

PREPARED BY AND RETURN TO

PARK AGREEMENT – FEE IN LIEU OF LAND

THIS AGREEMENT (the “Agreement”), effective this ___ day of _____, 20___, is made and entered into by and between:

THE CITY OF MIRAMAR, a Florida municipal corporation, located at 2300 Civic Center Place, Miramar, Florida 33025, hereinafter referred to as the “City”,

and

_____, whose address is _____, hereinafter referred to as “Owner”.

WITNESSETH:

WHEREAS, Owner is the owner of that certain property known as _____, located within the City of Miramar, which development is planned to consist of _____ residential units, more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Property”); and

WHEREAS, Owner submitted to the City an application for site plan approval of the Property; and

WHEREAS, in accordance with City Code of Ordinances (the “Code”) Chapter 2 (“Administration”), Article VI. (“Finance and Miscellaneous Fees”), Division 2.1 (“Impact Fees for New Development”), the City requires payment of recreational impact fees prior to the issuance of building permits for the Property (“Recreational Impact Fee”), pursuant to the formula set forth by Resolution of the City Commission; and

WHEREAS, in accordance with Section 308.11 (“Parks and Recreational Areas”) of the City’s Land Development Code (the “LDC”), at the discretion of the City, the City shall require a dedication of land, pursuant to the formula set forth by Resolution of the City Commission, or a deposit in the City’s Park Development Fund, of an amount of money equal to the fair market value of the land otherwise to be dedicated (“Park Dedication Requirement”) as a condition of approval of any plat or site development plan; and

WHEREAS, the City’s Park Dedication Requirement requires Owner to dedicate _____ acres of land for development of the Property with ___ residential units (based upon Owner’s estimate of the number of bedrooms for each of the units within the Development); and

WHEREAS, Owner and City have agreed that Owner shall pay \$_____ as a park dedication fee (“Park Dedication Fee”) in lieu of the dedication of land as required by Section 308.11 of the LDC; and

WHEREAS, Owner and City agree that the payment of the Park Dedication Fee satisfies the Park Dedication Requirements of the City Code; and

WHEREAS, the City Commission has determined that Owner is financially sound and is able to pay the Park Dedication Fee required by this Agreement; and

WHEREAS, the parties desire to enter into this Agreement setting forth the mutual understandings and undertakings regarding the Park Dedication Fee and Recreational Impact Fee for the Property.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings of the City and Owner, and other good and valuable consideration, the parties covenant and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Payment of Recreational Impact Fees. The Recreational Impact Fee shall be paid on a unit by unit basis upon issuance of building permits for residential dwelling units on the Property, as set forth by Resolution of the City Commission, which may be amended from time to time.

3. Payment of Park Dedication Fees. Within 14 days of the approval of this Agreement by the City, Owner agrees to perform one of the following options:

- (a) Pay \$_____ to the City as compensation for the Park Dedication Fee for ___ residential units (based upon Owner’s estimate of the number of bedrooms in each unit of the Development, as set forth on the attached Exhibit “B”). During the issuance of building permits, Owner shall keep track of the actual number of bedrooms for each unit and shall submit a spreadsheet with a currently updated tally as part of each permit application. Prior to the issuance of the last building permit, the City shall evaluate the actual land required based on the actual number of bedrooms per unit for the Development. Should the final number of bedrooms per unit for the Development exceed the Owner’s estimate (i.e., number of three bedroom units, number of four bedroom units, number of five bedroom units, etc.), then the Owner shall pay to the City the difference in

the Park Dedication Fee calculated by using the estimated number of bedrooms originally provided and the Park Dedication Fee calculated by using the actual number of bedrooms per unit for the entire Development. Should the final number of bedrooms per unit for the Development be less than the Owner's estimate, then the City shall refund to the Owner the difference in Park Dedication Fee calculated by using the estimated number of bedrooms provided and the Park Dedication Fee calculated by using the actual number of bedrooms per unit for the entire Development;
or

- (b) Post a bond or irrevocable letter of credit with the City for 100 percent of the Owner's contribution for local parks, guaranteeing the payment of the Park Dedication Fees prior to the issuance of a building permit, and pay an administrative fee of three percent of the Park Dedication Fee.

