

## **MASTER UTILITY CONSTRUCTION AGREEMENT**

This Master Utility Construction Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Miramar, a municipal corporation duly organized and validly existing under the laws of the State of Florida ("City");

and

Hereafter referred to as "Developer".

### WITNESSETH

WHEREAS, Developer has requested the City to execute a Boundary Plat (as defined herein) with Broward County; and

WHEREAS, the installation of utilities, dedicating easements and rights-of-way, and construction of the Utility Improvements (as set forth herein) are components of the City Master Plan; and

WHEREAS, Developer hereby agrees to comply with all requirements of the City's Water/Wastewater Assessment Program (as set forth in Resolutions 93-150, 93-161, 95-38, 95-39, 95-54, 95-55, 96-5 and as may otherwise be set forth in any other City Resolutions or Ordinances) and the Master Plan; and

WHEREAS, Developer understands that under the City of Miramar Land Development Code, the Developer will be required to record a full subdivision plat for single family residential units or will need to obtain site plan approval for multi-family and non-residential sites in addition to the boundary plat; and

WHEREAS, the parties agree that in order to assure compliance with Section 21-204 of the City Code and applicable Sections of the City Land Development Code, there shall be no reservation of water or sewer capacity or other service unless all conditions precedent to such reservation, including, but not limited to, entry into a Service Agreement acceptable to the City are met with respect to that particular Parcel; and

WHEREAS, the City and Developer agree that they will enter into a Service Agreement as defined by Section 21-204. The Service Agreement shall be fully executed prior to recording of a final subdivision plat (or replat) or issuance of a building permit if no platting is required or if the plat has already been recorded; and

WHEREAS, the City Commission has determined that it is in the City's best interest to enter into this Agreement as an interim agreement for development of the Utility improvements necessary to serve the Property; and

WHEREAS, Developer represents that it is the owner of the Property with full authority to execute this Agreement and bind the Property and all future owners thereof.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the City and Developer mutually undertake, promise and agree for themselves, their successors and assigns as follows:

## ARTICLE I

### INCORPORATION INTO AGREEMENT

SECTION 1.01. The foregoing "WHEREAS" clauses are hereby ratified and conformed as being true and correct and are hereby made a specific part of this Agreement.

## ARTICLE II

### DEDICATIONS AND CONSTRUCTION

SECTION 2.01. DEFINITIONS. As used in this Agreement, the following terms shall have the following meanings, unless the context hereof otherwise requires.

"Agreement" means this Master Utility Construction Agreement.

"Boundary Plat" means the \_\_\_\_\_ Plat and does not mean any other replat or a final subdivision plat.

"City" means the City of Miramar, a municipal corporation duly organized and validly existing under the laws of the State of Florida.

"City Manager" means the chief executive officer of the City or such chief executive officer's designee.

"Construction Contracts" means all contracts entered into by Developer for the design, construction and inspection of the Utility improvements.

"Contractors" means the firms entering into construction Contracts with Developer.

"Developer" means \_\_\_\_\_ and each and every successor-in-title to the property, or any portion thereof.

"Department" means the City's Department of Engineering Services.

"Director" means the Director of Engineering Services or his other authorized representative of the City.

"Onsite Private Facilities" means all water and sewer facilities not conveyed to the City and which are not located within dedicated rights-of-way or City owned easement areas, including but not limited to all plumbing facilities located on private property, not including those fixtures or facilities installed or to be installed within any building. Ownership by the City shall terminate at the outlet side of each water meter or at the property or easement line for sewage facilities.

"Offsite Transmission Facilities" means that portion of the water and sewer facilities not located on the East or West Water Treatment Plant and/or the Wastewater Reclamation Facility. Offsite facilities include, but are not limited to, water lines, sewer lines reuse lines, master lift stations, lift stations, water storage tanks, reuse storage tanks, repump facilities etc. Without limitation, all property rights, easements, rights-of-way, franchises and equipment relating thereto and deemed necessary or convenient for the acquisition, construction, renovation, reconstruction or operation thereof, with such changes, deletions, additions or modifications to the enumerated improvements, equipment and facilities, or such other improvements, equipment or facilities as may hereafter be approved by the City in accordance with this Agreement.

"Parcel" shall mean any final subdivision plat within the Property or any portion of the Property sought to be developed through the approval of a final subdivision plat or site plan.

