

## **DEVELOPMENT AGREEMENT**

**THIS AGREEMENT ("Agreement")** is made and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between:

**CITY OF POMPANO BEACH**, a Florida municipal corporation, whose address is 100 West Atlantic Boulevard, Pompano Beach, Florida ("City"),

and

**MARQUIS PARTNERS, LTD.**, a Florida limited partnership whose address is 2100 Hollywood Blvd., Hollywood, Florida 33020 ("Developer"),

collectively referred to as "the Parties."

### WITNESSETH:

**WHEREAS**, the Parties desire to enter into a development agreement setting forth the mutual understandings and undertakings regarding the sale and development of property located at 1850 Dr. Martin Luther King, Jr. Boulevard, Pompano Beach, Florida and further legally described in Exhibit "A", attached and incorporated in this Agreement ("Property"), upon which Developer intends to build a 100-unit affordable housing development ("Project"), and Developer's role in designing, developing, constructing and marketing the Property; and

**WHEREAS**, the City has determined that the Project is consistent with and furthers the goals and objectives of the City's Neighborhood Stabilization Program and the handling of foreclosed or abandoned properties in the City, and that development of the Project is in the best interest and welfare of City residents; and

**WHEREAS**, the City is providing funds from the US Department of Housing and Urban Development ("HUD") Neighborhood Stabilization Program ("NSP") to financially assist Developer with the Project in accordance with the City's NSP Multifamily Rental Program (the "Program") described by the City's published NSP Implementation Plan; and

**WHEREAS**, the Developer has agreed to certain commitments regarding number of affordable units, affordability levels, permanent supportive housing and, where applicable, market rate units; and

**WHEREAS**, the Program restrict the use and operation of the Project in certain respects and mandates recapture of certain Program funding, and the Developer has agreed to such restrictions and mandates to be later provided and recorded in a Declaration of Restrictions.

**NOW, THEREFORE**, in consideration of the conditions, covenants and mutual promises set forth, Developer and City agree as follows:

1. **Recital.** The foregoing recitations are true and correct. All Exhibits to this Agreement are deemed a part of this Agreement.

## 2. **Project Overview.**

2.1 Developer will develop the Property and will construct no fewer than 100 rental housing units on the Property, together with ancillary improvements, all of which shall be known as Marquis Apartments. All rental housing units in the Project shall be "Affordable Rental Housing Units" as that term may be defined under the City Code and State and Federal regulations governing affordable housing, subject to the restrictions and conditions of the Declaration of Restrictions executed by the parties (the "Restrictions"). None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing as defined in City and HUD regulations.

2.2 Developer will lease, for a period of Thirty (30) years from the date that the last certificate of occupancy is issued for the Affordable Rental Housing Units (the "Compliance Period"), all of the Affordable Rental Housing Units in the Project to households whose gross incomes, adjusted for family size, are no more than income averaged at sixty percent (60%) of Area Median Income ("AMI") at the time these units are first occupied and, thereafter, at any time new tenants occupy these units. AMI shall mean the most recent area median income published by HUD for the Pompano Beach Metropolitan Statistical Area and consistent with the rental limits most recently published by the Florida Housing Finance Corporation.

2.3 Developer shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use or occupancy of any housing unit constructed on the Property.

2.4 Developer shall maintain complete and accurate records as to the rental of the Affordable Rental Housing Units and submit to the City an annual report, in the same format required by the Florida Housing Finance Corporation, detailing the Developer's compliance with the terms of this Agreement, by no later than the last date on which a similar report is required to be provided to or for the benefit of the Florida Housing Finance Corporation.

2.5 In carrying out the Project, Developer will submit to the City, no later than ninety (90) days after the Effective Date of this Agreement, an operational plan including, but not limited to, the strategies and tasks to be achieved and completed by the Developer, the personnel responsible for each strategy or task, the timeline for commencing and concluding each strategy or task, and the available financial resources to complete each strategy and task.

