

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter the "Agreement") is made and entered into this 29 day of March, 2011 ("Execution Date"), by and between F71-1, LLC and F69-1, LLC (together, the "Owner"), and the Town of Miami Lakes, Florida, a Florida municipal corporation (hereinafter, the "Town").

WITNESSETH:

WHEREAS, Owner is the legal and equitable owner of those certain parcels of land, located at the Northwest and Northeast corners of proposed 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 ("Dunnwoody Lake") and 32-2015-001-0500 ("Dunnwoody Forest") (together, the "Property"), the legal description of which is attached hereto and made a part hereof as Exhibit "1"; and

WHEREAS, the Property is vacant and undeveloped and the Owner owns substantially all the right-of-way for Northwest 87 Avenue abutting the Property from Northwest 154 Street to Northwest 162 Street (the "Northwest 87 Avenue Right-of-Way"), the legal description of which is attached hereto and made a part hereof as Exhibit "2", as well as a portion of the right-of-way for Northwest 154 Street abutting the Property from Northwest 84 Avenue to sixty (60) feet west of Northwest 89 Avenue (the "Northwest 154 Street Right-of-Way"), the legal description of which is attached hereto and made a part hereof as Exhibit "3"; and

WHEREAS, Miami-Dade County (the "County") has initiated eminent domain proceedings, styled as *Miami-Dade County v. The Genet Family Limited Partnership No. 2*, Case No. 08-51917 CA 20 in the Circuit Court of the 11th Judicial Circuit (the "Litigation") to acquire the required right-of-way for the development of Northwest 87 Avenue; and

WHEREAS, both the Owner and the Town are parties to the Litigation and to avoid the expense of continued litigation, wish to enter into a conditional settlement agreement to settle said Litigation; and

WHEREAS, the Town desires the construction of the Northwest 87 Avenue Right-Of-Way by Miami-Dade County, and this construction is a material inducement for the Town to enter into this Agreement; and

WHEREAS, the Owner and Town mutually desire to work together and with Miami-Dade County to transfer the right-of-way expeditiously and construct and improve the Northwest 87 Avenue Right-of-Way in its entirety; and

WHEREAS, the Owner has agreed to accelerate the conveyance of the Northwest 87 Avenue Right-of-Way to the Town or Town's assignee (Miami-Dade County), in exchange for Miami-Dade County's payment of impact fees and the Town's reservation and allocation of concurrency for transportation and parks and recreation public facilities, and this final

concurrency determination is a material inducement for the Owner to enter into this Agreement; and

WHEREAS, the Declaration of Restrictions recorded in Official Records Book 20812 at Page 4767 through 4778 of the Public Records of Miami-Dade County controls the density and intensity of Dunnwoody Lake through an approved site plan that provides for 509 single and multi-family residential units and 100,000 square feet of commercial development, attached hereto as Exhibit "4"; and

WHEREAS, Dunnwoody Forest is designated by the Town's Comprehensive Plan as "Parks and Recreation", which permits residential development at a density equal to, or less than, the average existing density of developed property adjoining the subject land, and "Environmentally Protected Parks", which permits residential development at a density of up to four (4) units per net acre; and

WHEREAS, a portion of Dunnwoody Forest has been designated by Miami-Dade County as an "Archeological Zone" by the Miami-Dade County Historic Preservation Board via Resolution 06-01 of the Historic Preservation Board, pursuant to the authority granted to Miami-Dade County in Chapter 16A-10 of the Miami-Dade County Code of Ordinances; and

WHEREAS, Resolution 06-01 of the Miami-Dade County Historic Preservation Board establishes a legal description and sketch of the Archeological Zone, also known as "Madden's Hammock", attached hereto as Exhibit "5"; and

WHEREAS, the Town anticipates that development of the Property will provide housing for approximately 1,880 additional residents more or less, creating as much as a six percent increase in the Town's population; and

WHEREAS, the proposed increase in the residential population must be served by the Town's Public Facilities and services and numerous programmatic offerings; and

WHEREAS, development of the Property will generate additional impacts and additional needs for public safety, municipal programming and community facilities and Owner desires to provide facilities to address these impacts and to serve the needs of the community and development on the Property; and

WHEREAS, Owner desires to provide certain contributions above and beyond impact fees, including the construction of an 8,000 square foot municipal facility on Dunnwoody Lake and a \$300,000 contribution for educational purposes; and

WHEREAS, the Owner and the Town desire to establish certain terms and conditions relating to the accelerated conveyance of the Northwest 87 Avenue Right-of-Way and Northwest 154 Street Right-of-Way and wish to establish identifiable parameters for the future development of the Property; 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 Agreement is intended to and shall constitute a development agreement among the parties pursuant to the Act; and

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

WHEREAS, this Agreement 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 Agreement 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 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 Agreement with the Owner.

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

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference. All exhibits to this Agreement are hereby deemed a part hereof.
2. Consideration. The Owner and Town agree that the consideration and obligations recited and provided for under this Agreement constitute substantial benefits to both parties and are thus adequate consideration for this Agreement.
3. Definitions.
 - a. "Approved Site Plan" means those certain plans attached to, incorporated in, and as approved by the Town Council of the Town of Miami Lakes on October 9, 2002 in Ordinance Number 02-26.

