right of reverter in the event of a default under this Agreement and shall reference this Agreement and the Developer's obligations hereunder in favor of the Developer or an approved single purpose entity owned and controlled by the Developer or its principals. Subject to force majeure as described in paragraph 15-6 and any extensions granted by the Executive Director as provided in Article 7, the Developer shall receive a Certificate of Occupancy and close on a Single Family Home with an Eligible Homebuyer within two (2) years from the Effective Date of this Agreement.

3.2 **Conditions.**

The following conditions are required to be met by Developer at the time provided in the Project Schedule and at the time of transfer of the Property to the Developer:

- 3.2.1 Closing on Developer's construction financing with a financial institution approved by the Agency or satisfactory evidence that it has sufficient funding to make the Improvements in accordance with the Project Development Plan, Project Schedule and Project Budget. Closing shall occur within one hundred eighty days (180) after the Effective Date of this Agreement unless extended by the Executive Director. While the Agency will not subordinate the Declaration of Developer's Restrictive Covenants to the lien of the construction lender, the Agency agrees to subordinate the lien of its second mortgage and related security instruments to a first mortgage in favor of a regulated financial institution providing construction financing for the Improvements which loan shall include a partial release price for each Single Family Home and such other terms and conditions which will facilitate the sale of the Single Family Homes to Eligible Homebuyers; and
- 3.2.2 Execution and delivery of a Promissory Note, Second Mortgage and Security Agreement, Declaration of Developer's Restrictive Covenants in favor of the Agency in form and substance acceptable to the Agency; and
- 3.2.3 Such other certificates, affidavits and instruments as reasonably requested by the Agency.

- 3.2.4 Satisfactory Evidence that the City has approved issuance of a building permit for the Vertical Improvements subject to payment of permit fees.
- 3.2.5 Issuance of a Title Commitment and subsequent lender's title policy, at Developer's expense, to insure the Agency's security interest in the Property with the Developer bearing responsibility to pay the owner's title premium and title search fees. Such title commitment shall agree to delete all standard exceptions agree to issue Florida Form 9 coverage and Environmental endorsements and subject to permitted title exceptions approved by the Agency.
- 3.2.6 Agency approval of the final Plans and Specifications for the Vertical Improvements.
- 3.2.7 Developer provides a template of its Purchase and Sale Agreement between the Developer and the Eligible Homebuyer, for review and approval by the Agency, for Eligible Homebuyers which agreement adequately discloses that the homebuyer is required to sign the Agency documents and must agree to reside on the Property a minimum of seven (7) years as their principal place of residence. If not, the Eligible Homebuyer may be required to repay the Agency unimproved value of the land.

3.3 Closing. If all conditions provided in this Agreement have been met, the Property shall be conveyed to Developer subject to the terms, conditions and restrictions provided in this Agreement, the Special Warranty Deed and the Developer Restrictive Covenant. Subject to the conditions set forth herein, the Developer Restrictive Covenant shall be partially released upon closing on a Single Family Home with an Eligible Homebuyer and execution and delivery of a Declaration of Restrictive Covenant executed by the Eligible Homebuyer in favor of the Agency. Developer shall bear all transactional cost, fees, expenses and taxes of transferring the Property and closing on its financing with the Agency.

3.4 After Closing. The Developer shall construct the Project in accordance with the Project Schedule, Project Development Plan and Project Budget and is required to sell the Single Family Home to an Eligible Homebuyer at the Approved Purchase Price which shall not include the value of the land. As to the Developer only, the parties hereby stipulate that the value of each vacant parcel is set forth in CRA Resolution No. 21-05. If the Eligible Homebuyer is required to secure an appraisal under his or her Declaration of Restrictive Covenant for Eligible Homebuyers, the cost of the appraisal shall be borne by the Eligible Homebuyer. The appraisal shall be prepared by an independent appraiser with an MAI designation and licensed to practice in the State of Florida with at least five (5) years of experience appraising residential property in Broward County, Florida.

3.5 Conditions for Release of the Declaration of Developer's Restrictive Covenants and Partial Release of Mortgage.

To secure a partial release of the Declaration of Developer's Restrictive Covenants and a Partial Release of Mortgage and to satisfy one of its primary obligations under this Agreement, the following conditions are required to be met by Developer:

- 3.5.1 Satisfactory proof that the potential homebuyer qualifies as an Eligible Homebuyer as determined by the Agency in its sole discretion; and
- 3.5.2 Copy of the signed Purchase and Sale Agreement; Closing Statement with an Approved Purchase Price between the Eligible Homebuyer and the Developer, General Contractor's final affidavit, final releases of lien from the contractor and subcontractors, materialmen and lienors and other closing documents as requested by the Agency; and
- 3.5.3 Declaration of Restrictive Covenant (Eligible Homebuyer) executed by the Eligible Homebuyer to be recorded in the Public Records of Broward County, Florida which declaration shall run in favor of the Agency and provides that the Eligible Homebuyer shall reside within the Single Family Home as his or her permanent place of residence for a minimum of seven (7) years; and
- 3.5.4 Issuance of a Certificate of Occupancy for the Single Family Home identified in the Purchase and Sale Agreement; and
- 3.5.5 Such other certifications, affidavits and instruments reasonably required by the Agency; and
- 3.5.6 Satisfactory evidence that the value of the land is not part of the consideration paid by the Eligible Homebuyer and has been used by the Eligible Homebuyer as leverage towards purchase of the Single Family Home.
- 3.5.7 Satisfactory evidence of Developer's closing with the Eligible Homebuyer along with a copy of the deed of conveyance from the Developer to the Eligible Homebuyer.

Upon receipt and acceptance of these instruments and closing with the Eligible Homebuyer, the Agency shall partially release the Declaration of Developer's Restrictive Covenant and issue a Partial Release of Mortgage in favor of the Developer.

3.6 Deed of Conveyance; Restrictions.

3.6.1 Agency shall convey title to the Property, at closing, subject to the restrictions as provided in this Agreement, by Special Warranty Deed subject to taxes for the year of closing and subsequent years, oil, gas, mineral rights with right of entry released, matters of plat, reservations, restrictions, easement, covenants and conditions of record, governmental regulations, matters of record, unpaid code violations, unpaid utility bills and special assessments, right of reverter and matters otherwise accepted by the Developer.