## 3. **Project Schedule**

3.1 Developer expressly agrees to complete all work required by this Agreement substantially in accordance with the timetable set forth in Exhibit B attached and incorporated in this Agreement. All milestones listed in Exhibit B shall commence on the Effective Date of this Agreement. Timely completion of the work specified in this Agreement is an integral part of performance. By acceptance and execution of this Agreement, it is understood and agreed by Developer that the Project will be completed as expeditiously as possible and that Developer will make every effort to ensure that the Project will proceed and will not be delayed. Failure to meet

these deadlines shall be considered an Event of Default after notice and opportunity to cure and may result in termination of this Agreement.

3.2 In the event Developer is unable to meet the above schedule or complete the above services because of Permitted Delays (as defined in Section 16.16 below), the City shall grant a reasonable extension of time for completion of the Project not to exceed One Hundred Twenty (120) days from the scheduled completion date. It shall be the responsibility of Developer to notify the City promptly in writing whenever a delay is anticipated or experienced, and to inform the City of all facts and details related to the delay.

4. **Permitting.** The City will assist with the expediting of permits for the development of the Property and construction of the Project.

#### 5. **Scope of Work**

Developer shall perform all services necessary to complete the development and construction of the Project in full compliance with the terms of this Agreement as follows:

- a. Developing an operational plan for carrying out the Project;
- b. Securing Project financing;
- c. Securing building permits;
- d. Monitoring the development of the Project throughout the course of the Project and submit quarterly reports to the City; and
- e. Completing the Project substantially in accordance with the Project Schedule attached as part of Composite Exhibit B.

6. **Procurement Standards.** Developer shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective and equitable manner and that the use of any consultants for services, which may include, but are not limited to, legal, financial, marketing, and design should not be done so without consultation with the City.

#### 7. **Labor, Training and Business Opportunity**

7.1 The Parties agree that, to the greatest extent feasible, (a) opportunities for training and employment will be given to low and moderate income residents of the City and (b) contracts for work in connection with the Project will be awarded to business concerns, which are located in, or owned in substantial part by persons residing in the City. The Developer will ensure that selected subcontractors incorporate this objective into their contracts carrying out the Project.

7.2 **EEO Compliance.** Developer shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, pregnancy, gender identity and expression, or sexual orientation as may be amended from time to time, in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement. Developer shall include the foregoing or similar language in its contracts with any subcontractors or sub-consultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

7.3 Developer shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Developer shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Developer shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

**8. Compliance with Federal, State and Local Laws.** Developer covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the local, state and federal governments, and all amendments, including, but not limited to: Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing, Section 3 of the Housing and Urban Development Act of 1968 and the Housing and Community Development Act of 1974. Developer agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations 40 CFR part 15.

#### **9. Reporting Responsibilities**

Developer agrees to submit any and all quarterly reports required by the City to the City's Office of Housing and Urban Improvement (OHUI) on the following due dates for the applicable calendar quarters in any given year:

1st Quarterly Report (January/February/March) - May 15<sup>th</sup>

2<sup>nd</sup> Quarterly Report (April/May/June) - August 15<sup>th</sup>

3<sup>rd</sup> Quarterly Report (July/August/September) - November 15<sup>th</sup>

4<sup>th</sup> Quarterly Report (October/November/December) - February 15<sup>th</sup>

OHUI will send Developer one reminder notice if the quarterly report has not been received seven (7) days after the due date. If Developer has not submitted a report thirty (30) days after the date on the reminder notice, such failure shall be considered an Event of Default and may result in termination of this Agreement.

#### **10. Inspection, Monitoring and Access to Records.**

10.1 The City reserves the right to inspect, monitor, and observe work and services performed by Developer at any and all reasonable times. The City reserves the right to audit the records of Developer any time during the performance of this Agreement and for a period of five (5) years after completion of the Project. Access shall be immediately granted to the City or any of its duly authorized representatives to any books, documents, papers, and records of Developer or its contractors or consultants, which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

10.2 *Public Records.*

10.2.1. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The Developer shall comply with Florida's Public Records Law, as amended. Specifically, the Developer shall:

a. Keep and maintain public records required by the City in order to perform the service.

b. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.

c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Developer does not transfer the records to the City.

d. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Developer, or keep and maintain public records required by the City to perform the service. If the Developer transfers all public records to the City upon completion of the contract, the Developer shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the contract, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

10.2.2. Failure of the Developer to provide the above described public records to the City within a reasonable time may subject Developer to penalties under 119.10, Florida Statutes, as amended.