- b. **"Completed"** for purposes of completed roadways, means the road segment has been fully constructed to its maximum lane capacity and approved by the Town or Miami-Dade County, as appropriate, and all lanes are open for public use.
- c. **"Comprehensive Plan"** means the plan adopted by the Town pursuant to Chapter 163, Florida Statutes, as found in compliance by the Florida Department of Community Affairs, as amended.
- d. **"Declaration of Restrictions"** shall mean the Declaration of Restrictions recorded in the County Official Records Book 20812, pages 4767 through 4778, attached hereto as Exhibit "4."
- e. **"Development"** means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, the clearing of any land or filling of any water body, for a purpose other than right-of-way development for Northwest 87 Avenue or Northwest 154 Street, or the dividing of land into three or more parcels and such other activities described in Section 163.3221(4), Florida Statutes (2009), provided, however, that the activities and uses set forth in Section 163.3221(4)(b), F.S. shall not constitute development.
- f. **"Development Permit"** includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.
- g. **"Effective Date"** is the date which is thirty days after a copy of the recorded Agreement is received by the State of Florida, Department of Community Affairs as provided in Paragraph 5 of this Agreement pursuant to Section 163.3239, Florida Statutes.
- h. **"Entire Term"** is the total term of this Agreement, combining the Initial Term and any extended Term granted under Paragraph 5 of this Agreement.
- i. **"Execution Date"** is the date the last of the required parties executes this Agreement.
- j. **"Governing Body"** means the Miami Lakes Town Council or successor entity.
- k. **"Initial Term"** is twenty (20) years, commencing on the Effective Date.
- l. **"Land"** means the earth, water, and air, above, below, or on the surface and includes any improvements or structures customarily regarded as land, except as provided herein.
- m. **"Land Development Regulations"** means ordinances, rules and policies enacted or customarily implemented by the Town for the regulation of any aspect of

development and includes any Federal, State, County or local government zoning, rezoning, subdivision, building construction, or sign regulation or any other regulations controlling the development of or construction upon land in effect as of the Effective Date.

- n. "Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by government or agency having jurisdiction affecting the development of land, specifically including the zoning and sign regulations of the Town of Miami Lakes; the provisions of the Miami Lakes Land Development Code; and Miami Lakes Comprehensive Plan in effect as of the Effective Date.
- o. "Litigation" means the eminent domain proceedings, styled as *Miami-Dade County v. The Genet Family Limited Partnership No. 2*, Case No. 08-51917 CA 20 in the Circuit Court of the 11th Judicial Circuit, to acquire the right-of-way required for the construction of Northwest 87 Avenue in exchange for Miami-Dade County to pay transportation impact fees associated with the Property.
- p. "Northwest 87 Avenue Right-of-Way" means that land necessary for the right-of-way for Northwest 87 Avenue abutting the Property from Northwest 154 Street to Northwest 162 Street, lying in Sections 15 and 16, Township 52, Range 40, as described in the legal description attached hereto and made a part hereof as Exhibit "2".
- q. "Northwest 154 Street Right-of-Way" means that land necessary for the right-of-way for Northwest 154 Avenue abutting the Property from Northwest 84 Avenue to sixty (60) feet west of Northwest 89 Avenue, being the southern fifty (50) feet of Sections 15 and 16 of Township 52, Range 40, adjacent to Dunnwoody Forest and Dunnwoody Lake as described in the legal description attached hereto and made a part hereof as Exhibit "3".
- r. "Owner" means the person or entity undertaking the development of the Property, as defined in the preamble to this Agreement, or any successors, assigns, or heirs thereof.
- s. "Principal Structure" means a building in which is conducted the principal use of the lot on which it is located. This shall include any structure, secondary residence, garage or other building or structure on a lot, subordinate to and not forming an integral part of the Principal Structure but pertaining to the use of the Principal Structure.
- t. "Public Facilities" means capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, education, parks and recreation, and health systems and facilities for which the Town's Comprehensive Plan provides a level of service.