3.6.2 The Agency and Developer agree that the Property shall be owned, held, used, transferred, sold, conveyed, demised, occupied, possessed and used subject to the Declaration of Developer's Restrictive Covenants, reservations, regulations and burdens set forth in this Agreement and the deed of conveyance shall make reference thereto. The Developer shall execute a Declaration of Developer's Restrictive Covenants, which shall be binding upon the Developer and its successors and/or assigns. Such Declaration of Developer's Restrictive Covenants shall be recorded in the Public Records of Broward County, Florida at Developer's expense simultaneous with the deed of conveyance. Such declaration assures that the uses contemplated by the Agreement shall continue to inure to the benefit of the community within the basic intent of this Agreement, assures that the Developer designs, constructs and conveys the Single Family Homes to Eligible Homebuyers for the Approved Purchase Price in accordance with this Agreement and the Project Development Plan. Such Declaration of Developer's Restrictive Covenants shall include the provisions of the Articles listed therein and shall refer to the whole of the Agreement. In the event of conflict between terms and conditions of the Declaration of Developer's Restrictive Covenants and this Agreement, the terms and conditions of this Agreement shall prevail.

3.7. Right to Enforce.

3.7.1 The parties stipulate and agree that for enforcement purposes the Declaration of Developer's Restrictive Covenants shall run in favor of the Agency until closing with an Eligible Homebuyer, without regard to whether the Agency has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such restrictive covenants relate. The Agency shall have the right, in the event of any breach of the restrictive covenants provided for herein, to exercise all the rights and remedies available to the Agency including the maintenance of any actions at law for damages, for declaratory relief or actions in equity for the enforcement of the

terms hereof.

- 3.7.2 The Agency may enforce the restrictive covenant in any judicial proceeding in any court of competent jurisdiction seeking any remedy cognizable at law or in equity, including injunctive relief, specific performance or any other form of relief against any Person violating or attempting to violate any term or condition of the restrictive covenant. The failure of the Agency to enforce any provision contained in either Restrictive Covenant shall in no event be deemed a waiver of such provision or of the right of the Agency to thereafter enforce such provision. The prevailing party in any such litigation shall be entitled to the award of court costs and reasonable attorneys' fees at both the trial and appellate levels, including mediation relating thereto.
- 3.7.3 It is intended and the parties do hereby stipulate and agree that the Declaration of Developer's Restrictive Covenants and Declaration of Restrictive Covenant (Eligible Homebuyer) executed by the Eligible Homebuyer shall so expressly provide, that the restrictive covenants referenced therein, shall be covenants running with the land and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, and except only as to otherwise specifically provided in the Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Agency as against Developer, Eligible Homebuyer or their heirs, successors or assigns as to the Property or each Single Family Home. It is further stipulated and agreed that both restrictive covenants provided for herein shall be binding on all parties and Persons claiming under them or claiming any right, title or interest in and to the Single Family Home conveyed, for a period terminating seven (7) years after occupancy by the Eligible Homebuyer. As to the Developer, the Restrictive Covenant shall remain in full force and effect until the conditions for release have been satisfied or title to the Property has been returned to the Agency. For the purposes of enforcement of the restrictive covenants, the parties stipulate and agree that a violation thereof constitutes an irreparable injury for which there is no adequate remedy at law.
- 3.7.4 It is the intent of the Agency that the Eligible Homebuyer shall use the value of the land, as secured by a Note and Mortgage in favor of the Agency, as leverage to secure acquisition financing. In exchange, the Eligible Homebuyer shall agree to reside on the parcel a minimum of seven (7) years as his or her principal place of residence. Failure to do so shall result in a recapture of the full value of the land as stipulated by the Agency, its successors and/or

assigns based on an acceptable appraisal paid for by the Eligible Homebuyer.

ARTICLE 4
INTENTIONALLY OMITTED.

ARTICLE 5
PROJECT DEVELOPMENT PLAN

5.1 **Project Development Plan.** The Agency acknowledges that the Developer has prepared and completed a Project Development Plan for development of Single Family Homes on the Property. Agency hereby approves the Project Development Plan which is conceptual in nature, subject to the Vertical Improvements meeting the requirements of the Unified Land Development Regulations of the City of Fort Lauderdale and such other laws, rules and regulations applicable to the development described and shown in the Plan and described in this Agreement. Prior to the submission to the City of an application for the first building permit for the construction of the Vertical Improvements or for the first engineering permit for construction or installation of any infrastructure improvements, the Developer shall submit the final Plans and Specifications for the Vertical Improvements to the Contract Administrator for a determination that the Plans and Specifications are consistent with the Project Development Plan in effect at the time of such submission. Any such requests shall be acted upon by the Contract Administrator within fourteen (14) days of the submission of such request or the Plans and Specifications will be deemed to be consistent with the Project Development Plan by the Agency. If the Contract Administrator determines that the Plans and Specifications are not consistent with the Project Development Plan, the Developer will have thirty (30) days to either: (a) give notice of a Termination Event in accordance with Article 13 of this Agreement; or (b) modify the Plans and Specifications as required by the Contract Administrator. If the Developer submit(s) modifications to the Plans and Specifications as required by the Contract Administrator, the Contract Administrator shall determine if such modifications are consistent with the Project Development Plan. If the Developer and Contract Administrator cannot reach agreement then the Developer may give notice of a Termination Event in accordance with Article 13 of this Agreement.

5.2 **Modification.** Any proposed modifications to the Project Development Plan, shall be submitted to the Contract Administrator for approval, which approval will not be unreasonably withheld. However, all modifications must substantially conform to the Project Development Plan and such modification must relate to impediments of the sites or other construction obstacles and not related to constructing less expensive Single Family Homes unless otherwise approved by the Agency in its sole discretion.

Any request for approval of a modification shall be acted upon by the Contract Administrator within fourteen (14) days of submission of such request or such request shall be deemed approved by the Agency. The Contract Administrator may approve,

deny, or approve the proposed modifications subject to conditions. If the proposed modifications are denied or approved with conditions, the Developer will have thirty (30) days to either: (a) give notice of a Termination Event in accordance with Article 13 of this Agreement; or (b) include the conditions or changes in the Project Development Plan. If the Developer includes the changes, the revised modifications to the Project Development Plan will be resubmitted to the Contract Administrator, and if it is determined that changes conform with the conditions requested, the Contract Administrator will approve such modifications. If the Developer and Contract Administrator cannot reach agreement then the Developer may give notice of a Termination Event in accordance with Article 13 of this Agreement.