**PUBLIC RECORDS CUSTODIAN**

**IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
[RecordsCustodian@copbfl.com](mailto:RecordsCustodian@copbfl.com)**

## 11. City Financial Assistance

11.1 *City Grant.* The City shall provide a grant to Developer in the total amount of Four Hundred Seven Thousand Seven Hundred Fifty Dollars (\$407,750.00), payable at the time of Closing, for the successful completion of the affordable housing Project. The Grant shall be credited toward the purchase price and any closing costs.

11.2 *City NSP Loan.* The City has agreed to lend to Developer Two Hundred Thousand Dollars (\$200,000.00) ("Loan") in furtherance of the Project's construction, specifically to secure construction financing. The Loan shall be secured by a mortgage and non-interest bearing promissory note, with the principal balance due and payable within five (5) days after Developer receives the final certificate of occupancy for the Project. The Mortgage and Note shall be substantially similar in form as the Mortgage and Note attached and incorporated in this Agreement as Exhibit "C", and shall be executed at Closing. All Loan proceeds will be payable at Closing.

11.3 *Repayment of City Funds.* The City Grant shall be repaid to the City, at the City's election, in the event that the Developer fails to preserve the affordability aspect of the Project as set forth in that Declaration of Restrictions (the "Declaration") recorded in favor of the City and that is substantially similar in form as Exhibit "D", attached and incorporated in this Agreement.

12. **Developer Obligations.** Developer shall have the following obligations with respect to the Project:

12.1 *Project Financing.* Developer will secure the necessary financing to develop and complete the Project. Developer will submit to the City such documentation as will reasonably demonstrate to the City the Developer's financial ability to commence construction of the Project within two hundred seventy (270) days following execution of this Agreement by both parties.

### 12.2 *Other Conditions.*

a. The principal use permitted in the Project shall be multi-family rental as depicted on the Conceptual Plan attached and incorporated in this Agreement as Composite Exhibit B. The Project may also contain accessory uses customarily incidental to the principal use permitted. Portions of the Project shown on the Conceptual Plan for use as recreation or open space or otherwise restricted to recreation or open space shall be devoted exclusively to the common use and enjoyment of the occupants of the Project and not to members of the general public, unless otherwise approved by the City. No business shall be carried on or operated in conjunction with the recreational facilities.

b. The Developer understands and agrees that the rental dwellings shall be rented to households whose gross incomes, adjusted for family size, are no more than income averaged at sixty percent (60%) or less of the Broward County area median income published by HUD for the Pompano Beach Metropolitan Statistical Area and consistent with the rental limits most recently published by the Florida Housing Finance Corporation. All such actions shall be consistent with the Declaration. In addition, Developer agrees to provide OHUI information as it

relates to eligibility of occupants for the Project, as frequently as Developer is required to provide such information to the Florida Housing Finance Corporation and in the same format.

c. Lot coverage and open space within the Project shall conform to the City's land development code.

d. No building or other improvements shall be constructed on, over, or within the boundary lines of any rights-of-way or easements within the Project unless such construction has been approved by the City and the holder or owner of such easements, or will not interfere with the easement holder's exercise of its easement for its given purpose.

e. The Project, when completed, shall be maintained in a clean, sanitary, and safe condition. The Project shall be appropriately landscaped, such landscaping to be maintained with a mechanical sprinkling system and in accordance with the City land development code. No portion of the Project shall be allowed to become or remain overgrown or unsightly.

f. No portion of the Project shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste must be kept in sanitary containers, placed in the trash enclosures, and screened from public view.

g. No travel trailer, mobile home, recreational vehicle, boat, tent, storage building, garage, barn or out-building erected within the Project shall at any time be used as a residence, temporarily or permanently.

h. No signs of any kind shall be displayed to the public view in the Project except signs approved by the City in accordance with its sign code.