- u. "Parcel A" shall mean that portion of the Property known as Dunnwoody Lake Residential Area, within the boundaries of the Town and identified as a part of Miami-Dade County Tax Folio No. 32-2016-000-0020 (hereinafter, the "Parcel A" or "Dunnwoody Lake Residential Area"), the legal description of which is attached hereto and made a part hereof as "Parcel A" of Exhibit "1".
 - v. "Parcel B" shall mean that portion of the Property known as Dunnwoody Forest, within the boundaries of the Town and identified by Miami-Dade County Tax Folio No. 32-2015-001-0500 (hereinafter, the "Parcel B" or "Dunnwoody Forest"), the legal description of which is attached hereto and made a part hereof as "Parcel B" of Exhibit "1".
 - w. "Parcel C" shall mean that portion of the Property known as Dunnwoody Lake Commercial Area, within the boundaries of the Town and identified as a part of Miami-Dade County Tax Folio No. 32-2016-000-0020 (hereinafter, the "Parcel C" or "Dunnwoody Lake Commercial Area"), the legal description of which is attached hereto and made a part hereof as "Parcel C" of Exhibit "1".
 - x. "Property" shall mean those certain parcels of land, located at the Northwest and Northeast corners of proposed 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 ("Dunnwoody Lake") and 32-2015-001-0500("Dunnwoody Forest"), the legal description of which is attached hereto and made a part hereof as Exhibit "1". Property shall include Parcels A, B and C collectively.
 - y. "Shell" shall mean the exterior structure for a standard commercial tenancy and includes framework, drywall, concrete floor, and stub-outs for electrical, plumbing and other utilities and glazing, and specifically does not include any interior finishes.
4. Intent. It is the intent of the Owner and the Town, two of the several parties involved in *Miami-Dade County v. The Genet Family Limited Partnership No. 2*, Case No. 08-51917 CA 20, in an effort to avoid further expense in the Litigation, to enter into this Agreement as a condition precedent to the settlement of the Litigation contemplated in the Settlement Agreement, attached hereto as Exhibit "7" and incorporated by reference herein. Further, Owner and Town intend that this Agreement shall be construed and implemented as a development agreement among the parties pursuant to the Act.
5. Effective Date and Duration. Within fourteen (14) days following approval at two public hearings and execution by all parties, the Town shall record the Agreement in the public records of Miami-Dade County. Within fourteen (14) days following the recording of the approval, the Town shall transmit one (1) copy of the recorded Agreement to the State of Florida Department of Community Affairs. This Agreement shall become effective on the date that is thirty (30) days subsequent to the date the State of Florida Department of Community Affairs receives a copy of the recorded Agreement pursuant to Section

163.3239, Florida Statutes. Notwithstanding the Effective Date provided herein and required by Section 163.3239, Florida Statutes, the Town and the Owner shall act in good faith to carry out the intent of the Agreement upon the Execution Date. This Agreement shall run for an Initial Term of twenty (20) years from the Effective Date, and may be extended by mutual consent of the Governing Body and the Owner subject to a public hearing pursuant to Section 163.3225, Florida Statutes. Consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either party upon the expiration of this Agreement, and thereafter the parties hereto shall have no further obligations under this Agreement, except as any individual obligations may specifically survive the expiration of this Agreement.

6. Permitted Development Uses and Building Intensities.

- (a) *Permitted Development Uses.* Parcel A is designated as "Low Density Residential," Parcel B is designated as "Parks and Recreation" and "Environmentally Protected Parks", and Parcel C is designated as "Business and Office" according to the Town's adopted Comprehensive Plan and Future Land Use Plan Map. Parcel A is zoned "RM-13," Parcel B is zoned "AU", and Parcel C is zoned "BU-1A" by the Town's Land Development Regulations and Official Zoning Map. The Property may be used for the purposes permitted and regulated in these land use designations and zoning districts, as further limited by the Declaration of Restrictions, Approved Site Plan, and Resolution 06-01 of the Miami-Dade County Historic Preservation Board. A copy of the Future Land Use Plan Map of the Town's Comprehensive Plan, as amended, is attached hereto and made a part hereof as Exhibit "6".
- (b) *Density, Building Heights, Setbacks and Intensities.* The maximum density, heights, setbacks and intensities for any development on the Property shall be regulated by the Town's Land Development Regulations, Comprehensive Plan and any applicable Federal, State or County laws and regulations.

The parties acknowledge that Parcel A and Parcel C are currently subject to the Declaration of Restrictions and development of these Parcels is currently limited to 509 residential units and 100,000 square feet of commercial space, respectively. The parties further acknowledge that any future development of Dunnwoody Forest, "Parcel B", must be compatible and consistent with the Town's Comprehensive Plan and Land Development Regulations. The foregoing statement is not intended to restrict the Owner's ability to request amendments to the Official Zoning Map pursuant to Paragraph 7(b) and 7(c).

7. Public Services and Facilities.

- (a) The Town and the Owner anticipate that the Property and its future development will be served, consistent with the level of service standards identified in the Town's Comprehensive Plan, by those public services and facilities currently in

existence or to be developed as provided by the State of Florida, Miami-Dade County, or the Town, or as contemplated in this Agreement and consistent with the Declaration of Restrictions and Town's Laws. The Property will also be served by any and all available Public Facilities defined in Section 163.3221(13), Florida Statutes and provided in the Town's Comprehensive Plan, specifically including but not limited to, those Public Facilities described in the Comprehensive Plan such as transportation facilities, police, fire, parks and recreation, sanitary sewer, solid waste, drainage, potable water services, and educational facilities.