5.3 Zoning, Vacation of Streets, other Government Approvals. The Developer acknowledges and agrees, to obtain or cause to be obtained at its own expense, all appropriate approvals, permits, subdivisions variances, rezonings, street vacations or waivers necessary under applicable law rules and regulations including building permits for construction of the Project as contemplated by this Agreement and as required by the applicable governmental authority. The Developer shall comply with all applicable zoning, subdivision, land use and/or environmental laws; provided that the foregoing shall not relieve the Developer of the obligation to pay water charges, pollution control charges and electrical service charges with respect to the Vertical Improvements, at their normal rates or levels. Nothing in this Agreement shall waive the City's police powers and obligations with respect to the review of development approval applications acting in its governmental and regulatory capacity.

5.4 Permits. All Vertical Improvements shall be constructed by the Developer pursuant to a building or engineering permit or permits, as applicable, issued by the City covering each such improvement. The Developer is responsible for obtaining all required permits for Vertical Improvements and infrastructure improvements and/or connections as applicable and required from any and all jurisdictional authorities.

5.5 Approval by Other Governmental Agencies. All Plans and Specifications must be approved by such other governmental agencies, whether state, local, or federal, that have jurisdiction and require approval of them. Plans and Specifications shall be prepared, construction of all Improvements shall be carried out and all obligations of the Developer as provided in this Agreement shall be carried out and use of the Project shall be in accordance with all applicable rules, laws, ordinances and governmental regulations of all governmental agencies having jurisdiction over such matters. The Developer is responsible for obtaining all required approvals as applicable and required from any and all jurisdictional authorities.

5.6 Changes to Project Schedule. If required, due to changes in the Project Development Plan, the Project Schedule shall be revised by Developer to reflect such changes to the Project Development Plan.

5.7 Submission of Applications for Development Permit Approval. If zoning, site plan or vacation or other development approvals necessary to construct the Vertical

Improvements in accordance with the Project Development Plan are not approved, Developer may:

- 5.7.1 Amend the Project Development Plan with approval of Contract Administrator as provided in this Agreement; or
- 5.7.2. Delete the parcels that cannot be developed as a result of the denial of a development approval application and elect to give notice of the occurrence of a Termination Event in accordance with Article 13 of this Agreement with respect to such parcel.

5.8 Submission of Project Documents. During the course of constructing all Improvements, the Developer will, upon request, submit to the Agency copies of the following (herein collectively called "Project Documents"):

- 5.8.1 All soil test, engineering studies, feasibility studies, plans, specifications and related documents, studies, tests, plans and drawings concerning any item comprising the Improvements;
- 5.8.2 Preliminary plans and specifications for the Vertical Improvements, including but not limited to all civil, architectural, structural, mechanical, electrical and landscaping plans and specifications, soil borings and foundation plans;
- 5.8.3 Final plans, specifications, construction drawings, permits and related documents concerning the Vertical Improvements; and
- 5.8.4 Any revisions, corrections, amendments, or supplements to any of the foregoing.

ARTICLE 6 THE DEVELOPMENT

6.1 Scope of Development. The Developer shall be responsible for arranging, managing, overseeing, coordinating, and administering the total development subject to the terms and conditions provided in this Agreement. The Developer shall construct and develop, or cause to be constructed and developed, all Vertical Improvements which the Developer is obligated to construct and develop in accordance with the Project Schedule, and subject to the conditions established in this Agreement. The Developer shall assume responsibility for securing the necessary financing, for constructing, including design, architectural, engineering and survey elements, paying permit and impact fees, water and sewer connections and other infrastructure improvements, marketing and promoting the Project, educating potential homebuyers, securing and closing with Eligible Homebuyers and all fees, costs and expenses related thereto.

6.2 Authority of Agency to Monitor Compliance. During all periods of design and construction, the Contract Administrator shall have the authority (at no cost to the Developer) to monitor compliance by the Developer with the provisions of this Agreement and the Project Development Plan. To that end, during the period of construction and without prior notice to the Developer, or any Builder, representatives of the Agency shall have the right of access to the Project and Property and to every structure within the Project and on the Property during normal construction hours. Agency monitoring of compliance shall not be in lieu of normal engineering or building inspections for any element or sub-element of the Vertical Improvements or infrastructure improvements or connections as required by other jurisdictional authorities.

ARTICLE 7 PROJECT SCHEDULE

7.1 The Developer and the Agency staff have jointly prepared a Project Schedule setting forth specific dates for the performance of each party's respective obligations under this Agreement (herein called the "Project Schedule"). The Project Schedule is hereby approved by the Agency and the Developer. Subject to the terms of this Agreement, the Developer hereby agrees to undertake and complete the construction and development of the Project in accordance with this Agreement and the Project Schedule, and to use all Reasonable Efforts to comply with all of the obligations and abide by all the dates set forth therein. The Agency hereby agrees to complete those acts to be performed by the Agency within the dates set forth in the Project Schedule, and to use all Reasonable Efforts to cause those acts to be performed by the City described in the Project Schedule to be completed within the dates established by the Project Schedule, and to otherwise comply with all of the obligations of the Agency and abide by all the dates set forth therein. The Project Schedule may be modified by Developer upon providing advance notice of such modification to the Agency for good cause, subject to approval by the Contract Administrator which approval will not be unreasonably withheld. Any request for such approval shall be acted upon by the Contract Administrator within fourteen (14) days of submission or such request shall be deemed approved by the Agency. In any event, construction and development of the Project and closing on a Single-Family Home with an Eligible Homebuyer shall be completed no later than twenty four (24) months from the Effective Date of this Agreement, provided however, the Agency may approve up to two (2) consecutive six (6) month extensions for such completion upon the request of the Developer for good cause, which approval will not be unreasonably withheld. The Project Schedule will be extended for events constituting Force Majeure as provided in Section 15-6 hereof; including delays caused by the Agency.

7.2 Timing of Completion. Each part of the Project and the Project as a whole shall be completed by the dates set forth in the Project Schedule unless amended by the Parties hereto in writing.

