

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter, the "Amendment") is made and entered into this ____ day of _____, 2017 ("Execution Date"), by and among F71-1, LLC and F69-1, LLC (together, the "Owner"), Lennar Homes, LLC (hereinafter, "Lennar"), and the Town of Miami Lakes, Florida, a Florida municipal corporation (hereinafter, the "Town"), who shall collectively be referred to as the "Parties."

WITNESSETH:

WHEREAS, on March 28, 2011, the Owner and the Town entered into a Development Agreement ("Agreement"), which was approved by Town Resolution No. 11-883; and

WHEREAS, the Owner is the legal and equitable owner of those certain parcels of land, located at the Northwest and Northeast corners of Northwest 87 Avenue and Northwest 154 Street within the boundaries of the Town and identified by Miami-Dade County Tax Folio No. 32-2016-000-0020 ("Parcel C" or "Dunnwoody Lake Commercial Area") and 32-2015-001-0500 ("Parcel B" or "Dunnwoody Forest"); and

WHEREAS, on January 7, 2016, Lennar acquired from the Owner and became the developer of that certain parcel of land, located at the Northwest corner of Northwest 87 Avenue and Northwest 154 Street within the boundaries of the Town, as identified by Miami-Dade County Tax Folio No. 32-2016-000-0040 and as identified in Miami-Dade County Official Records at Plat Book 172, Page 35 ("Parcel A" or "Dunnwoody Lake Residential Area"); and

WHEREAS, together, Dunnwoody Lake – Parcel A, Dunnwoody Lake Commercial Area, and Dunnwoody Forest shall collectively be referred to as the "Property;" and

WHEREAS, Section 9 of the Agreement sets forth the requirements and conditions for Transportation Final Concurrency Determination; and

WHEREAS, pursuant to Sections 9 and 10 of the Agreement, Lennar, as the first developer of a portion of the Property, was required to complete the following roadway infrastructure improvements (collectively, the "Roadway Improvements"):

Roadway Improvement No. 1. construction of an additional southbound left-turn lane at NW 82nd Avenue and NW 154th Street (pursuant to Section 9(a)(v) of the Agreement);

Roadway Improvement No. 2. construction of an exclusive westbound right-turn lane at NW 82nd Avenue and NW 154th Street (pursuant to Section 9(a)(v) of the Agreement);

Roadway Improvement No. 3. construction of an exclusive eastbound right-turn lane at NW 82nd Avenue and NW 154th Street (pursuant to Section 9(a)(v) of the Agreement);

Roadway Improvement No. 4. construction of an additional eastbound through lane on NW 154th Street from NW 79th Court to NW 77th Court (pursuant to Section 9(b)(i) of the Agreement);

Roadway Improvement No. 5. construction of an additional southbound left-turn lane at NW 154th Street and NW 79th Avenue (pursuant to Section 9(b)(ii) of the Agreement);

Roadway Improvement No. 6. construction of an exclusive northbound right-turn lane at NW 138th Street and NW 87th Avenue (pursuant to Section 9(b)(iii) of the Agreement);

Roadway Improvement No. 7. completion of construction of NW 154th Street to 60 feet west of NW 89th Avenue prior to issuance of the first building permit (pursuant to Section 9(a)(iv) of the Agreement); and

Roadway Improvement No. 8. completion of landscaping of NW 87th Avenue adjacent to its property (including medians); and

WHEREAS, after approving the Agreement, the Town commissioned an Alternative to Concurrency Study to encourage multimodal concurrency mitigation to supplement more traditional on and off-site transportation improvements (such as those contemplated in Section 9(b) of the Agreement), and determine methods to allow for the mitigation of transportation impacts of development that will more equitably fund multimodal mobility improvements rather than only automobile related improvements, as well as encourage better quality development and be more business friendly by providing for a simpler and less time-intensive approval process; and

WHEREAS, on November 3, 2015, the Town adopted Resolution No. 15-1336, which established that F71-1, LLC could satisfy the Town's transportation concurrency requirements for the development of the Dunnwoody Lake Residential Area by voluntarily selecting from a number of alternatives, including providing for alternative mitigation as set forth in the Alternative to Concurrency Study, if adopted by the Town Council; and