- (b) For purposes of concurrency, the Town shall reserve and allocate sufficient public facility capacity for transportation and parks and recreation to serve the development of Parcel A with 509 residential units, Parcel B with 84 residential units, and Parcel C with 140,000 square feet of commercial development to accommodate the Approved Site Plan and any modifications thereto, for the Entire Term of this Agreement.
- (c) Residential development on Parcel B is currently limited to single family residential units with a minimum lot size of five (5) acres. No increase in density shall be permitted beyond that currently allowed in the AU district without approval of a rezoning of the Parcel. Upon application by the Owner for a rezoning pursuant to all applicable development review procedures and criteria, the Town shall exercise its jurisdiction under the police power to consider the approval, approval with conditions, or rejection of any such application to rezone Parcel B. However, for purposes of concurrency, the Town shall reserve and allocate sufficient public facility capacity for transportation and park and recreation facilities provided in the Town's Comprehensive Plan, to serve the development of up to a maximum development of 84 detached residential single family units for the Entire Term of this Agreement, except as may be modified pursuant to Paragraph 7(d). Owner and the Town agree that all development characteristics including but not limited to density, intensity, location, character, bulk, height, and scale shall be regulated by the Laws of the Town or other jurisdictional agencies and any and all required Development Permit procedures, reviews and approvals, subject to the requirement that no development shall be proposed on Parcel B in excess of 84 units. The foregoing shall in no way be deemed to inhibit, restrict, or require the exercise of the Town's police power or actions of the Town when acting in a quasi-judicial capacity. Parties understand that this is not a vested right to any residential density and that the current maximum density for Parcel B is limited to one (1) unit per (5) acres as allowed in the AU zoning district.
- (d) The Town and Owner acknowledge that the Town may grant development approvals for Parcel B for less than 84 residential units, and Owner may either accept such reduction, appeal, otherwise challenge such decision or seek other remedies provided by law. In the event Owner accepts any such decision and elects to commence the development of Parcel B in accordance with such

decision, or after resolution of any appeal or other challenge resulting in development rights for less than 84 residential units, then the reservation of concurrency for Parcel B shall be reduced to that capacity necessary to accommodate the approved number of units. If Owner does not accept such decision, Owner shall notify Town accordingly and may reapply for development approvals in accordance with Town Laws and this Agreement.

- (e) This Agreement shall constitute a final concurrency determination for the Property that shall be valid and binding for the Entire Term of this Agreement subject to the conditions set forth herein.
- (f) The Owner agrees to be bound by the Town impact fees and building permit fees in effect at the time of any Development Permit application with respect to parks and recreation and police. The Owner agrees to be bound by the Miami-Dade County impact fees and building permit fees in effect at the time of any Development Permit application with respect to transportation, water, sewer, drainage, schools, and fire or other impact fees. The Owner shall not be subject to other impact fees or building permit fees that may be adopted by the Town subsequent to execution of this Agreement except as may be applied pursuant to the requirements of the Act.
- (g) The Town hereby acknowledges and agrees that its Public Facilities for transportation and parks and recreation can and shall accommodate the impacts of all Development Permits sought to be issued for the Property as contemplated herein, subject to the conditions of this Agreement and, provided the Owner completes the necessary improvements set forth herein and develops the Property in substantial compliance with the Laws of the Town and as contemplated in this Agreement.
- (h) Owner acknowledges and agrees that it is bound by the concurrency requirements for all Public Facilities other than transportation and parks and recreation.
- (i) Owner acknowledges and agrees that all development on the Property is subject to school concurrency and no portion of the Property is vested or has otherwise satisfied school concurrency. Owner agrees to be bound by the school concurrency requirements in place at the time of application for any development orders, including platting and site plan review, under the School Concurrency land development regulations. Nothing in this agreement in anyway off-sets, reduces, or otherwise mitigates the school concurrency requirements or educational impacts related to any residential development on any of the Property. Owner and the Town expressly understand that no building permit will be issued for any residential development on the Property that generates impacts on public school facilities until adequate school capacity is available as evidenced by satisfaction of all school concurrency requirements at the time of building permit, site plan, site plan modification or plat, whichever event is first in time for any given residential development.

8. Parks and Recreation Final Concurrency Determination.

- (a) Final concurrency determination for Parks and Recreation is hereby granted, and impacts of development of Parcel A, Parcel B, or any portion of the Property have been adequately mitigated subject to compliance with the following conditions within the time frames required by this Agreement:
- i. Owner has conveyed the Northwest 87 Avenue Right-of-Way to Miami-Dade County pursuant to Paragraph 10(a); and
 - ii. Owner has conveyed the Northwest 154 Street Right-of-Way to the Town or its assignee pursuant to Paragraph 10(b).
 - iii. Prior to the issuance of the first building permit for any residential Principal Structure on the Property, the Owner shall dedicate all or a portion of Madden's Hammock located in Dunnwoody Forest, Parcel B, to satisfy the respective development's proportionate fair share of land for park use, pursuant to the Town's Laws. The parties acknowledge that the maximum build-out of residential units contemplated herein for Parcel A and Parcel B requires the dedication of 6.11 acres of park land. Owner shall provide and dedicate as necessary, simultaneously with the dedication of any parks lands, developed access to all dedicated park and recreation lands. Town acknowledges that upon the Owner's dedication of Madden's Hammock to satisfy its proportionate fair share of park land, in whole or in part, a covenant running with the land providing limited access to Madden's Hammock, in accordance with the provisions of paragraph 8(b) below will constitute developed access for Madden's Hammock. In addition, the Town acknowledges that any park land dedicated above and beyond the required dedication to satisfy the Town's level of service requirements may serve as a contribution in lieu of park impact fees pursuant to the Town's Laws.
- (b) Prior to the issuance of the first building permit for any residential Principal Structure for the Property, the Owner shall record a covenant running with the Madden's Hammock portion of Parcel B to provide limited public access to the Dunnwoody Forest Madden's Hammock site. The foregoing covenant shall set forth certain limitations on public access, as set forth in Exhibit "8" attached hereto in order to preserve the "Archaeological Zone" and/or unique resource area(s), including permissible passive uses, reasonable hours for visitation by Miami Lakes residents for educational purposes, and the geographic extent of such access.
- (c) This final concurrency determination shall be valid and binding for the Entire Term of this Agreement, subject to the conditions set forth herein.