ARTICLE 8

ADDITIONAL CONDITIONS FOR PARTICIPATION

8.1 Conditions to Construction. The obligations of the Agency to participate in the Project as described in this Agreement is subject, without limitation, to satisfaction of the following conditions:

8.1.1 The Developer has satisfied all conditions to participation set forth in this Agreement.

8.1.2 On the date hereof and subsequent thereto, the Developer shall be in compliance with all the terms and provisions set forth in this Agreement and its part to be observed or performed, and no default or Event of Default (as such terms are defined herein) shall have occurred which remain uncured

8.2 Other Documents. The Agency, shall have received on or before the date of any disbursement hereunder such other documents or items as the Agency may reasonably request

8.3 Compliance with Consultant's Competitive Negotiation Act. In contracting for any design services for public infrastructure improvements or any public improvements, the Developer shall comply, to the extent required by law, with the requirements of the Consultant's Competitive Negotiation Act (Section 287.055, Florida Statutes).

8.4 Taxes and Other Charges. Upon acquiring title to the Property, Developer must pay all ad valorem and non-ad valorem taxes and other governmental fees, charges or assessments that are related to the Property or personalty situated thereon or operations conducted thereon until transfer of a Single-Family Home to an Eligible Homebuyer. Developer shall pay all such taxes and other charges when due and before any fine, penalty, interest or other cost is added, becomes due, or is imposed by operation of law for nonpayment. These taxes and other charges include, but are not necessarily limited to the following:

8.4.1 All taxes, assessments, water, sewer, connection fees, garbage rates and charges, public utility charges, excise levies, licenses and permit and impact fees;

8.4.2 All such charges whether they are general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied, confirmed or imposed upon the Property or use thereof or improvements thereto or personalty situated thereon;

8.5 Nothing in this subsection shall require the payment of any such sum if the Developer promptly notifies the Agency and the City and by appropriate proceedings contests the same in good faith. Developer may contest the validity of any tax, tax claim, or charge or assessment, described herein without being in default for

nonpayment of taxes under this Agreement, provided Developer complies with terms and conditions of this Section. Developer must give Agency written notice of Developer's intention to contest and Developer must also furnish Agency with a bond with surety by a surety company qualified to do business in the State of Florida or cash paid into escrow and held by Agency. The bond or cash must be in an amount equal to the amount of the taxes, claim, charge or assessment together with estimated penalties and interest being contested and must be conditioned upon payment of the taxes, claim, charge or assessment once the validity has been determined. Developer must give the written notice accompanied by evidence of the bond or escrow to Agency not later than sixty (60) days before the contested taxes would otherwise become delinquent.

8.6 Bonds to be Provided by the Developer (Letter of Credit).

8.6.1 Bonds. Prior to commencement of construction of the Vertical Improvements, Developer shall provide satisfactory proof that it has secured statutory payment and performance bonds, along with proof of payment of the full premium, pursuant to Florida Statute Chapter 713 and Florida Statute Chapter 255 (for itself or from its respective contractor(s)) for construction of the Vertical Improvements and infrastructure improvements related thereto, written by a corporate surety company on the U.S. Department of Treasury's current approved list of acceptable sureties on Federal Bonds, as found in the U.S. Department of Treasury Circular No. 570, as same may be updated from time to time in the full amount of any contract entered into by Developer with said bonds being executed and issued by a resident agent licensed by and having offices in the State of Florida representing such corporate surety at the time such capital improvements are constructed, conditioned upon full and faithful performance by Developer or any contractor, if applicable, of such contract, and full payment to all laborers and materialmen supplying labor or materials for such improvements. Such bonds shall identify the Agency as an additional or dual obligee. If the bonds are provided by the Contractor, the bond shall provide that a default by Developer in the performance of the contractor's contract, shall not be raised as a defense to the Agency as one of the obligee's requiring performance of such construction contract by the surety. The Performance Bond shall be in the amount of not less than the costs of construction of the Vertical Improvements. The principal amount of the Performance Bond shall be reduced by a pro rata cost of construction of a Single-Family Home as determined by the Contract Administrator as evidenced by the issuance by the City of a Certificate of Occupancy for each Single Family Home conveyed to a Eligible Homebuyer; provided, however, the amount of the Performance Bond shall not be reduced below the value of Vertical Improvements remaining to be completed.

- 8.6.2 Letter of Credit. As an alternative to a Payment and Performance Bond, the Developer may, with the consent of Agency, obtain and furnish an irrevocable letter of credit in the amount not less than the costs of construction of the Vertical Improvements on the Property on which the Developer will construct Single-Family Homes.

ARTICLE 9 INSURANCE

9.1 Insurance.

- 9.1.1 The Developer, according to the scope of development undertaken, will maintain, at their sole cost and expense, adequate insurance with responsible insurers with coverage normally obtained by businesses similar to that of the Developer but covering at least: (i) damage to physical property from fire and other hazards for the full insurable value of such property; (ii) liability on account of injury to persons; and (iii) insurance against theft, forgery or embezzlement or other illegal acts of officers or employees in reasonable amounts.
- 9.1.2 The Developer at their sole cost and expense, with the Agency listed as an additional named insured, shall also obtain and maintain the following policies of insurance:
- 9.1.2.1 Builders risk insurance until construction of the Improvements has been completed. Such policy to be obtained by the Developer shall be in an amount of no less than one hundred percent (100%) of the replacement value of all Single-Family Homes required to be constructed by the Developer under this Agreement.
- 9.1.2.2 Flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any amendment or successor act thereto) in an amount at least equal to the value of the Improvements or the maximum limit of coverage available with respect to the Improvements under such Act, whichever is less.
- 9.1.2.3 Commercial General Liability insurance, broad form with

endorsements naming the Agency as additional insured. The Developer may choose to provide this coverage through an O.C.P. (Owner's, Contractor's Protective) Policy with review and approval by the Agency.

9.1.2.4 Such other insurance as may be from time to time be reasonably required by the Agency in order to protect its interests and which is customarily required by institutional mortgagees with respect to similar properties similarly situated.