i. No animals, livestock or poultry of any kind shall be raised, bred or kept within the Project, except that dogs, cats or other domestic pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. All animals must be housed inside the residence.

j. No individual water wells, septic tanks or other individual sewage disposal facility shall be permitted within the Project. This provision, however, shall not be construed to prohibit private water wells for irrigation.

k. No chain link type fence shall be permanently constructed or installed within the Project, except as has been approved by the City.

l. There shall be no discrimination in the use of any building or improvement located within the Project on the basis of race, color, religion, sex, disability, familial status or country of national origin.

m. Developer will pay the sum of Two Hundred Thousand Dollars (\$200,000.00) to the City, immediately following its closing on construction financing, as a contribution to the new Broward Sheriff's Office substation to be developed by the City at another location within the City.

12.3 This Agreement and the covenants referenced in this Agreement shall be covenants running with the land and they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the City and its successors and assigns.

12.4 The Project shall be constructed, used and maintained substantially in accordance with the Project Schedule (Milestones), Conceptual Plan, Declaration of Restrictions, and the terms of this Agreement.

12.5 The Project shall be constructed in accordance with the Florida Building Code, ordinances and all other applicable City, State and Federal laws, rules, regulations and requirements. The quality of the workmanship shall be equal to or greater than the quality of other projects built by the Developer and its affiliates.

12.6 Following execution of the Agreement, Developer shall prepare or have prepared applications for all necessary governmental approvals and diligently process such applications through the appropriate governmental approval process.

12.7 Following issuance of all Governmental Approvals and all development permits required for construction of the Project, including building permits, the Developer shall proceed with and complete construction of the Project. The buildings and improvements to be constructed on the Property by Developer shall be of a unified architectural design as shown on the Conceptual Plan.

12.8 During construction of the Project, Developer covenants and agrees that it shall safely maintain the site of construction activities and protect against damage to persons and property by reason of construction activities and will provide adequate security during non-construction periods. In the case of damage or loss to the Project, Developer shall, as soon as possible after the occurrence of such loss or damage, repair or rebuild the affected portion of the Project to the condition it was in prior to such loss or damage. Such repairs shall be begun within sixty (60) calendar days after such occurrence or if rebuilding is required, such rebuilding shall be begun within one hundred twenty (120) calendar days after such occurrence and in either case shall be completed in a reasonable time, Permitted Delays excepted, provided insurance funds are available, but in no event shall commencement of repairs or rebuilding be delayed beyond one hundred eighty (180) days from the date of occurrence. Developer shall pay for all such repairing and rebuilding so that the Property and the Project shall be free and clear of any construction liens arising out of such repair, rebuilding or reconstruction of the Project.

12.9 Developer shall complete the Project, subject to extension for Permitted Delays, not later than thirty (30) months from the Effective Date of this Agreement (the "Completion Date"). By the Completion Date, it is understood and agreed that the same shall mean that it is ready for the issuance of a temporary or final Certificate of Occupancy. The failure of Developer to complete construction of the Project by the Completion Date, subject to extension for Permitted Delays, shall constitute a material Event of Default in accordance with the provisions of this Agreement.



12.10 The Developer's performance of these obligations are substantial and material provisions to this Agreement and Developer acknowledges that the City has materially relied upon such representation from Developer as a component to this transaction. If the Developer fails to perform or make the contribution consistent and in compliance with this Agreement, the Developer's failure shall be an Event of Default.

**13. Required Insurance.** Throughout the term of this Agreement, Developer and all contractors shall maintain in full force and effect, at its sole cost, the insurance coverage set forth below in a form, content, and amount acceptable to the City's Risk Manager:

a. **Fire and Extended Coverage: (Builder's Risk Policy)** Developer shall require the General Contractor, at its expense, to provide full theft, windstorm, fire and extended coverage on improvements constructed, and personal property located on the Property, for the benefit of the City and Developer, as each party's interests may appear, in an amount not less than one hundred percent (100%) of the replacement value of the improvements. Such insurance shall provide that the interests of the City are included as an additional loss payee and contain a waiver of subrogation rights by the General Contractor's carrier against the City.

b. **Worker's Compensation:** General Contractor shall provide, carry, maintain and pay for all necessary Worker's Compensation insurance for the benefit of its employees with the following limits: Worker's Compensation-statutory limits; Employer's Liability – one hundred thousand dollars (\$100,000.00).

c. **General Liability Insurance:** Developer shall, at its own expense, provide, pay for, and continuously maintain, comprehensive and all-inclusive public liability and property damage insurance for the benefit of the City, with a policy limit of not less than one million dollars (\$1,000,000.00), combined single limits, which coverage shall include property damage and personal injuries, including death, and shall include the City as an additional named insured.