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; 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.
- (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
 - 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.

(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.

10. Conveyance and Construction of Rights-of-Way

- (a) The Owner shall convey the Northwest 87 Avenue Right-of-Way to Miami-Dade County pursuant to the terms agreed upon in the Litigation and Settlement Agreement between the Owner and Miami-Dade County.
- (b) The Owner shall convey to the Town or its assignee the Northwest 154 Street Right-of-Way within thirty (30) days of the Effective Date of this Agreement as provided herein, and the Town acknowledges that said dedication is sufficient to accommodate and include construction of a roadway with four (4) driving lanes, grass medians, turn lanes, concrete sidewalks, curb and gutter, storm drainage, street lighting, traffic signalization, pavement markings and other required road features, according to the specifications of the Town Engineer and pursuant to the Town's Laws and design standards.
- (c) The Owner shall be responsible for the full cost of design and construction of the Northwest 154 Street Right-of-Way and all associated Right-of-Way improvements contemplated under this Agreement and the Declaration of Restrictions. In the event the Town elects to construct the Northwest 154 Street Right-of-Way prior to Owner's commencement of development on the Property, the Owner shall reimburse the Town for all related costs incurred including but not limited to the actual total design, construction, management costs and actual interest rates incurred to finance the construction. In the event the Town finances the construction itself, the Owner shall pay interest on the total costs described above at the annual average interest rate on State Board of Administration (SBA) funds for the prior calendar year of the reimbursement. Reimbursement shall occur prior to or concurrent with the issuance of any permit on the Property. The obligation to reimburse at the time any permit on the property is issued shall survive the expiration of this Agreement.
- (d) As part of Owner's settlement with Miami-Dade County in *Miami-Dade County v. The Genet Family Limited Partnership No. 2*, Case No. 08-51917 CA 20, Owner shall use best efforts to negotiate with the County a reasonable timeline for the completion of Northwest 87 Avenue from Northwest 154 Street to Northwest 186 Street by the County.

11. Town Municipal Facility. Prior to submitting an application for the first building permit on a Principal Structure on Parcel C, the Owner shall prepare and submit to the Town for review and approval, an application to modify the Approved Site Plan to provide a maximum of an additional 40,000 square feet for a total of 140,000 square feet of commercial development on Parcel C, which square footage will include a site plan and preliminary architectural and design drawings for an 8,000 square foot Shell to be used as a senior center ("Municipal Facility") and related improvements(the "Plans").

- (a) The Town Council shall review the Plans at its next available agenda, pursuant to the approval procedures required in the Town Land Development Code and shall exercise its jurisdiction under the police power to consider the approval, approval with conditions, or denial of the request. In the event of denial, the Town shall submit recommendations which Owner shall thereupon incorporate into the Plans. Thereafter and as soon as reasonably possible, Owner shall resubmit the revised Plans for reconsideration by the Town Council. The parties agree to act in good faith in the preparation, submission, review and revision of the Plans. As long as the Owner proceeds in good faith, the Owner shall not be required to submit substantially revised Plans more than twice.
- (b) The Town and Owner acknowledge that the Owner may apply for modification of the Approved Site Plan for Parcel C for less than 140,000 square feet of commercial uses, but that any such request must still include the 8,000 square foot Municipal Facility. However, if the Owner applies for modification of the Approved Site Plan for Parcel C for additional square feet of commercial uses, and the Town issues development approvals for Parcel C for less than the requested square footage of commercial uses, then the Owner is relieved of its obligation to construct the Municipal Facility and such relief will not be deemed to be a default under this Agreement.
- (c) Design, development and construction of the Municipal Facility shall be performed simultaneous with the design, development and construction of the Dunnwoody Lake Commercial Area, Parcel C. Owner agrees to complete the Municipal Facility and record a Memorandum of Lease or transfer ownership to the Town, subject to the Owner's sole discretion as indicated in Paragraph 11(h) below, prior to the issuance of the first Certificate of Occupancy or Use for any Principal Structure on Parcel C.
- (d) Design, development and construction of the Municipal Facility shall be the sole responsibility and at the sole cost of Owner, in compliance with the Town's Laws.
- (e) Owner shall construct, at the Owner's sole expense, the Municipal Facility, as approved by the Town subject to all site plan review or modification requirements. At the Owner's discretion the Municipal Facility may be constructed as an "in line" space within the shopping center, a stand-alone building, or as part of an out-parcel, on Parcel C.
- (f) Construction of the Municipal Facility shall be in accordance with the Approved Site Plan, as may be revised above, and no material changes shall be made without the prior written approval of the Town Manager. Construction shall continue in substantial accordance with the schedule set forth in the Approved Site Plan. During the construction process, the Town shall have the right to visit the Municipal Facility and the Dunnwoody Lakes, Parcel C, at any reasonable time in order to observe the work in progress.