9.1.3 All policies of insurance (the "Policies") required pursuant to this Section:

9.1.3.1 shall be issued by insurers reasonably satisfactory to the Agency;

9.1.3.2 shall be maintained throughout the term of this Agreement without cost to the Agency;

9.1.3.3 if requested, copies delivered to the Agency; shall contain such provisions as the Agency deem reasonably necessary or desirable to protect its interests, including, without limitation, endorsements providing that neither the Agency nor any other party shall be a co-insurer under such Policies and that the Agency shall receive at least thirty (30) days prior written notice of any modification or cancellation; and

9.1.3.4 shall be satisfactory in form and substance to the Agency and shall be approved by the Agency, in its reasonable discretion, as to amounts, form, risk coverage, deductibles, loss payees and insureds.

9.1.4 The Developer shall pay the premiums for the Policies as the same become due and payable.

9.2 Maintenance Costs. It is understood and agreed that Developer shall be responsible for all matters pertaining to the Project and all costs, fees, taxes, conditions, or any other matter associated with the Project. The Developer shall maintain the Property in a clean, sanitary, and safe condition. No portion of the Property shall be allowed to become or remain overgrown or unsightly nor be used or maintained as a dumping ground for rubbish. The Developer shall, at its own expense and subject to reasonable construction conditions and activities, keep the Property in good and clean order and condition and will promptly make all necessary or appropriate repairs, replacements, and renewals, thereof, whether interior or exterior, structural, or non-structural, ordinary or extraordinary, foreseen or unforeseen. All

repairs, replacements and renewals shall be equal in quality and class to the original work. When making such repairs, replacements and renewals, the Developer shall comply, if legally required, with all laws, ordinances, codes, and regulations then applicable to the Project or Property.

9.3 Waste. The Developer shall not permit, commit or suffer waste or impairment of the Project or the Property except as may be due to construction activity on the Property.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

10.1 Approval of Agreement. By the execution hereof:

10.1.1 The Agency represents that the execution and delivery hereof has been approved at a duly convened, properly noticed, meeting of the Agency and the same is binding upon and enforceable against the Agency in accordance with its terms.

10.1.2 The Developer represents that: (i) the execution and delivery hereof has been approved by all Persons whose approval is required; (ii) this Agreement is binding upon the Developer and enforceable against it in accordance with its terms; (iii) the Persons executing this Agreement on behalf of the Developer are duly authorized and are empowered to execute the same for and on behalf the Developer; and (iv) each entity composing the Developer is duly authorized to transact business in this state and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida.

ARTICLE 11 DEVELOPER DEFAULTS, REMEDIES, TERMINATION AND FURTHER RIGHTS

11.1 Event of Default. The occurrence of any one or more of the following shall constitute an Event of Default by the Developer, hereunder:

11.1.1 If the Developer defaults in the performance of any obligation imposed under this Agreement or if the Developer fails to complete any item required to be completed under the Project Schedule, and subject to the conditions established in Section 3.5 hereof, and further subject to Force Majeure as provided in Section 15-6 at the time called for therein, and the Developer does not commence to cure such default within thirty (30) days

after delivery of notice of such default from the Agency and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice; or

11.1.2 If any statement, representation or warranty made by the Developer herein or in any writing now or hereafter furnished in connection herewith shall be false in any material respect; or

11.1.3 If, (a) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Developer bankrupt or insolvent, approving a petition seeking a reorganization or appointing a receiver, trustee or liquidator of the Developer or of all or a substantial part of its assets, or (b) there is otherwise commenced as to the Developer or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and if such order, judgment, decree or proceeding continues unstayed for more than sixty (60) days after any stay thereof expires.

11.2 Remedies.

11.2.1 Upon the occurrence of any Event of Default hereunder by Developer the Agency, shall have the following non-exclusive rights: (i) to terminate the Agreement; (ii) to refuse to convey any parcel with in the Property; (iii) to immediately enforce all of its rights under this Agreement; and (iv) to avail itself of any right or remedy it may have at law or in equity.

11.2.2 In addition to the remedies provided by Section 11.2.1 hereof, if Developer fails to commence construction of the Single Family Homes for which they are responsible pursuant to this Agreement, or take such actions as further provided in Article 3.6, then the Agency has a right of specific performance and may require the Developer to convey the Property to the Agency. In such event, the Agency shall provide written notice to the Developer of its intent to exercise its rights in accordance with this paragraph. Within thirty (30) days of such notice, the Developer shall convey the Property to the Agency by special warranty deed free and clear of all liens and encumbrances.

ARTICLE 12 AGENCY DEFAULTS, REMEDIES, TERMINATION

12.1 Event of Default. The occurrence of any one or more of the following shall constitute an Event of Default hereunder by the Agency.

- 12.1.1 The Agency defaults in the performance of any obligation imposed under this Agreement or if the Agency fails to complete any item required to be completed under the Project Schedule.

In the Event of Default as provided above, the Agency shall commence to cure such default within thirty (30) days after delivery of such notice of default from the Developer and diligently pursue such cure to completion within seventy-five (75) days after delivery of such notice.

ARTICLE 13

TERMINATION EVENTS, OPTIONS AND PROCEDURES

13.1 **Termination Events.** The occurrence of any one or more of the following, or an event or occurrence provided for elsewhere in this Agreement resulting in termination, shall constitute a Termination Event. A Termination Event shall not be considered an Event of Default. The following shall constitute a Termination Event:

- 13.1.1 If any proposed modifications to the Project Development Plan or Plans and Specifications are not approved in accordance with Section 5.2 of this Agreement; or
- 13.1.2 If the Property is not conveyed to Developer in accordance with Article 3 of this Agreement on or before the dates set forth in the Project Schedule and such failure to convey is not due to Developer's failure to perform the obligations required for conveyance; or
- 13.1.3 If zoning, site plan or vacation or other development approvals necessary to construct the Vertical Improvements in accordance with the Project Development Plan are not approved by the City.

13.2 **Options upon Termination.** If a Terminating Event occurs, then any party may give notice specifying the Terminating Event and that such party elects to terminate this Agreement.

13.3 **Agreement Not To Terminate.** Notwithstanding any other provision of this Agreement to the contrary, the Developer and the Agency may agree by written Agreement to continue the Agreement after the occurrence of an Event of Termination.

13.4 **Reconveyance Procedure.** In the event the Agency gives notice of its intent to exercise an option to acquire or cause a reconveyance as provided in this Agreement, the following procedures shall be required:

- 13.4.1 Within thirty (30) days of notice given by Agency , Developer shall provide Agency with an updated title commitment or title search

showing clear and marketable title in the name of Developer (the "Title Evidence").