Developer shall provide the following: (i) certificates of insurance evidencing the required coverage; (ii) names and addresses of companies providing coverage; (iii) effective and expiration dates of policies; (iv) a provision in all policies affording the City thirty (30) days written notice by a carrier of any cancellation or material change in any policy. In the event of destruction or damage to any portion of the Project covered by insurance, and subject to the corresponding provisions of any mortgage encumbering the Property, the funds payable in pursuance of these insurance policies for repair or reconstruction shall be deposited in a commercial national bank located in Pompano Beach, Florida, selected by the City as a trust fund. These funds shall be used for the purposes of reconstruction or repair of the Project and the replacement of personal property within the Project, so damaged or destroyed. Such reconstruction and repair work shall be performed in strict conformity with the ordinances of the City and all governmental agencies having jurisdiction. Should the cost of reconstruction or repair exceed the amount of funds available from the proceeds of such insurance policy, then in such event, such funds shall be used as far as the same will permit in paying the cost of reconstruction or repair and Developer shall be responsible for the remaining funds. In the event that the cost of such reconstruction or repair work shall be less than the proceeds derived for such insurance policies, the surplus shall be payable to Developer. Should any of the required insurance policies be canceled before the expiration date or non-renewed, the issuing company will provide thirty (30) days written notice to the certificate holder.

#### **14. Developer Default, Remedies, Termination and Further Rights.**

14.1 *Event of Default.* Notwithstanding Events of Default described in other provisions of this Agreement, the occurrence of any one or more of the following shall constitute an Event of Default:

a. If Developer defaults in the performance of an obligation imposed upon it under this Agreement or if Developer fails to complete construction of the Project, and Developer does not commence to cure such default within thirty (30) days after delivery of notice of such default from the City and diligently pursue to cure such default within sixty (60) days after delivery of such notice.

b. If any statement or representation made by Developer in this Agreement or in any writing furnished in connection with this Agreement is determined to be false in any material respect.

c. If a petition in bankruptcy is filed by or against the Developer or a petition for the appointment of a receiver or trustee of the Property, which, in the reasonable judgment of City, will cause material interference with the timely completion of the Project, and any such petition not filed by the Developer is not dismissed within ninety (90) days of the date of filing.

If an Event of Default occurs and there is no cure within the time provided in this Agreement, then Section 14.2 shall be applicable.

14.2 *Remedies.* Upon the occurrence of any Event of Default, the City shall have the following non-exclusive rights: (i) to terminate this Agreement; (ii) to cease any further disbursements of City Funds; (iii) to immediately enforce all of its rights under this Agreement; and (iv) to avail itself of any right it may have at law or in equity.

#### **15. City Default, Remedies, Termination and Further Rights.**

15.1 *Default by City.* If the City fails to disburse City Funds pursuant to the provisions of Section 11 of this Agreement, such failure shall constitute a default by the City. The City shall have thirty (30) days after delivery of notice of such default from Developer to cure the default. If there is no cure of the default within the time provided, then Section 15.2 shall be applicable.

15.2 *Remedies.* In the event of default by the City, Developer shall have the following non-exclusive rights: (i) to terminate the Agreement without cost or liability to the City; (ii) to immediately enforce all of its rights under this Agreement; and (iii) to avail itself of any right it may have at law or in equity.

#### **16. General Provisions.**

16.1 *Non-liability of City Officials.* No member, official or employee of the City shall be personally liable to Developer or to any person with whom Developer shall have entered

into any contract, or for any amount which may become due to Developer under the terms of this Agreement.