- (g) Owner shall obtain all necessary approvals required for the construction of the Municipal Facility. Owner agrees to provide at its sole cost and expense all necessary on-site and off-site utility and infrastructure improvements, including access easements or rights-of-way, necessary for the construction and use of the Municipal Facility.
 - (h) Prior to the issuance of any Certificate of Occupancy or Use for any Principal Structure on Parcel C, the Town and the Owner shall enter into a lease for the Municipal Facility. This lease shall provide for a long-term 99 year lease of the Municipal Facility for \$1 per year, plus common area maintenance except for ad valorem taxes. The Town and Owner shall execute a Memorandum of Lease reflecting the foregoing terms, which shall be recorded in the Public Records of Miami-Dade County at Owner's expense. At the Owner's option, the Owner may elect to transfer ownership in fee simple or condominium form of ownership.
12. Right of First Refusal of Dunnwoody Forest, Parcel B. Owner and Town agree that Town shall have a right of first refusal to purchase the Dunnwoody Forest, Parcel B.
- (a) Nothing herein shall preclude Owner from marketing Parcel B. In the event Owner receives a bona fide written offer from a third-party to purchase Parcel B and the Owner agrees to sell Parcel B to said third-party upon the terms and conditions set forth in the agreement, Owner agrees to provide written notice to Town within five (5) working days of the effective date of any executed agreement to sell Parcel B, with full disclosure concerning the proposed disposition, which shall include the purchase price, deposit, manner in which the purchase price will be paid, due diligence period, time of closing, and any other terms of the agreement that are germane and specific to the proposed transaction. The Town shall then have a right to purchase Parcel B for the offered purchase price, and on the same financial terms and conditions under which the Owner agreed to sell, provided, however, that the Town shall have the right to avail itself of the purchase money financing (set forth below) which Owner agrees to make available exclusively to the Town.
 - (b) Town shall have twenty (20) days to exercise this right of first refusal and notify the Owner, in writing, of its decision. Should the Town exercise its right of first refusal to purchase Dunnwoody Forest, Parcel B, the Owner agrees to provide purchase money financing in an amount that shall not exceed 80% of the purchase price. The purchase money note ("Note") shall bear interest at an adjustable rate of four hundred (400) basis points over the 12 month LIBOR Index published in The Wall Street Journal, adjusted monthly. The Note shall be payable interest only monthly commencing thirty (30) days after closing and shall mature on the forty-eight (48th) month after closing at which time the entire unpaid principal balance together with all accrued and unpaid interest shall be due and payable. The repayment of the Note shall be secured by a purchase money first mortgage encumbering the title of the Dunnwoody Forest and the Note shall be fully recourse against Town. Town shall have sixty (60) days from the date it exercises

its right of first refusal, to close on the sale, regardless of the timing of the closing as set forth in the agreement between Owner and third party purchaser.

- (c) Town shall not have any right of first refusal in those cases in which Owner wishes to transfer or dispose of its interests to a related entity, trust, partnership or other type of entity in which Owner or its heirs owns a majority or controlling interest, regardless of whether such transfer or disposition occurs through merger, reorganization, consolidation, transfer, or by sale of its interests.
 - (d) In the event that the Dunnwoody Forest is subject to an agreement to sell and Town does not elect to exercise its right of first refusal and the proposed transaction does not close, then Town's right of first refusal shall be reinstated and be fully applicable to any successive transactions; provided, however, that if Town shall elect to exercise its right of first refusal and fails to purchase the Dunnwoody Forest, the right of first refusal shall be terminated and not be of any further force or effect. In the event of such a termination, the Town shall record a release into the Public Records of Miami-Dade County.
 - (e) This right of first refusal is personal to Town and may not be assigned or transferred.
13. Other Agreements. This Agreement has no effect on any other agreement, the Town's development orders, or Declaration of Restrictions otherwise encumbering the Property. Any and all agreements currently in the public records remain valid. The parties acknowledge and agree that this Agreement and the Declaration of Restrictions shall be read together and not to conflict whenever possible. No condition in the Agreement that may have the effect of modifying the Declaration of Restrictions shall be effective until and unless said modifications are properly approved through a duly adopted amendment to the Declaration of Restrictions. The parties incorporate by reference each and every requirement set forth in Sections 163.3220 through 163.3242, Florida Statutes (2010), the Florida Local Government Development Agreement Act. The Town acknowledges that if the roadway improvements identified in the Declaration of Restrictions are completed as contemplated by this Agreement by another party, those improvements shall constitute compliance with the Declaration of Restrictions and the applicable provisions of this Agreement.
14. Lowering of Vegetation - Dunnwoody Forest. Within thirty (30) days of the Effective Date, the Owner shall lower the vegetation surrounding Madden's Hammock and shall maintain such vegetation at a lowered height.
15. Contribution. The Declaration of Restrictions previously required a voluntary contribution of \$300,000.00 toward the improvement of schools to serve the Property in addition to meeting the educational facilities concurrency and impact fee requirements. Owner and Town agree that the voluntary contribution of \$300,000 shall be contributed to the Town's general fund for educational purposes which shall be spent for improvements to impacted schools in the Town of Miami Lakes, as directed by the Town

Council to offset the future impact of the development provided herein. This contribution shall be in addition to any contributions or improvements required to comply with School Concurrency. No building permit for a Principle Structure on Parcel A or Parcel B shall be issued prior to payment of this contribution. Owner acknowledges that the Property remains subject to the Town's educational facilities concurrency requirements and impact fee requirements for Public Schools and this contribution shall not be credited in any way toward the impact fees or other contribution required for Public Schools Concurrency.