- 13.4.2 Within thirty (30) days of receipt of the Title Evidence, Agency shall notify Developer of a closing date to occur within fourteen (14) days of the establishment of clear and marketable title and the delivery of evidence of same.
- 13.4.3 Developer shall convey on the closing date, title to the subject property to Agency by special warranty deed free and clear of all liens, judgments, mortgages, encumbrances and other adverse matters except that the property may be subject to zoning and/or and prohibitions imposed by governmental authority; restrictions, easements and other matters appearing on the plat or common to the subdivision. Developer shall bear all closings costs related to this re-conveyance. If applicable, in accordance with Florida Statutes, Section 196.295, Developer, at closing, shall pay to the Broward County Tax Collector an amount equal to the current year's taxes, if any, prorated to the date of transfer of title, together with any taxes or special assessments due for prior and future years. The Developer shall be required to place in escrow with the Tax Collector an amount equal to the current taxes prorated to the date of transfer of title, based upon the current assessment and millage rates on the Property. The escrowed funds shall be used to pay any ad valorem taxes and special assessments due and the remainder of taxes which would otherwise have been due for the current year shall stand cancelled. Upon payment of the final bill, if additional funds in excess of the escrowed balance are owed, upon demand from the Agency, the Developer shall immediately remit the difference to the Tax Collector in U.S. Funds. This provision shall survive closing.
- 13.4.4 Closing of any reconveyance pursuant to this Agreement, shall be held at the office of the Agency on the date set forth in the notification from the Agency and must occur within forty-five (45) days after notice is given, without liability to the Agency, after the date of the delivery of proof of marketable title.
- 13.4.5 The provisions of this Article 13 shall apply only to a parcel within the Property upon which the Developer has not commenced construction of a Single-Family Home in accordance with the provisions of this Agreement.

ARTICLE 14
ANTI-SPECULATION AND NON-TRANSFER PROVISIONS

14.1 Purpose. The Developer represents and agrees that their undertakings pursuant to this Agreement are for the purpose of developing the Project pursuant to this Agreement, and not for speculation in land holding. The Developer further recognizes, in view of the importance of the development of the Project to the general health and welfare of the City and redevelopment of the Redevelopment Area that the qualifications, financial strength and identity of the members of the Developer are of particular concern to the Agency.

14.2 Assignment of Agreement; Limitation on Conveyance. Except as provided herein, the Developer agrees that it shall not without the prior written consent of the Agency, assign, transfer or convey this Agreement or any provision hereof to another party, unless such assignment is made to: (a) an Affiliate; (b) any firm or corporation which the Developer controls, is controlled by, or is under common control with Antonio Gestido, Jr. and Luis Machado; or (c) any partnership in which the Developer has a majority interest (collectively, "Related Company"), only after approval by the Agency.

14.3 Assignment of Sites; Limitation on Conveyance. Except as provided herein, the Developer agrees that it shall not without the prior written consent of the Agency assign, transfer or convey the Property or any portion thereof to another party, unless such assignment, transfer or conveyance is made to: (a) an Affiliate; (b) any firm or corporation which the Developer controls, is controlled by, or is under common control with Antonio Gestido, Jr. or Luis Machado or (c) any partnership in which the Developer has a majority interest (collectively, "Related Company"), only after approval by the Agency.

14.4 Composition of Developer.

14.4.1 On the date this Agreement is executed by Developer, Developer is made up of the following entities and persons and each has control and ownership of the Developer as follows:

Developer:

Percentage Interest

50%

50%

Name of Individual

Antonio Gestido, Jr.

Luis Machado

14.4.2 No person listed in Article 14.4.1 may transfer, all or part thereof, of its interest in the Developer without the prior written consent of the Contract Administrator. Any such transfer in violation of this provision shall be null and void. A transfer as a result of a merger the Developer that controls the merging entity after such merger shall not be prohibited by any provision of this Agreement.

ARTICLE 15
GENERAL PROVISIONS

15.2 Non-liability of Agency Officials. No member, official or employee of the Agency shall be personally liable to the Developer, Builder or to any Person with whom the Developer, or any Builder shall have entered into any contract, or to any other Person in the event of a default or breach by the Agency or for any amount which may become due to the Developer, or any other Person under the terms of this Agreement.

15.3 Inspection of Books and Records. The Agency shall have the right at all reasonable times to inspect the books and records of the Developer pertaining to the performance by it of its obligations under this Agreement. Agency shall have the right to audit the books, records, and accounts of Developer that are related to this Agreement. Developer shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement in accordance with generally accepted accounting practices and standards. All books, records, and accounts of Developer shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Developer shall make same available at no cost to Agency in written form.

Developer shall preserve and make available, at reasonable times for examination and audit by Agency in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit, litigation or other action has been initiated and has not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings, litigation or other action. If the Florida public records law is determined by Agency to be applicable, Developer shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Agency's disallowance and recovery of any payment upon such entry.

15.4 Public 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 same may be amended from time to time and any resultant award of attorney's fees for non-compliance with that law.

Developer and all contractors or subcontractors (the "**Contractor**") engaging in services in connection with construction and/or maintenance of the Project shall:

- 15.4.1 Keep and maintain public records that ordinarily and necessarily would be required by Agency in order to perform the services rendered.
- 15.4.2 Upon request from Agency's custodian of public records, provide Agency with a copy of the requested records or allow the records

to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2016), as may be amended or revised, or as otherwise provided by law.

- 15.4.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and as to Developer for the duration of the Agreement and as to Contractor for the duration of the contract term and following completion of said contract if Contractor does not transfer the records to Agency.
- 15.4.4 Upon completion of said construction or maintenance at the Project, transfer, at no cost, to Agency all public records in possession of Developer or Contractor or keep and maintain public records required by Agency to perform the service. If Contractor transfers all public records to Agency upon completion of the Project, Developer and Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Developer or Contractor keeps and maintains public records upon completion of the Project, Developer and Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Agency, upon request from Agency's custodian of public records, in a format that is compatible with the information technology systems of Agency.

If Developer or any contractor has questions regarding the application of Chapter 119, Florida Statutes, to Developer or Contractor's duty to provide public records relating to its contract, contact the Agency's custodian of public records by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.

15.5 Approval. Unless a different standard is expressly stated, whenever this Agreement requires the Agency or the Developer to approve any contract, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld, delayed or conditioned. The Developer and the Agency shall perform all obligations imposed upon them under this Agreement in a reasonable and timely fashion.