"Plans and Specifications" means the plans, specifications and any other technical data necessary for the construction of the Utility Improvements for the Property. The Plans and Specifications shall be prepared and certified by a Florida registered professional engineer.

"Property" means the \_\_\_\_\_ property (as described on Exhibit "A").

"Utility Improvements" means that portion of the necessary storm sewer, water sanitary sewer, and/or reuse facilities necessary to serve the Property, including but not limited to, any and all storm sewer pipes, catch basins, water mains, valves, fitting, fire hydrants, fire lines, service connections, service lines, shutoffs, meter boxes, sewage pumping stations, force mains, gravity sewer mains, laterals, manholes, wastewater reuse lines, services and all appurtenances and easements thereto necessary for complete water, sanitary sewer, and/or reuse system.

SECTION 2.02. CONSTRUCTION. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein", "hereunder", "hereby", "hereto", thereof," and any similar terms, shall refer to this Agreement; the term

heretofore" shall mean before the date this Agreement is executed; and the term "hereafter" shall mean after the date this Agreement is executed.

SECTION 2.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

### ARTICLE III

#### CONSTRUCTION OF UTILITY IMPROVEMENTS

##### SECTION 3.01. DEVELOPER'S OBLIGATIONS.

(A) Design: The Developer, at its sole cost and expense, with the aid of a Florida registered professional engineer, shall be responsible for designing and preparing the Plans and Specifications for the Utility Improvements. All plans, specifications, and calculations submitted for review shall be sealed and signed by a Florida registered professional engineer. The Plans and Specifications shall be approved in writing by the Department and by any other governmental entity whose approval is required. No work shall commence until the Plans and Specifications are approved in writing by the Department and a construction permit is issued.

(B) Construction and Installation: The Developer, at its sole cost and expense, shall construct and install the Utility Improvements (with the exception of all Utility Improvements which the City is obligated to construct pursuant to any other agreement, contract or assessment program) in accordance with the approved Plans and Specifications for each Parcel of the Property.

(C) On-Site Private Facilities: As part of its construction obligation, the Developer, at its sole cost and expense, shall design, construct and install all On-Site Private Facilities for each lot or Parcel prior to the issuance of any Certificate of Occupancy within that lot or Parcel. The On-Site Private Facilities shall be owned, operated, repaired and maintained by the Developer, its successors and/or assigns in good order and condition in accordance with applicable City regulations. As part of the On-Site Private Facilities, Developer shall install clean-out on consumer sewage service at the property line or easement line in accordance with current Utility Standard Details. The City shall not be liable for any defects or repairs to the On-Site Private Facilities.

(D) Inspection: The developer, at its sole cost and expense, shall retain the services of a Florida registered professional engineer for the purposes of inspecting and supervising the construction and installation of the Utility Improvements to insure compliance with accepted civil engineering practices and

approved Plans and Specifications. Prior to conveying the Utility Improvements to the City, the engineer shall certify in writing that the construction and installation of the such facilities comply with accepted civil engineering practices and are in substantial conformance with approved Plans and Specifications. The City shall have the right, but not the obligation, to make inspections of all the construction work performed by or for the Developer and permitted by the City under the terms of this Agreement, including both Onsite Private Facilities and Utility Improvements regardless of whether or not the facilities will be subsequently owned by the City. Such inspections shall not be construed to constitute any guarantee on the part of the City as to materials or workmanship, nor shall they relieve the Developer of the responsibility for the proper construction of said facilities in accordance with the requirements of the approved Plans and Specifications nor shall any inspections, if undertaken, abrogate any warranties made by the Developer as to the quality and condition of the materials and workmanship.

(E) Compliance with Applicable Laws: The work to be performed by Developer pursuant to the provisions set forth herein, shall be in accordance with all requirements of the regulatory agencies which have jurisdiction over the subject matter of this Agreement as well as all applicable Federal laws, State statutes and County and City ordinances. The requirements of this paragraph shall govern, regardless of any errors or omissions in the approved Plans and Specifications.

(F) Approvals and Permits: The Developer or its agents, at its sole cost and expense, shall be fully responsible for obtaining all required approvals from all governmental agencies and for obtaining all necessary construction permits for the Utility Improvements contemplated in the approved Plans and Specifications.

(G) Accuracy of Information: The Developer shall furnish to the City accurate information with regard to all matters under this Agreement. The Developer shall be responsible for errors or changes in the information furnished to the City under this Agreement.

