

RESOLUTION NO. 17-1488

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA APPROVING AND RATIFYING THE TERMS AND CONDITIONS OF A SETTLEMENT AGREEMENT AND RELEASE PERTAINING TO THE FOLLOWING MATTERS: F71-1, LLC AND F69-1, LLC V. TOWN OF MIAMI LAKES (CASE NO.: 2016-015279-CA-01); F71-1, LLC V. CEASAR MESTRE (CASE NO.: 2017-006866-CA-01); F71- 1, LLC V. MANNY CID (CASE NO.: 2017-006887-CA-01); F71-1, LLC V. TIM DAUBERT (CASE NO.: 2017- 006885-CA-01); F71-1, LLC V. TONY LAMA (CASE NO.: 2017-006891-CA-01); F71-1, LLC V. FRANK MINGO (CASE NO.: 2017-006892-CA-01; AND F71-1, LLC V. NELSON RODRIGUEZ (CASE NO.: 2017-006900- CA-01); PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AUTHORIZATION; PROVIDING FOR EXECUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on March 28, 2011, the Town Council of the Town of Miami Lakes (the "Town") adopted Resolution No. 11-883, approving a Development Agreement (the "Development Agreement") concerning the future development of certain Property more particularly defined therein as "Parcel A," "Parcel B," and "Parcel C," pursuant to Chapter 163, Florida Statutes; and

WHEREAS, pursuant to Sections 9 and 10 of the Development Agreement, the first developer ("First Developer") of any of the three parcels identified in the Development Agreement is required to complete certain roadway infrastructure improvements ("Roadway Improvements"); and

WHEREAS, a dispute has arisen between F71-1, LLC and F69-1, LLC ("F71-1, LLC" and "F69-1, LLC") and the Town concerning F71-1, LLC and F69-1, LLC's remaining obligations regarding the Roadway Improvements, which dispute is pending in Miami-Dade Circuit Court and styled *F71-1, LLC and F69-1, LLC v. Town of Miami Lakes* (Case No.: 2016-015279-CA-01) (the "Breach of Contract Lawsuit"); and

WHEREAS, disputes have also arisen between F71-1, LLC and the Town Councilmembers and the Town concerning alleged violations of Chapter 119, Florida Statutes ("Florida's Public Records Act"), which disputes are pending in Miami-Dade Circuit Court and are styled as follows (collectively, the "Public Records Lawsuits"): *F71-1, LLC v. Ceasar Mestre* (Case No.: 2017-006866-CA-01); *F71- 1, LLC v. Manny Cid* (Case No.: 2017-006887-CA-01);

F71-1, LLC v. Tim Daubert (Case No.: 2017- 006885-CA-01); *F71-1, LLC v. Tony Lama* (Case No.: 2017-006891-CA-01); *F71-1, LLC v. Frank Mingo* (Case No.: 2017-006892-CA-01); and *F71-1, LLC v. Nelson Rodriguez* (Case No.: 2017-006900-CA-01); and

WHEREAS, the Town, F71-1, LLC, and F69-1, LLC have agreed to settle the Breach of Contract Lawsuit and the Public Records Lawsuits; and

WHEREAS, on July 25, 2017, the Town Council adopted Resolution No. 17-1467 approving and ratifying the terms and conditions of a settlement agreement in the Breach of Contract Lawsuit and the Public Records Lawsuits; and

WHEREAS, subsequent to the adoption of Resolution No. 17-1467, the Town, F71-1, LLC, and F69-1, LLC engaged in further settlement discussions and agreed to revise their agreement, which, although approved by the Town Council, had not been executed by any of the parties; and

WHEREAS, the Town seeks to avoid the expense, delay, and uncertainty of continued litigation, and wishes to resolve the Breach of Contract Lawsuit and the Public Records Lawsuits under the terms of a Settlement Agreement and Release, attached hereto as Exhibit “A” (the “Settlement Agreement”); and

WHEREAS, the Town Council desires to approve and ratify the Settlement Agreement; and

WHEREAS, the Town Council finds that settlement of the Breach of Contract Lawsuit and the Public Records Lawsuits and approval and ratification of the Settlement Agreement is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA AS FOLLOWS:

Section 1. Recitals. That the above-stated recitals are hereby adopted and confirmed.

Section 2. Approval and Ratification. The Settlement Agreement attached hereto as Exhibit “A” is hereby approved and ratified.