15.6 Force Majeure. Subject to providing written notice of such an event and the party's intention to exercise the applicability of this provision, no party to this Agreement shall be deemed in default, and the time for performance of any required act hereunder shall be extended for such period, where such a default is based on a delay

in performance as a result of war, acts of terrorism, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, epidemic, quarantine restrictions; freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, government restrictions, litigation, severe weather and other acts beyond the control or outside the control of either party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial inability of a party.

15.7 Notices. All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail, if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.

If to the Agency:	Executive Director Fort Lauderdale Community Redevelopment Agency 100 North Andrews Avenue Fort Lauderdale, FL 33301 (954) 828-5013 (phone) (954) 828-5667 (fax)
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If to the Developer:	Antonio Gestido, Jr. GESMAC Development Inc. 305 Alcazar Avenue, Suite 3 Coral Gables, Florida 33134 (305) 817-0114 (phone) tgestido@gestidoconstruction.com (email)
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15.8 Time. Time is of the essence in the performance by any party of its obligations hereunder.

15.9 Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

15.10 Amendment. This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties.

15.11 Waivers. All waivers, amendments or modifications of this Agreement must be in writing and signed by all parties hereto. Any failures or delays by any party in

asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, or any other rights or remedies for the same default or other default by any other party.

15.12 Assignment. Except as provided in Section 14.2, this Agreement and the rights, duties, obligations and privileges of the parties herein are non-assignable and any purported assignment shall be void and of no force and effect and shall constitute a default of this Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

15.13 Indemnification. Developer agrees to protect, defend, indemnify and hold harmless the Agency, and its officers, employees and agents, from and against any and all lawsuits, penalties, claims, damages, settlements, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort or description including, but not limited to, attorneys' fees at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from this Agreement or the Developer's acts or omissions in performing its obligations under this Agreement or arising out of or in connection with any negligent act or omissions of the Developer, its agents, employees or assigns while performing the duties and obligations required by this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, bodily injury, death, damage to property, defects in material or workmanship, actual or alleged infringement or any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance administrative order, rule or regulation or decree of any court, are included in the indemnity. The Developer further agrees 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(s) is groundless, false or fraudulent. However, the Agency reserves the right to select counsel of its own choosing. Notwithstanding anything set forth in this Agreement to the contrary, in no event shall Developer be obligated to protect, defend, indemnify or hold harmless the Agency, or its officers, employees and agents, from and against any lawsuits, penalties, claims, damages, settlements, judgments, decrees, costs, charges and other expenses or liabilities of every kind, sort or description including, but not limited to, attorneys' fees at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from the Agency's, its officers, employees or agents, acts or omissions occurring during the course and scope of their employment. This provision shall survive the expiration or termination of this Agreement and is not limited by the amount of insurance coverage. It is understood and agrees that neither party to this Agreement waives any immunity it may have as provided by law.

15.14 Severability. The invalidity, illegality or unenforceability of any one or

more of the provisions of this Agreement shall not affect any other provision of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.15 Contingent Fee. The Developer represents and warrants that they have not employed or retained any Person to solicit or secure this Agreement and that they have not paid or agreed or promised to pay any Person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

15.16 Independent Contractor. In the performance of this Agreement, the Developer will be acting in the capacity of independent contractor and not as an agent, employee, partner, developer or association of the Agency. The Developer and Builders, if any, employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Developer in the construction of the Vertical Improvements and in its performance under this Agreement.

15.17 Non-merger. None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property.

15.18 Not A General Obligation. Neither this Agreement nor the obligations imposed upon the Agency hereunder shall be or constitute an indebtedness or general obligation of the City, within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes nor a lien upon any properties of the City.

15.19 Agreement Not a Development Agreement or Order. This Agreement is not, and shall not be construed to be, a development agreement as that term is defined by Section 163.3220, Florida Statutes, et seq. and none of the provisions of Florida law applicable to development agreements pursuant to that statute or related statutes shall apply to this Agreement. No permit or order issued pursuant to, or affected by, this Agreement shall be deemed to be a development permit or development order as those terms are defined in Chapter 380, Florida Statutes, or Chapter 163, Part II, Florida Statutes.

15.20 Parties to Agreement. This is an agreement solely between the Agency, and the Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any Person not a party hereto other than the successors or assigns of the Agency and the Developer.

15.21 Venue: Applicable Law. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Broward County, Florida, or United States District Court for the Southern District of Florida. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

15.22 Timing of Approvals. Unless specifically provided otherwise, the Agency, shall have a period of not more than twenty (20) days from the date of submission of any item under this Agreement (not including development permit or building permit approvals) to take any action or give its approval or denial, or make a request for additional information. The failure of the Agency to take any such action or give such approval or denial or request additional information within such period of time shall be deemed approval, subject, however, to applicable law.

15.23 Authorized Representative. The person or persons designated and appointed from time to time as such by any party in writing to represent the entity in administrative matters as opposed to policy matters.

15.24 "As-Is Conveyance". Developer acknowledges that prior to the Effective Date hereof it has performed sufficient inspections of the Property in order to fully assess and make itself aware of the condition of the Property. Developer is acquiring the Property in its "AS IS" condition. Developer acknowledges that the Agency has made no other representations or warranties as to the condition or status of the Property and that Developer is not relying on any representations or warranties of the Agency or any broker(s), of agent of Agency in acquiring the Property. Developer acknowledges that neither Agency nor any agent or employee of Agency has provided any other representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning with respect to:

15.24.1 The nature, quality or condition of the Property, including, without limitation, the water, soil and geology;

15.24.2 The suitability of the Property for any and all activities and uses which Developer may conduct thereon;

15.24.3 The compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body;

15.24.4 The habitability, merchantability or fitness for a particular purpose of the Property; or

15.24.5 Any other matter with respect to the Property.

Without limiting the foregoing, Agency does not and has not made and specifically disclaims any other representation or warranty regarding the presence or absence of any hazardous substances, at, on, under or about the Property or the compliance or non-compliance of the Property with any laws, rules, regulations or orders regarding hazardous substances laws. Hazardous substances shall also include Radon Gas. Developer further acknowledges that neither Agency nor any agent of Agency has provided any representation or warranty with respect to the existence of asbestos or other hazardous substances on the Property. Accordingly, the physical condition of the

Property and compliance with all applicable laws, statutes, ordinances or regulations with respect to the physical condition of the Property shall be the sole responsibility and obligation of Developer.