(H) Compliance with City Code: Developer agrees that it shall be bound by the requirements of Section 21-204 of the City Code with respect to the execution of Service Agreements for water and or sewer facilities, as more fully described in subparagraph (I) below and all other provisions, ordinances, resolutions and regulations related to the City's water and wastewater system. The Service Agreements for one or more Parcels shall each address those items set in Section 21-204, as more fully described in the City Code, which includes, without limitation, the installation of utilities, standards of construction or specifications, and warranties and bonding requirements and such Service Agreement shall be a prerequisite to the recording of any final subdivision plat of any Parcel within the Property or issuance of any building permit if no platting is

required or if the boundary plat has already been recorded within the particular Parcel (whichever approval is sought first).

(l) Service Agreements and Developer's Phasing Plan: Developer agrees that the Service Agreement (described above) shall be in a form acceptable to City and shall be applicable to any Parcel of the Property and shall be executed in accordance with Section 21.204 prior to recording of any final subdivision plat, or the issuance of a building permit if no platting is required or the plat has already been recorded. In addition to the requirements set forth in Subsection H. above, the Service Agreement shall: (1) require Developer and City to agree upon the number of equivalent residential connections needed to furnish water and sewer capacity to the particular Parcel; (2) Provide for payment of necessary water and sewer impact and connection fees and participation in the City's Water/Wastewater Assessment Program and payment of all other applicable fees; (3) require the phasing of the installation of Utility Improvements for the entire Parcel upon which building is to be commenced for each particular parcel. Furthermore, Developer shall deliver to the Department, a phasing plan, which (a) indicates the anticipated order of development for the Property, though the Developer reserves the right, upon reasonable prior notice to the City, to modify its phasing plan and order of development at a subsequent time by submission to the Department for approval of a revised phasing plan consistent with all plat and site plan approvals and other applicable code requirement; and (b) describes with particularity the Parcels to be developed and the nature of development on each Parcel; (4) require compliance with all other applicable City code provisions, ordinances, resolutions, regulations and obligations assumed by the Developer in any agreements with the City and related to water/wastewater service; (5) be in a form acceptable to the City; (6) be approved by the City Commission; and (7) be recorded in the public records and bind the particular Parcel or Plat and all of its owners, successors and assigns.

SECTION 3.02. CONSTRUCTION OF UTILITY IMPROVEMENTS. Licensed and insured contractors shall be used for all work to be performed on the construction of Utility Improvements. Developer shall verify and correct any field conflict.

SECTION 3.03. SURETY BONDS OR OTHER SECURITY. Developer shall post a Surety Bond ("Bond") or Letter of Credit ("LC") in the amount of 125% of the Engineer's estimated construction cost of the work as shown on the approved Plans and Specifications as a guarantee that the work will be completed in accordance with the approved Plans and Specifications. The Bond or LC shall be posted with a surety company or bank acceptable to the City and which is authorized to write Bonds or LC of such character and amount under the laws of the State of Florida. The attorney-in-fact or other officer who signs a Bond or LC must file with such bond a certified copy of his power-of-attorney authorizing him to do so. A bond must be countersigned by the surety's Florida agent. In all such bonds, the City shall be named as "Obligee". A surety company

must have a Best's Key Rating Guide General Policyholder's Rating of "A" or better and a Financial Category of Class "V" or better to be acceptable to the City.

SECTION 3.04. INSURANCE. Developer shall enter into Construction Contracts that require each Contractor to provide insurance coverage in accordance with the following requirements:

(A) General liability insurance shall be provided on an "occurrence" basis, if available, and if not, on a Claims-made basis and shall be written for the following limits of liability as a minimum: (1) bodily injury, \$1,000,000 each occurrence and \$1,000,000 each aggregate, and (2) property damage, \$250,000 each occurrence and \$250,000 each aggregate.

(B) Comprehensive automobile liability insurance coverage shall be provided for all owned, hired or non-hired vehicles, including loading or unloading thereof with the following limits of liability: (1) automobile bodily injury, \$1,000,000 each person and \$1,000,000 each occurrence, and (2) automobile property damage, \$1,000,000 each occurrence.

(C) All policies shall provide that they cannot be canceled or materially altered except after 30 days advance written notice to the City and shall name the City as an additional insured.