Section 3. Authorization. The Town Manager, the Town Attorney, and litigation counsel at Weiss Serota Helfman Cole & Bierman, P.L. are authorized to take all actions necessary to implement the terms and conditions of the Settlement Agreement.

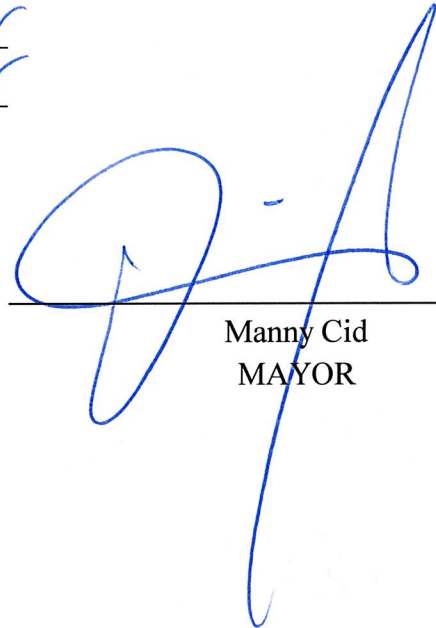
Section 4. Execution. The Town Manager is authorized to execute the Settlement Agreement in substantially the same form as Exhibit “A,” and any required agreements and/or documents to implement the terms and conditions of the Settlement Agreement on behalf of the Town, subject to approval by the Town Attorney as to form, content, and legality.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 18th day of October, 2017.

The foregoing Resolution was moved for adoption by Vice Mayor Rodriguez and seconded by Councilmember Mestre and upon being put to a vote, the vote was as follows:

Mayor Manny Cid	<u>yes</u>
Vice Mayor Nelson Rodriguez	<u>yes</u>
Councilmember Luis Collazo	<u>yes</u>
Councilmember Tim Daubert	<u>Absent</u>
Councilmember Ceasar Mestre	<u>yes</u>
Councilmember Frank Mingo	<u>yes</u>
Councilmember Marilyn Ruano	<u>yes</u>



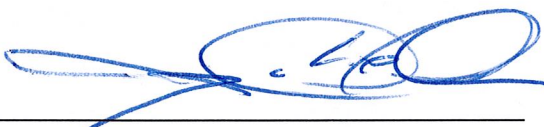
Manny Cid
MAYOR

Attest:



Gina Inguanzo
TOWN CLERK

Approved as to form and legal sufficiency:



Raul Gastesi, Jr. Gastesi &
Associates, P.A. TOWN
ATTORNEY

EXHIBIT A

(Settlement Agreement and Release)

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (“Agreement”) is entered into by and between F71-1, LLC and F69-1, LLC (“F71-1, LLC and F69-1, LLC”), Jose M. Herrera, Jose-Trelles Herrera, Lennar Homes LLC, and Jose M. Herrera, P.A., and the Town of Miami Lakes (“Town”), on the terms and conditions set forth below (F71-1, LLC, F69-1, LLC, Jose M. Herrera, Jose-Trelles Herrera, Lennar Homes, LLC, Jose M. Herrera, P.A., and Town are collectively referred to as the “Parties” and individually as a “Party”):

WHEREAS, on March 28, 2011, the Town adopted Resolution 11-883 which approved a Chapter 163, Florida Statutes, Development Agreement (the "Development Agreement") concerning the future development of certain Property more particularly defined therein as “Parcel A”, “Parcel B”, and “Parcel C”;

WHEREAS, Chapter 163, Florida Statutes Provides that:

163.3225 Public hearings.—

(1) Before entering into, amending, or revoking a development agreement, a local government shall conduct at least two public hearings. At the option of the governing body, one of the public hearings may be held by the local planning agency.