WHEREAS, on April 16, 2016, the Town Council adopted Ordinance No. 16-192 (the "Mobility Fee Ordinance"); and

WHEREAS, Section 13-2009(g) of the Mobility Fee Ordinance provides that, "a property owner with an existing transportation concurrency determination or determination of vested rights may voluntarily, subject to acceptance by the Town, choose to forego that previous determination and instead be subject to [the] Mobility Fee Ordinance;" and

WHEREAS, Lennar requested that the Town reaffirm the findings of Resolution No. 15-1336 by accepting its payment of the applicable mobility fee under the Mobility Fee Ordinance in lieu of the transportation concurrency determination made under the Agreement; and

WHEREAS, on June 7, 2016, the Town Council adopted Resolution No. 16-1383, confirming that Lennar could satisfy the Town's transportation concurrency requirements for the Dunnwoody Lake Residential Area by paying the applicable mobility fee under the Mobility Fee Ordinance; and

WHEREAS, on June 23, 2016, the Owner initiated litigation, styled as *F71-1, LLC and F69-1, LLC v. Town of Miami Lakes*, Case No. 2016-015279-CA-01 in the Circuit Court of the 11th Judicial Circuit ("Breach of Contract Lawsuit"), to determine the Owner's obligations regarding the Roadway Improvements; and

WHEREAS, on March 22, 2017, the Owner initiated the following lawsuits alleging violations of Chapter 119, Florida Statutes (the "Public Records Lawsuits"), which are pending in the Circuit Court of the 11th Judicial Circuit: *F71-1, LLC v. Ceasar Mestre*, Case No. 17-006866-CA-01; *F71-1, LLC v. Manny Cid*, Case No.: 17-006887-CA-01; *F71-1, LLC v. Tim Daubert*, Case No.: 17-006885-CA-01; *F71-1, LLC v. Tony Lama*, Case No.: 17-006891-CA-01; *F71-1, LLC v. Frank Mingo*, Case No.: 17-006892-CA-01; and *F71-1, LLC v. Nelson Rodriguez*, Case No.: 17-006900-CA-01; and

WHEREAS, to avoid the expense of continued litigation, the Owner and the Town have entered into a settlement agreement ("Settlement") to settle the Breach of Contract Lawsuit and the Public Records Lawsuits, which Settlement requires that the Agreement be modified to reflect the changes contemplated by the Settlement, which confirm the actions taken by the Town in Resolution No. 16-1383; and

WHEREAS, the Parties acknowledge and agree that Lennar and the Town, by Resolution No. 16-1383, Resolution No. 15-1336, and Ordinance No. 16-192, have dispensed with the required construction of Roadway Improvements Nos. 1 through and including 5 in exchange for Lennar's payment of a mobility fee, which the Town confirms having received; and

WHEREAS, the Town reaffirms its previous finding that Lennar's payment of the mobility fee is of greater benefit to the Town than the construction of Roadway Improvements Nos. 1 through and including 5; and

WHEREAS, the Parties acknowledge and agree that with respect to Roadway Improvements Nos. 1 through and including 5, Lennar's obligations as the first developer have been fully satisfied through payment by Lennar of the mobility fee as indicated in Resolution No. 16-1383; and

WHEREAS, the Parties further acknowledge and agree that Roadway Improvement No. 6 is not located within the jurisdiction of the Town and should therefore not be included as a condition for transportation concurrency determination by the Town; and

WHEREAS, the Parties further acknowledge and agree that Roadway Improvement No. 7 is being completed by Lennar and that Roadway Improvement No. 8 is being completed by Miami-Dade County; and

WHEREAS, the Parties further acknowledge and agree that neither Lennar nor the Owner, or any of their successors or assigns, have any further obligations with respect to any of the Roadway Improvements enumerated in Section 9 and 10 of the Development Agreement, or any other roadway improvements required by the Town; and

WHEREAS, the Parties further acknowledge and agree that neither Lennar nor the Owner, or any of their successors or assigns, have any further obligations with respect to payment of any additional mobility fees required by the Town; and

WHEREAS, the Parties further acknowledge and agree that, although the Town does not require any roadway improvements other than as set forth in the Agreement, as amended, Miami-Dade County (the “County”) may impose the same or other requirements upon the Owner, Lennar, and/or their successors or assigns; and