15.25 Discrimination. The Developer shall not discriminate against any person, or group of persons, on account of race, color, creed, sex, age, religion, national origin, marital status, handicap, having children or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of all or any part of the Vertical Improvements, in the design and construction of any infrastructure improvements or connections or in the sale and transfer of Single-Family Homes to Eligible Homebuyers.

15.26 Scrutinized Companies. Developer certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, and that it is not engaged in a boycott of Israel. The Tenant may terminate this Agreement at the Tenant's option if the Landlord is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2018), as may be amended or revised, or been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, or is engaged in a boycott of Israel as defined in Sections 287.135 and 215.4725, Florida Statutes (2018), as may be amended or revised.

15.27. Public Entity Crime.

15.27.1 Developer represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to Agency, may not submit a bid on a contract with Agency for the construction or repair of a public building or public work, may not submit bids on leases of real property to Agency, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Agency, and may not transact any business with Agency in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for Category Two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by Agency pursuant to this Agreement and may result in debarment from Agency's competitive procurement activities.

15.27.2 In addition to the foregoing, Developer further represents that there has been no determination, based on an audit, that it

committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Developer has been placed on the convicted vendor list.

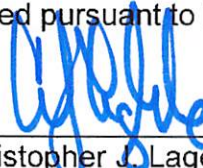
REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

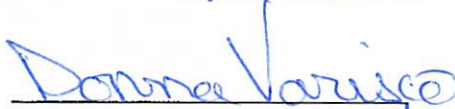
IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

WITNESSES:

**FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY**, a body
corporate and politic of the State of Florida
created pursuant to Part III, Chapter 163


Print Name: Annee L. Ward

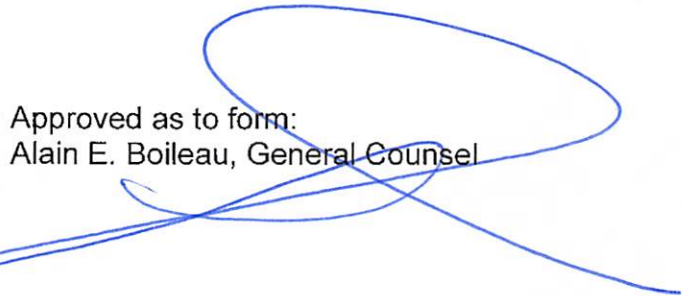
By 
Christopher J. Lagerbloom, ICMA-CM
Executive Director


Print Name: Donna Varisco

ATTEST:

Approved as to form:
Alain E. Boileau, General Counsel


Jeffrey A. Modarelli, CRA Secretary


Lynn Solomon, Assistant General Counsel



WITNESSES:

[Signature]

Print Name: ANABEL ESTEVEZ

[Signature]

Print Name: Deniset Martinez

(CORPORATE SEAL)

GESMAC Development Inc., a
Florida Profit Corporation

By [Signature]

Print Name: Antonio Gestido, Jr.
Print Title: Vice President

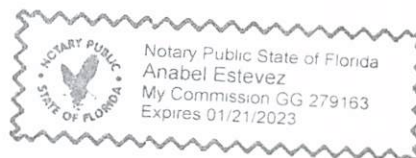
ATTEST:

STATE OF Florida)
COUNTY OF Miami-Dade) SS:

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of September, 2021, by Antonio Gestido, Jr. as Vice President of the GESMAC Development Inc., a Florida Profit Corporation on behalf of the company.

[Signature]
Notary Public, State of Florida

ANABEL ESTEVEZ
Name of Notary Typed, Printed or Stamped



Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



COMMISSION AGENDA ITEM
DOCUMENT ROUTING FORM
Today's Date: 9/24/2021

HL

DOCUMENT TITLE: Scattered Site Infill Housing- "GesMac Development" Development Agreement, Commercial Contract, and Addendum

COMM. MTG. DATE: 6/15/2021 CAM #: 21-0531 ITEM #: PH-1 CAM attached: ☒ YES ☐ NO

Routing Origin: CAO Router Name/Ext: Erica K./6088 Action Summary attached: ☒ YES ☐ NO

CIP FUNDED: ☐ YES ☐ NO

Capital Investment / Community Improvement Projects defined as having a life of at least 10 years and a cost of at least \$50,000 and shall mean improvements to real property (land, buildings, or fixtures) that add value and/or extend useful life, including major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, or real.

1) Dept: _____ Router Name/Ext: _____ # of originals routed: 1 Date to CAO: _____

2) City Attorney's Office: Documents to be signed/routed? ☒ YES ☐ NO # of originals attached: 4

Is attached Granicus document Final? ☒ YES ☐ NO Approved as to Form: ☒ YES ☐ NO

Date to CCO: 9/24/2021

Lynn Solomon
Attorney's Name

LS
Initials

3) City Clerk's Office: # of originals: 8 Routed to: Donna V./Aimee L./CMO Date: 9/24/2021

4) City Manager's Office: CMO LOG #: SEP-57 Document received from: 9-27-21

Assigned to: CHRIS LAGERBLOOM ☐ TARLESHA SMITH ☐ GREG CHAVARRIA ☐
CHRIS LAGERBLOOM as CRA Executive Director ☐

☐ APPROVED FOR C. LAGERBLOOM'S SIGNATURE ☐ N/A FOR C. LAGERBLOOM TO SIGN

PER ACM: T. Smith (Initial/Date) PER ACM: G. Chavarria (Initial/Date)

☐ PENDING APPROVAL (See comments below)

Comments/Questions: _____

Forward 8 originals to ☐ Mayor ☒ CCO Date: 9-28-21

5) Mayor/CRA Chairman: Please sign as indicated. Forward _____ originals to CCO for attestation/City seal (as applicable) Date: _____

6) City Clerk: Forward _____ originals to CAO for FINAL APPROVAL Date: _____

7) CAO forwards _____ originals to CCO Date: _____

8) City Clerk: Scan original and forwards 1 original to: Erica Keiper/ xt. 6088

Attach _____ certified Reso# _____ ☐ YES ☐ NO

Original Route form to: Erica K./6088