SECTION 3.05. CONVEYANCE OF UTILITY IMPROVEMENTS TO THE CITY. Upon completion and approval of the Utility Improvements, or each segment thereof, Developer shall convey the Utility Improvements to the City and provide the City with conveyance documents and Warranties and Bonds as required by the City's Ordinances or other regulations and in a form acceptable to the City Attorney.

Delivery to and approval by the City Commission or City Manager of all documents and related materials required for the Utility Improvements shall constitute final acceptance by the City of these improvements.

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## ARTICLE IV

### GENERAL PROVISIONS

SECTION 4.01. Nothing contained herein shall be deemed to waive or modify any other lawful code provision, ordinance, resolution or regulation of the City as a prerequisite to issuance of a building permit or authorization of water or wastewater capacity which is contained in a City code provision, ordinance, resolution or regulation nor shall this Agreement be applied in a manner which causes the City to violate any bond covenant or obligation.

SECTION 4.02. ASSIGNMENT, CONVEYANCES OR TRANSFERS OF THIS AGREEMENT. The partial or full assignment, conveyance or transfer of Developer's rights and/or obligations under this Agreement shall be prohibited unless:

- a. It is in writing in a form approved by the City Commission;
- b. The City consents to, which consent shall not be unreasonably withheld and is a party to said assignment, conveyance or transfer and the assignee, conveyee or transferee agrees to abide by all the terms and provisions of this Agreement;
- c. The Developer is not in default under this Agreement; and
- d. Such rights and/or obligations are assumed in writing by an assignee or transferee in a form acceptable to the City.

SECTION 4.03. TRANSFER OR CONVEYANCE OF DEVELOPER'S PROPERTY.

a. In the event that Developer's Property or a portion thereof is transferred or conveyed by the Developer, the Developer shall remain liable to the City for all obligations under this Agreement unless released in writing by the City which release shall not be unreasonably withheld by the City. Developer shall not be released as provided for herein if Developer is in default under this Agreement. Further, the obligations set forth herein and in any agreements entered into pursuant hereto shall run with and bind the land, Developers successors and assigns, and all future owners of any part of the Property.

b. Developer shall fully disclose this Agreement to all purchasers of the Property or portions thereof, by recording of this Agreement and by actual delivery of its contents. However, failure to deliver a copy of the contents hereto shall not in any way whatsoever relieve purchasers or subsequent owners of their obligation to be bound by the terms herein.

SECTION 4.04. NOTICES. All notices hereunder must be in writing and shall be validly given if hand delivered as follows (or to any other address that the party to be notified may have delivered to the other party by like notices:

For the City of Miramar:

City Manager  
City of Miramar  
2300 Civic Center Place  
Miramar, FL 33025

For the Developer:

Notice so addressed and sent by prepaid certified mail, with return receipt requested, shall be deemed validly given when deposited in the United States mail.

SECTION 4.05. PROMULGATION OF REASONABLE RULES OF SERVICE. City shall have the right to promulgate from time to time, reasonable rules and regulations relating to the furnishing of water and sewage services to consumers within the Property encompassed by this Agreement. Such rules and regulations may relate to, but are not limited to, rates, deposits and connection charges and the right to discontinue service under certain conditions. The water and sewer rates to be charged by City to said customer shall be the rates now or hereafter charged to other customers within the area of service of the City of Miramar Water and Sewer System. Developer hereby acknowledges and agrees that rates are subject to change at any time by City.

#### SECTION 4.06. EXCLUSIVE RIGHTS OF CITY.

a. City shall have the exclusive right to furnish water service and sewer service to consumers within the Property covered by this agreement.

b. The City is empowered to require the owner or occupant of any land within the Developer's Property to enter into a written service contract or Agreement for retail water, first and/or sewer service under the standard terms and conditions as promulgated by the City;

c. The City reserves the right to make full use of the water and/or sewer facilities to be owned by the City as contemplated herein to serve other customers at any time; and

d. To take all other actions with respect to its water and wastewater system as permitted by law.