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

**If to the City:**  
City Manager  
City of Pompano Beach  
100 W. Atlantic Boulevard  
Pompano Beach, FL 33060

**With a copy to:**  
Miriam Carrillo, Director  
City of Pompano Beach  
Office of Housing and Urban Improvement  
100 West Atlantic Blvd Suite 220  
Pompano Beach FL 33060

**If to Developer:**  
Marquis Partners, Ltd.  
2100 Hollywood Boulevard  
Hollywood, Florida 33020

16.3 *Entire Agreement.* This Agreement, including all exhibits attached and which are expressly incorporated by this reference, sets forth all of the promises and covenants between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, oral or written, except as contained in this Agreement.

16.4 *Pronouns.* All pronouns and any variations shall be deemed to refer to the masculine, feminine and neuter, singular or plural, as the identity of the party or parties, personal representatives, successors or assigns may require.

16.5 *Severability.* The invalidity of any provision shall in no way affect or invalidate the remainder of this Agreement.

16.6 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

16.7 *Headings.* The headings contained in this Agreement are inserted for convenience only and shall not affect, in any way, the meaning or interpretation of the Agreement.

16.8 *Governing Law.* This Agreement shall be construed in accordance with the laws of the State of Florida, and any proceeding arising between the parties in any manner pertaining to this Agreement shall, to the extent permitted by law, be in courts of jurisdiction for Broward County, Florida.

16.9 *Binding Effect.* The obligations imposed pursuant to this Agreement upon Developer shall be binding upon and enforceable by and against the parties, their successors, grantees and assigns.

16.10 *Amendments.* This Agreement may not be amended, modified or terminated orally, but only in writing signed by the parties.

16.11 *Authority of Developer.* By execution of this Agreement, Developer does certify to the City that the officer executing this Agreement has been duly authorized by proper resolution of the Members of Developer to enter into, execute and deliver this Agreement and all other documents, certificates, agreements, consents and receipts, and to take any and all other actions of any kind whatsoever in order to accomplish the purposes and undertakings of this Agreement.

16.12 *Assignment.* Developer agrees that it shall not assign or transfer this Agreement to another party without the prior written notice to the City.

16.13 *Contingent Fee.* Developer represents and warrants that it has not employed or retained any person to solicit or secure this Agreement and that it has not paid or agreed or promised to pay any person any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the execution of this Agreement.

16.14 *Indemnification.* Developer shall protect, defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges, and other expenses including reasonable attorney's fees or liabilities of every kind in connection with or arising this Agreement, or directly out of the improvement, operation, or possession of the Property by Developer except for any occurrence arising out of or resulting from intentional torts or gross negligence of the City or its respective officers, agents and employees. Nothing in this Agreement is in any way intended to be a waiver of the limitations placed on the City's liability as set forth in Section 768.28, Florida Statutes. City shall provide notice of any lawsuits or claims within four (4) business days of service. Without limiting the foregoing, any and all such claims, suits, causes of action, etc., relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of the Project, actual or alleged infringement of any patent, trademark, copyright, or of any other tangible or intangible personal or real property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, is included in the indemnity. Developer further agrees to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other related costs and expenses, even if the claim is groundless, false or fraudulent. The foregoing indemnification shall not be operative as to any claims by Developer for breach of warranties under

the deed or any causes of action Developer has or may have for breaches or defaults by the City under this Agreement.

16.15 *Approvals.* Wherever in this Agreement City approval or approval of the City designees shall be required for any action, such approvals shall not be withheld unreasonably.

16.16 *Permitted Delays.* Subject to providing written notice of such an event and the party's intention to exercise the applicability of this provision, no party to this Agreement shall be deemed in default, and the time for performance of any required act shall be extended for such period, where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods earthquakes, fires, casualty, acts of God, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, government restrictions of priority, litigation, severe weather and other acts or figures beyond the control or without the control of either party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial inability of a party.