WHEREAS, according to Sections 163.3220 through 163.3243, Florida Statutes, known as the Florida Local Government Development Agreement Act (the “Act”), the Florida Legislature has determined that the lack of certainty in the development process can result in a waste of economic and land development resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning; and

WHEREAS, the Florida Legislature has declared that assurances to a developer that it may proceed in accordance with existing laws and policies, subject to the conditions of a development agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development; and

WHEREAS, this Amendment is intended to and shall constitute an amendment to the Agreement among the Parties pursuant to the Act and the Settlement; and

WHEREAS, the Town has considered this Amendment at two public hearings, in compliance with Section 163.3225 of the Act and the Settlement; and

WHEREAS, this Amendment is consistent with the Town’s Comprehensive Plan and land development regulations; and

WHEREAS, the Town has determined that it is in the public interest to address the issues covered by this Amendment in a comprehensive manner and at public hearings, in compliance with all applicable laws, ordinances, plans, rules and regulations of the Town while allowing the Owner and Lennar to proceed in the development of the Property in accordance with the existing laws and policies, subject to the terms hereof, and the Town has agreed to enter into this Amendment with the Owner and Lennar.

NOW, THEREFORE, in consideration of the conditions, covenants and mutual promises herein set forth, the Owner, Lennar, and the Town agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference.
2. Amendment of Section 9 of the Agreement. Section 9 of the Agreement is amended as follows:¹

9. Transportation Final Concurrency Determination.

- (a) Final concurrency determination for transportation facilities is hereby granted, and impacts of development of Parcel C have been adequately mitigated upon compliance with the following conditions, within the time frames required by this Agreement:
 - i. Owner's conveyance of the Northwest 87 Avenue Right-of-Way to Miami-Dade County pursuant to Paragraph 10(a) and Owner's conveyance of the Northwest 154 Street Right-of-Way to the Town or its assignee pursuant to Paragraph 10(b); and
 - ii. Any other transportation improvements required by the Traffic Impact Analysis and Phase I Supplemental Analysis prepared by JMD Engineering, Inc., dated February 28, 2011 and March 4, 2011, attached hereto as composite Exhibit "9", which are necessary to achieve concurrency for the phased development of Parcel C, except for construction of an exclusive northbound right-turn lane at Northwest 138 Street and Northwest 87 Avenue, which is outside of the Town's jurisdiction; and
 - iii. Construction of Northwest 87 Avenue as a four lane divided facility from Northwest 154 Street to Northwest 186 Street such that it is fully constructed and operational; and
 - iv. Widening of Northwest 154 Street to four (4) lanes from the end of the 4 lane segment east of Northwest 87 Avenue to 60 feet west of Northwest 89 Avenue, such that it is fully constructed and operational; and
 - v. Construction of an additional southbound left-turn lane, an exclusive eastbound right-turn lane, and an exclusive westbound right-turn lane at Northwest 154 Street and Northwest 82 Avenue.

¹ Additions to the text are shown in underline. Deletions from the text are shown in ~~striketrough~~. Revisions to the text between the first and second public hearing are indicted with **yellow highlight**.

- vi. Alternatively, the Owner may voluntarily choose to forego this transportation concurrency determination and instead be subject to Town of Miami Lakes Ordinance No. 16-192 (the “Mobility Fee Ordinance”). This alternative is applicable only to Section 9(a)(ii) and (v) of this Agreement.

- (b) A final concurrency determination is hereby granted, and impacts of development for Parcel A and Parcel B, have been adequately mitigated, subject to completion of the improvements in Paragraph 9(a) above and the following transportation improvements which must be fully constructed and operational:
 - i. Construction of an additional eastbound through lane on Northwest 154 Street from Northwest 79 Court to Northwest 77 Court; and
 - ii. Construction of an additional southbound left-turn lane at Northwest 154 Street and Northwest 79 Avenue; and
 - iii. ~~Construction of an exclusive northbound right turn lane at Northwest 138 Street and Northwest 87 Avenue; and [OMITTED.]~~
 - iv. Any other transportation improvements required by the Traffic Impact Analysis and Phase I Supplemental Analysis prepared by JMD Engineering, Inc., dated February 28, 2011 and March 4, 2011, attached hereto as composite Exhibit “9”, which are necessary to achieve concurrency for the phased development of Parcels A and B, except for construction of an exclusive northbound right-turn lane at Northwest 138 Street and Northwest 87 Avenue, which is outside of the Town’s jurisdiction.
 - v. Alternatively, the Owner may voluntarily choose to forego this transportation concurrency determination and instead be subject to the Mobility Fee Ordinance.