SECTION 4.07. DEFAULT. The occurrence of any of the following during this Agreement shall constitute a default:

- a. Developer's failure to pay when due any sums, fees, charges, costs or expenses which are payable under this Agreement;
- b. Developer's failure in the performance or observance of any of the terms and conditions of this Agreement;
- c. There shall be filed by or against Developer in any court or other tribunal pursuant to any governmental requirement, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of Developer's Property, unless such petition shall be filed against Developer and Developer shall in good faith promptly thereafter commence and diligently prosecute any and all proceedings appropriate to secure the dismissal of such petition and shall secure dismissal within thirty (30) days of its filing;
- d. Developer shall be adjudicated a bankrupt or an insolvent or take the benefit of any federal reorganization or composition proceeding, make an assignment for the benefit of creditors, or take the benefit of an insolvency law;
- e. A trustee in bankruptcy or a receiver shall be appointed or elected or had for Developer, whether under federal or state laws; or
- f. Developer's interest under this Agreement shall be sold under any execution or process of law.

In the event of Developer's default under this Agreement, the City's obligations under this Agreement shall be voidable at the option of the City.

SECTION 4.08. REMEDIES. Should Developer be in default of this Agreement, it is agreed that the City shall be entitled to any and all remedies under Florida law, and in addition thereto, the City shall be entitled to any or all of the following remedies, which are cumulative:

- a. No final inspections shall be approved by the City;
- b. No Certificates of Occupancy shall be issued for any structure or building on the Property.
- c. The City shall have the right to charge interest at a rate equal to the maximum rate allowed by Florida law on any payments due to City from Developer which are not paid. The interest, when applicable, shall accrue from the due date of payment as provided in this Agreement; and

d. The City shall be entitled to lien the Property and foreclose the lien in satisfaction of any payments due under this Agreement.

#### SECTION 4.09. MISCELLANEOUS PROVISIONS.

a. This Agreement constitutes the entire agreement between the Parties for all matters contained herein and shall supersede all previous agreements or representations either oral or written with respect to all matters contained herein. All prior agreements between Developer and City pertaining to any matters specifically covered by this Agreement are hereby canceled and declared of no force and effect to the extent they are in conflict herewith.

b. If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

c. This Agreement shall be recorded by the City, at Developer's expense, among the Public Records of Broward County, Florida, for the particular purpose of placing all owners or occupants of Developers Property connected to or to be connected to said water and sewer systems of City upon notice of each and every one of the provisions herein contained to the same extent and with the same force and effect as if said owners and occupants had joined with the Parties to this Agreement in the execution thereof; and the acquisition or occupancy of real property in the Developer's Property connected to or to be connected to the said water and sewer systems of City shall be deemed conclusive evidence of the fact that the said owners or occupants have consented to and accepted the Agreement herein contained and have become bound thereby.

d. This Agreement constitutes a covenant running with the land and shall be binding on Developer, its successor or assigns as well as all future owners of the Property.

e. The headings and subheadings use throughout this Agreement are for convenience only and have no significance in the interpretation of the body of this Agreement, and the Parties hereto agree that they be disregarded in construing the provisions of this Agreement.

f. The recitals to this Agreement are true and correct and are hereby incorporated as an integral and material part of this Agreement.

g. The signature of any person to this Agreement shall be deemed a personal warranty by that person that he has the power and authority to bind any

corporation, partnership or any other business entity for which he purports to acts.

h. In the event of any disputes and/or litigation arising from this Agreement, the prevailing party shall be awarded reasonable attorney's fees and costs (including paralegal) through and including appeals.

i. No waiver by City of any breach by Developer of any term or condition of this Agreement, and no failure by City to exercise any right or remedy with respect of any such breach, shall constitute a waiver or relinquishment for the future, or bar any right or remedy of City with respect to any other breach of such term or condition or any breach of any other term of this Agreement. The receipt by City of any payments or any portion of payment required under this Agreement shall not operate as a waiver or an accord and satisfaction of the rights of City to enforce the payment or portion of a payment then or subsequently due, to terminate this Agreement or to invoke any other appropriate remedy which City may select as provided by this Agreement or by law.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year indicated below:

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

ATTEST: CITY:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

THIS AGREEMENT HAS BEEN APPROVED AND THE CITY MANAGER AUTHORIZED TO EXECUTE THE SAME BY RESOLUTION NO. \_\_\_\_\_, PASSED AND ADOPTED BY THE CITY COMMISSION ON \_\_\_\_\_ 20\_\_\_\_\_.

STATE OF FLORIDA        )  
  ) SS:  
COUNTY OF BROWARD    )

Before me personally appeared \_\_\_\_\_ and \_\_\_\_\_, as City Manager and City Clerk, respectively, of the City of Miramar, a Florida municipal corporation, to be well known and known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
State of Florida at-Large

My Commission Expires:



# EXHIBIT "A"