WHEREAS, pursuant to Sections 9 and 10 of the Development Agreement, the first developer (“First Developer”) of any of the three parcels identified in the Development Agreement is required to complete the following roadway infrastructure improvements (“Roadway Improvements”):

1. construction of an additional southbound left-turn lane at NW 82nd Avenue and NW 154th Street (see Exhibit A);
2. construction of an exclusive westbound right-turn lane at NW 82nd Avenue and NW 154th Street (see Exhibit A);
3. construction of an exclusive eastbound right-turn lane at NW 82nd Avenue and NW 154th Street (see Exhibit A);
4. construction of an additional eastbound through lane on NW 154th Street from NW 79th Court to NW 77th Court (see Exhibits B and C);
5. construction of an additional southbound left-turn lane at NW 154th Street and NW 79th Avenue (see Exhibit C); and,
6. construction of an exclusive northbound right-turn lane at NW 138th Street and NW 87th Avenue.
7. completion of construction of NW 154th Street to 60 feet west of NW 89th Avenue prior to issuance of the first building permit, and
8. completion of landscaping of NW 87th Avenue adjacent to its property (including medians);

WHEREAS, Section 29 of the Development Agreement provides that it may not be “amended or modified except by written instrument executed by both parties”;

SETTLEMENT AGREEMENT

WHEREAS, “Parcel A” was acquired by Lennar Homes LLC (“Lennar”) who became the “First Developer” under the Development Agreement;

WHEREAS, the First Developer and the Town, by Resolution 16-1383, have agreed pursuant to Resolution 15-1336 and Ordinance 16-192 to dispense with the required construction of Item Nos. 1 through 5 of the Roadway Improvements in exchange for the payment by the First Developer of a mobility fee;

WHEREAS, Item No. 6 of the Roadway Improvements is not within the jurisdiction of the Town, and therefore moot;

WHEREAS, Lennar has agreed to perform and is in the process of completing Item No. 7 of the Roadway Improvements;

WHEREAS, Miami-Dade County has agreed to perform and is in the process of completing Item No. 8 of the Roadway Improvements;

WHEREAS, a dispute (the “Dispute”) has arisen between the Parties concerning the F71-1, LLC and F69-1, LLC’s remaining obligations regarding the Roadway Improvements; and

WHEREAS, the Parties desire to enter into this Agreement to finally and fully settle and resolve the said Dispute and any and all claims pertaining to, or in any way relating to the Dispute, and any and all other issues which have been or which could have been raised in connection with the said Dispute.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and concessions set forth in this Agreement, the receipt and adequacy of which the Parties hereby acknowledge, the Parties, intending to be legally bound by it, and by the foregoing recitals which are incorporated herein, enter into this Agreement on the additional terms and conditions set forth below.

1. **Recitals:** The Recitals set forth above are correct and are adopted herein
2. **Public Hearing Approvals:** The Development Agreement shall be modified to reflect the changes contemplated by this Agreement. The Town, at its own expense, shall conduct two public hearings pursuant to Florida Statute 163.3225 to approve all amendments and/or modifications of the Development Agreement outlined herein within 45 days of the Execution of this Agreement. In the event of approval at public hearing, the Settlement Terms set forth below shall apply. In the event that approval does not occur at public hearing, this Agreement shall be null and void and the Parties shall be left as if this agreement had not occurred. “Approval at public hearing” shall mean approval without appeal of that decision, or if appealed, successful completion of all appeals such that the approval is final in all respects (“Final Public Hearing Approval”).
3. **SETTLEMENT TERMS:** The Parties acknowledge and hereby agree that the obligations of the First Developer regarding Item No. 1 through 5 of the Roadway Improvements have

been fully satisfied by payment by the First Developer of the mobility fee as indicated in Resolution 16-1383. The Parties further acknowledge and hereby agree that neither F71-1, LLC and F69-1, LLC nor any of its successors or assignees 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. Nor are they responsible for payment of any additional mobility fees. F71-1, LLC and F69-1, LLC agree to dismiss with prejudice within five business days of the Final Public Hearing Approval, the lawsuit against the Town of Miami Lakes currently pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida styled *F71-1, LLC and F69-1, LLC v. Town of Miami Lakes* and bearing Case No. 2016-015279 CA (01) (“Breach of Contract Lawsuit”) and further agree to dismiss with prejudice within five business days of the Final Public Hearing Approval, the following lawsuits related to violations of Chapter 119, Florida Statutes (“Public Records Lawsuits”): *F71-1, LLC v. Cesar Mestre*, Case No. 17-006866 CA (04); *F71-1, LLC v. Manny Cid*, Case No.: 17-006887-CA-(04); *F71-1, LLC v. Tim Daubert*, Case No.: 17-006885-CA-(04); *F71-1, LLC v. Tony Lama*, Case No.: 17-006891 CA (04); *F71-1, LLC v. Frank Mingo*, Case No.: 17-006892-CA-(04); *F71-1, LLC v. Nelson Rodriguez*, Case No.: 17-006900- CA-(04) (the Breach of Contract Lawsuit and Public Records Lawsuits will collectively be referred to as the “Dismissed Lawsuits”). The Town shall pay or cause F71-1, LLC and F69-1, LLC to be paid **\$86,575.94** in full settlement of all attorneys’ fees and costs incurred by F71-1, LLC and F69-1, LLC in the Dismissed Lawsuits within five business days of the Final Public Hearing Approval.