16. **Roadway Design.** Town and Owner acknowledge, agree and confirm that pursuant to the Declaration of Restrictions, Owner is responsible for constructing certain improvements, including but not limited to lighted, landscaped and irrigated roadway medians and swales along and within the portions of the Northwest 87 Avenue and Northwest 154 Street roadways adjacent to the Owner's Property.
17. **Local Development Permits.** The Property is the subject of various Development Permits and approvals consistent with the Property's land use classifications. Owner shall apply, at its own expense, and the Town will consider, the following additional Development Permits in order for the Owner to complete the Project, including but not limited to the transfer and dedication of all properties as contemplated herein, in a manner consistent with the zoning and comprehensive plan designations on the Property:
 - (a) Platting;
 - (b) Rezoning;
 - (c) Site plan modification and/or approval;
 - (d) Water, sewer, paving and drainage permits;
 - (e) Building permits;
 - (f) Certificates of Use and Occupancy;
 - (g) Certificate of Appropriateness; and
 - (h) Any other official action of the Town and/or Miami-Dade County, Florida or other applicable regulatory agencies having the effect of permitting the development of land or providing permits required for the development of land.
18. **Consistency with Comprehensive Plan.** The Town hereby finds and declares that the development permitted or proposed under this Agreement is consistent with the Town's Comprehensive Plan and Land Development Code, subject to the conditions set forth herein. Any development not depicted on the Approved Site Plan must comply with the Town's Comprehensive Plan and Land Development Code and be approved through the applicable review process provided in the Town's Laws.

19. **Reservation of Development Rights.** For the Entire Term of this Agreement, the Town hereby agrees that it shall permit the Owner to develop the Property in accordance with Laws of the Town, as they exist as of the Effective Date of this Agreement, subject to the terms and conditions of this Agreement and payment of impact fees and building permit fees applicable at the time of development. Development of the Property pursuant to the terms and conditions of this Agreement shall not be subject to any future changes to the Town's Land Development Regulations or Comprehensive Plan designation after the Effective Date and during the Entire Term. The Town may apply subsequently adopted laws or policies to the Property only as permitted or required by the Act.
20. **Zoning and Other Approvals.** The parties hereto recognize and agree that certain provisions of this Agreement require the Town and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances, in the exercise of the Town's jurisdiction under the police power. Nothing in this Agreement shall be construed to prohibit the Town from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.
21. **Necessity of Complying with Local Regulations Relative to Development Permits.** This Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification. The Owner and the Town agree that the failure of this Agreement to address a particular permit, approval, procedure, condition, fee, term or restriction in effect on the Effective Date of this Agreement shall not relieve Owner of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions as long as compliance with said regulation and requirements do not require the Owner to develop the Property in a manner that is inconsistent with the Laws of the Town in existence as of the Effective Date.
22. **Good Faith; Further Assurances.** The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of and to satisfy their obligations under this Agreement in order to secure to themselves the mutual benefits created under this Agreement. In that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement, provided that the foregoing shall in no way be deemed to inhibit, restrict, or require the exercise of the Town's police power or actions of the Town when acting in a quasi-judicial capacity.
23. **Expiration of Agreement.** The expiration or termination of this Agreement, for whatever reason, shall not be considered a waiver of, or limitation upon, the rights, including, but not limited to, any claims of vested rights or equitable estoppel, obtained or held by the Owner or its successors or assigns in compliance with this Agreement and all prior and subsequent Development Permits or development orders granted by the Town, including, but not limited to, those rights granted under the Town's Comprehensive Plan.

24. **Default and Remedies.**

- (a) The obligations of the Owner set forth in this Agreement are an express condition to the obligations of the Town to reserve and allocate concurrency to the Owner. In the event that Owner defaults under any of its obligations set forth in the Agreement the Town Manager is authorized to provide notice of such default, with a reasonable period in which to cure and grant reasonable extensions upon the Owner's showing of good faith to cure said default. Upon expiration of any such reasonable period to cure or extension thereto, the Town Manager is hereby authorized to withhold issuance of any development orders, approvals, certificates of use or occupancy and Development Permits for the respective Parcel until Owner has complied with the terms of this Agreement and to schedule a review of the Agreement in accordance with subparagraph (c), below.
- (b) In the event of default by either party under this Agreement, the other party shall be entitled to all remedies at law or in equity.
- (c) In accordance with Section 163.3235, Florida Statutes, the Town may review this Agreement at least once every 12 months, or more frequently if necessary, to determine if the Owner has demonstrated good faith compliance with the terms of this Agreement. If upon review the Town finds, on the basis of substantial competent evidence, that there has been a default by the Owner to comply with the terms of this Agreement, the Town may revoke or modify the Agreement. Prior to such revocation or modification of this Agreement, the Town Manager shall provide the Owner with notice of such default, with a reasonable period in which to cure and grant reasonable extensions upon the Owner's showing of good faith to cure said default.