- (c) Building Permits. Consistent with Ordinance 02-26:
 - i. No building permits for more than 150 residential units and no certificates of occupancy, use or completion for any Parcel will be issued unless and until Northwest 87 Avenue is fully constructed and operational as a four-lane median divided roadway; and
 - ii. No building permits shall be issued for any Parcel unless and until Northwest 154 Street is fully constructed and operational as a four-lane roadway from the west end of the current four lane section to approximately 60 feet west of Northwest 89 Avenue; and

- iii. In the event that Ordinance 02-26 is amended by the Town Council to provide less restrictive building permit timing provisions in Sections 7.1. and/or 7.2 of Ordinance 02-26, then the less restrictive requirements of the amended Ordinance shall apply here.
 - (d) In the event that the Owner proposes to develop the Property in phases not contemplated herein, the Owner shall submit a traffic analysis and phasing plan to analyze the transportation improvements required to mitigate the impacts of the phased development and reimburse the Town or its assignees for the review and approval, approval with conditions, or denial of such traffic analysis and phasing plan and any related required amendments to this Development Agreement. In no event shall a phasing plan operate to reduce or increase the required improvements provided under this Agreement unless the Agreement is modified pursuant to the requirements of State law.
 - (e) Owner and Town acknowledge and agree that Miami-Dade County intends to construct at its cost that portion of Northwest 87 Avenue located between Northwest 154 Street and Northwest 186 Street pursuant to MPO Project No. PW20040390 and TIP Reference Page A7-21, attached hereto as Exhibit “10”, and this improvement will provide capacity to serve development of the Property. Owner acknowledges and agrees that it is a material condition to this final concurrency determination for development of the Property, that construction of the Northwest 87 Avenue between Northwest 154 Street and Northwest 186 Street be Completed and open to traffic, as contemplated herein and that any development, construction or investment undertaken prior to completion of this and any other construction project or dedication required under this Agreement, are done so at the Owner’s risk.
 - (f) This final concurrency determination shall be valid and binding for the Entire Term of this Agreement, subject to the conditions set forth herein.
3. No Further Modifications. Except as modified herein, the terms of the Agreement shall remain unchanged and in full force and effect.
4. Effective Date and Duration. Within fourteen (14) days following approval at two public hearings and execution by all Parties, the Town shall record this Amendment in the public records of Miami-Dade County. This Amendment shall be effective upon recording in the public records of Miami-Dade County. Notwithstanding the Effective Date provided herein, the Town, the Owners, and Lennar shall act in good faith to carry out the intent of this Amendment upon the Execution Date. The duration of this Amendment shall be consistent with the Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]

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

TOWN:

ATTEST:

TOWN OF MIAMI LAKES,
FLORIDA

Gina Inguanzo
Town Clerk

By: _____
Manny Cid
Mayor

Dated ____ day of _____, 2017

Approved for form and legal sufficiency:

Town Attorney

OWNER

WITNESS:

F71-1 LLC

Signature

By: _____
Name _____
Title: _____

Print Name:

Dated this ____ day of _____, 2017

Signature

Print Name:

STATE OF FLORIDA)

)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____, who is personally known to me or produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

Notary Public, State of Florida
Print/type name: _____

WITNESS:

F69-1 LLC

Signature

By:_____

Name_____

Title:_____

Print Name:

Dated this ___ day of _____, 2017

Signature

Print Name:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, as _____, who is personally known to me or produced _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

Notary Public, State of Florida

Print/type name:_____

WITNESS:

LENNAR HOMES, LLC

Signature

By:_____

Name_____

Title:_____

Print Name:

Dated this ___ day of _____, 2017

Signature

Print Name:

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, as _____, who is personally known to me or produced _____ as identification, and acknowledged that he/she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commission Expires:

Notary Public, State of Florida

Print/type name:_____