4. **MUTUAL LIMITED RELEASE BY THE PARTIES:** In consideration of the promises, covenants and exchanges set forth in this Agreement, the Parties, individually and on behalf of their respective agents, heirs, family members, attorneys, members, successors, and assigns, release each other from any and all obligations, claims and liabilities, whether arising by contract, tort, in law or equity, which were brought or otherwise related to the issues raised in the Dismissed Lawsuits. With the exception of the Roadway Improvements, all other benefits and obligations enduring or imposed upon the Parties pursuant to the Development Agreement shall remain in full force and effect. This Mutual Limited Release should in no way be construed as precluding either F71-1, LLC, F69-1, LLC, or the Town from bringing a lawsuit to enforce any other provision of the Development Agreement.
5. **RELEASE OF THE TOWN OFFICIALS BY F71-1, LLC, F69-1, LLC, JOSE M. HERRERA, JOSE-TRELLES HERRERA, AND JOSE M. HERRERA, P.A.:** In consideration of the promises, covenants and exchanges set forth in this Agreement, F71-1, LLC, F69-1, LLC, Jose M. Herrera, Jose-Trelles Herrera, and Jose M. Herrera, P.A., as well as their respective agents, members, successors and assigns, hereby forever and fully release any and all current and former elected officials and current and former employees and/or agents of the Town, including, but not limited to, the current and former Mayor, the current and former Vice Mayor, current and former Town Councilmembers, the Town Manager and the Town Attorney from any and all causes of action, obligations, claims and liabilities, whether arising in contract, tort, in law or in equity, which have been brought or which could have been brought in any of the Dismissed Lawsuits.

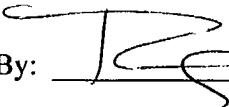
SETTLEMENT AGREEMENT

6. By entering into this Agreement, none of the Parties have admitted liability or damages for any of the allegations set forth in the Dismissed Lawsuits.
7. It is understood that the Courts of the State of Florida shall have and retain jurisdiction to enforce this Agreement. This Agreement is to be construed and governed under the laws of the State of Florida and shall bind the Parties and their respective heirs, estates, members, successors and assigns.
8. Each individual executing this Agreement represents that he has the authority to enter into this Agreement on behalf of himself or the Party he represents, and where he enters on behalf of another, that he has the authority to do so and to bind that other to the terms of the Agreement.
9. The Parties represent and warrant that they have entered into this Agreement of their own free will and accord and after consultation with counsel. The Parties hereby affirm that they have not been induced to enter into this Agreement by any statement, fact, or representation of any kind or character on the part of any Party, or on the part of any of the Parties' agents, attorneys, servants, or representatives other than those specifically set out herein. The Parties specifically state that they are executing this Agreement knowingly and voluntarily.
10. Language of all parts of this Agreement shall be construed as a whole according to its fair meaning. The Parties agree that this Agreement is the product of joint authorship, and in the event of any ambiguity the Agreement shall not be construed against any party as the drafter.
11. This Agreement cannot be modified, altered, or changed except by a written, signed agreement executed by all the Parties.
12. This Agreement constitutes a single integrated contract expressing the entire agreement of the Parties hereto. There is no other agreement or understanding, written or oral, expressed or implied, among the Parties hereto concerning the subject matter hereof, except that which is set forth in this Agreement.
13. This Agreement may be executed in counterparts. Scanned or faxed signatures are deemed original for all purposes.

DATED: _____

TOWN OF MIAMI LAKES

F71-1, LLC

By:  for Alex Rey
Its: Town Manager

By: _____
Its: _____

SETTLEMENT AGREEMENT

F69-1, LLC

By: _____

Its: _____

JOSE M. HERRERA, P.A.

By: _____
JOSE M. HERRERA

Its: President _____

JOSE M. HERRERA, in his individual capacity

JOSE-TRELLES HERRERA, in his individual capacity

LENNAR HOMES LLC

By: _____

Its: _____