In the event that the Property is not under common ownership, default of a particular obligation related to a particular Parcel shall not constitute a default of another Parcel under different ownership, but shall only constitute a default as to that particular Parcel and the applicable owner. Accordingly, and without limiting the foregoing, the failure of the Owner to complete any one, or combination of the following, shall be considered a default by the Owner as to the Property or particular Parcel as follows:

- i) Failure of the Owner to convey the Northwest 87 Avenue Right-of-Way and Northwest 154 Street Right-of-Way pursuant to Paragraph 10 herein shall be a default as to the Property;
- ii) Failure of the Owner to construct and lease or transfer ownership (at the Owner's discretion) the Municipal Facility pursuant to the terms of Paragraph 11 shall be a default as to Parcel C; and

- iii) Failure of the Owner to complete payment of the contribution as proffered in Paragraph 15 shall be a default as to Parcel A and Parcel B.
- (d) Failure of the County to complete the construction of Northwest 87 Avenue from Northwest 154 Street to Northwest 186 Street shall not be deemed a default of Owner. However, in the event of failure of the County to complete the roadway within the Term of this Agreement, including any extensions, the Town shall be authorized to withhold any additional permits for the Property until such improvements have been Completed.
- (e) The failure of the Miami-Dade Board of County Commissioners to approve the Settlement Agreement in substantially the form attached hereto as Exhibit "7" shall relieve the parties of any further obligations under this Agreement.
25. **Binding Effect.** The obligations imposed pursuant to this Agreement upon the Owner and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.
26. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by a recognized courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope and addressed as follows:

If to the Town: Town Mayor
 Town of Miami Lakes
 15150 NW 79 Court
 First Floor
 Miami Lakes, FL 33016

With copies to: Town Manager
 Town of Miami Lakes
 15150 NW 79 Court
 Miami Lakes, FL 33016

 Town Attorney
 Town of Miami Lakes
 2525 Ponce De Leon Boulevard
 Suite 700
 Coral Gables, FL33134

If to the Owner at: Mrs. Betty L. Dunn
 8083 NW 103 Street
 Hialeah Gardens, FL33016

With copy to:

Jeffrey Bercow, Esq.
Bercow Radell & Fernandez, PA
200 South Biscayne Boulevard
Suite 850
Miami, FL 33131

27. Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Owner and the Town agree that Miami-Dade County, Florida is the appropriate venue in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. Notwithstanding any changes to Florida law, this Agreement shall remain binding as a statutory development agreement between the parties and Owner agrees to mitigate the impacts of development of the Property pursuant to the requirements of this Agreement.
28. Severability. In the event that any term or provision of this Agreement is determined by an appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.
29. Entire Agreement. This Agreement sets forth the entire Agreement and understanding between the parties hereto relating in any way to the subject matter contained herein and merges all prior discussions between the Owner and the Town. Neither party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Agreement and this Agreement may not be amended or modified except by written instrument signed by both parties hereto.
30. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or rehearings commenced by the Owner (any such causes or events to be referred to herein as a "Force Majeure"), shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage.

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

EXHIBITS

Exhibit 1: Legal Description of the Property (Including Parcel A, Parcel B and Parcel C)

Exhibit 2: Legal Description of Northwest 87 Avenue Right-of-Way

Exhibit 3: Legal Description of Northwest 154 Street Right-of-Way

Exhibit 4: Declaration of Restrictions

Exhibit 5: Resolution 06-01 of the Miami-Dade County Historic Preservation Board

Exhibit 6: Future Land Use Map

Exhibit 7: Settlement Agreement

Exhibit 8: Terms of Covenant for Limited Public Access to Madden's Hammock

Exhibit 9: Traffic Impact Analysis prepared by JMD Engineering, Inc., dated (February 28, 2011 and March 4, 2011)

Exhibit 10: MPO Project No. PW20040390 and TIP Reference Page A7-21

TOWN:

ATTEST:

M. Tejeda
Marjorie Tejeda
Town Clerk

TOWN OF MIAMI LAKES,
FLORIDA

By: Michael Pizzi
Michael Pizzi
Mayor

Dated 28 day of April, 2011

Approved for form and legal sufficiency:

Kathy M. Rangel
Town Attorney

OWNER

WITNESS:

Yaris Ovalles
Signature
YARIS OVALLES
Print Name:
Erica Hernandez
Signature
Erica Hernandez
Print Name:

F71-1 LLC

By: Betty L. Dunn
Name Betty L. Dunn
Title: Managing Member

Dated this 18th day of April, 2011

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 18th day of April, 2011, by Betty L. Dunn, as Managing Member, 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:

Kathy M. Rangel
Notary Public, State of Florida
Print/type name: Kathy M. Rangel



WITNESS:

[Signature]

Signature

YARIS OVALLES

Print Name:

[Signature]

Signature

ERICA HERNANDEZ

Print Name:

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

F69-1 LLC

By: [Signature]

Name Betty L. Dunn

Title: Managing Member

Dated this 18th day of April, 2011

The foregoing instrument was acknowledged before me this 18th day of April, 2011, by Betty L. Dunn, as Managing Member, 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:

[Signature]
Notary Public, State of Florida

Print/type name: KATHY M RANGEL



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