16.17 *Attorney's Fees and Costs.* The prevailing party in any action to enforce the terms of this Agreement shall recover from the non-prevailing party all and singular the costs, charges and expenses including, but not limited to, reasonable attorney's fees, at trial, on appeal and involving bankruptcy litigation, as well as entitlement to costs, charges, and expenses, because of the failure on the part of the non-prevailing party to perform, comply with, and abide by each and every of the stipulations, agreements, conditions and covenants of this Agreement, whether or not suit is brought. Such fees and costs shall bear interest at the maximum rate permitted by law.

16.18 *City/NSP Program Disclosure.* The City purchased the Property with funding provided to carry out the Neighborhood Stabilization Program NSP which was established as part of Title III of the Housing and Economic Recovery Act of 2008. The Property was purchased as a foreclosed and vacant lot for affordable housing.

16.19 Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both City and Developer and their respective counsel have had equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against, either party.

16.20 *Authority.* Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

16.21 Failure of either party to insist upon strict performance of any covenant or condition of this Contract, or to exercise any right contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right; but the same shall remain in full force and effect. None of the conditions, covenants or provisions of this Agreement shall be waived or modified except by the Parties in writing.

16.22 *Effective Date.* This Agreement nor any modification, amendment or alteration, shall be effective or binding upon any of the Parties until it is approved by the City Commission and executed by the Mayor and Manager and attested by the City Clerk.

16.23 The Parties agree that this Agreement shall be recorded in the public records of Broward County, at Developer's sole cost and expense.

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

**"CITY"**

WITNESSES:

CITY OF POMPANO BEACH

\_\_\_\_\_

BY: \_\_\_\_\_  
REX HARDIN, MAYOR

\_\_\_\_\_

BY: \_\_\_\_\_  
GREGORY P. HARRISON  
CITY MANAGER

\_\_\_\_\_  
ASCELETA HAMMOND  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK E. BERMAN  
CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by **REX HARDIN** as Mayor, **GREGORY P. HARRISON** as City Manager, and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:


\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA


\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

**DEVELOPER**

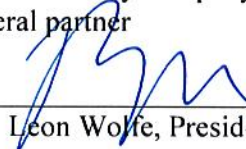
Witnesses:

  
\_\_\_\_\_  
Signature  
John Tomason  
\_\_\_\_\_  
Printed Name

  
\_\_\_\_\_  
Signature  
Mark Martinez  
\_\_\_\_\_  
Printed Name

**MARQUIS PARTNERS, LTD.**, a Florida limited partnership

By: Cornerstone Marquis, LLC, a Florida limited liability company, its managing general partner

By:   
\_\_\_\_\_  
Leon Wolfe, President

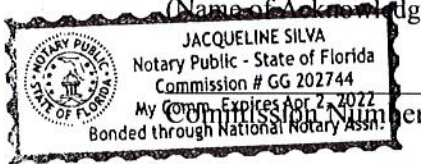
STATE OF FLORIDA  
COUNTY OF Dade

The foregoing instrument was acknowledged before me this 8 day of November, 2019, by Leon Wolfe as President of Cornerstone Marquis, LLC, the managing general partner of Marquis Partners, Ltd., a Florida limited liability company, who is personally known to me.

NOTARY'S SEAL:

  
\_\_\_\_\_  
NOTARY PUBLIC STATE OF FLORIDA  
(Signature of Notary Taking Acknowledgement)  
**Jacqueline Silva**

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)



JES:jrm  
11/6/19  
L:agr/comdev/2020-143



**EXHIBIT A – LEGAL DESCRIPTION**

COMPOSITE EXHIBIT B

<b>Milestone</b>	<b>Deadline</b>
Interim Milestones/Deadlines <i>(list below)</i>	
Development Team Operational Plan	90 days
Proposed Project Schedule and Project Budget	90 days
Securing of Project Financing	180 days
Selection of Engineer for Plans, Specifications, Installation, and Construction of Infrastructure	45 days
Completion of Land Infrastructure Improvements etc.	270 days
Creation of Marketing Program for Project	270 days
Securing Building Permits	180 days
Begin Construction	210 days
Complete Project	30 months total

## CONCEPTUAL PLAN

EXHIBIT C – MORTGAGE AND PROMISSORY NOTE

EXHIBIT D – DECLARATION OF RESTRICTIONS