4. Bond or Surety. If Owner elects to post a bond or surety per paragraph 3(b), then Owner shall, within 14 days of approval of this Agreement by the City, in lieu of making the Payment of Park Dedication Fees to the City, provide the City with security in the amount of \$_____ by posting with the City a bond or irrevocable letter of credit in a form that is acceptable to the City and which guarantees payment of the Park Dedication Fee, pursuant to City Code, prior to the issuance of the first building permit for any residential unit on the Property. The parties agree that if the Owner fails to pay the City the Park Dedication Fee prior to the issuance of the first building permit for any residential unit on the Property, the City shall have the right to draw against said security.

Owner shall ensure that Owner's security remains valid and in full force and effect until such time as the Park Dedication Fee is paid. Expiration of the security prior to Owner's satisfaction of these obligations, or notice to the City that security will expire, has been canceled or terminated prior to Owner's satisfaction of the above described obligation, shall constitute a default of this Agreement. The City shall be notified at least 30 days prior to the termination and/or cancellation of the posted security. City agrees to release Owner's security and forward same to Owner within 14 days of payment of the Park Dedication Fee, receipt of an assignment applying Credit Acreage or acceptance of other suitable lands for park purposes.

5. Administrative Fee. Within 14 days of the approval of this Agreement by the City, if Owner elects to post a Bond or Surety per paragraph 3(b) above, then Owner shall pay to City an administrative fee of \$_____ (three percent of the Park Dedication Fee). If Owner makes the payment of Park Dedication Fees in full to the City within 14 days of the approval of this Agreement, this Administrative fee is not owed or due to the City.

6. Satisfaction of City's Land Dedication. The City agrees that compliance with the terms of this Agreement shall satisfy in full the land dedication component of the

Park and Recreation Impact Fee obligation to the City as provided in Section 308.11 of the LDC.

7. Remedies. In the event of Owner's default under this Agreement, City shall be entitled to any and all remedies under Florida law and, in addition, shall have the right to stop issuing development permits on the Property, including but not limited to building permits and certificates of occupancy. In the event City defaults under this Agreement, Owner shall have all remedies under Florida law.

8. Termination of Agreement Regarding Park Dedication Fee. This Agreement shall automatically terminate and be of no further force or effect five years after the Effective Date. If, after termination of this Agreement, there remain any platted residential parcels or unplatted Property for which the Park Dedication Fee has not been paid, Owner will be required to enter into a new agreement with City for payment of the Park Dedication Fee for such remaining platted parcels or unplatted Property. The calculation of the Park Dedication Fee for the remaining platted parcels or unplatted Property shall be determined in accordance with the then applicable provisions of the Code and the LDC. Moreover, after termination of this Agreement, the City shall release all letters or credit or bonds held to secure payment of the Park Dedication Fees pursuant to Section 4 of this Agreement.

9. Attorney's Fees. In the event of any disputes and/or litigation arising from this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, including fees for paralegal services and including all appellate levels.

10. Recording. This Agreement shall be recorded in the public records of Broward County, Florida, and shall be binding upon and benefit the City and the Owner's successors and assigns in interest and title.

10. Joinder. Any existing mortgagee must agree and consent to the terms of this Agreement.

11. Entire Agreement. This Agreement, and any exhibits attached hereto, constitute the entire agreement and understanding of all parties to this Agreement with respect to the subject matter of this Agreement, and supersedes all prior discussions, correspondence, oral and written agreements, commitments or understandings, restrictions, representations or warranties among the parties to the Agreement concerning the subject matter of this Agreement other than those set forth herein or herein provided for.

12. Notice. The notices sent to any person pursuant to this Agreement shall be in writing and transmitted by hand delivery, certified mail, return receipt requested, facsimile or telegram, and shall be mailed or delivered as follows:

As to City: Whittingham O. Gordon
City Manager
City of Miramar
2300 Civic Center Place
Miramar, FL 33025
Telephone: (954) 602-3120
Facsimile: (954) 602-3568

With a copy to: City Attorney
Austin Pamies Norris Weeks Powell, PLLC
401 NW 7th Avenue
Fort Lauderdale, FL 33311
Telephone: (954) 768-9770

As to Owner: _____

Attn.: _____

Any of the foregoing parties may, by Notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission, or three days after the date mailed.

13. Binding Agreement. This Agreement shall be a covenant running with the land and shall be binding upon Owner and City, their successors and assigns.

14. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

15. Jurisdiction and Venue. The Parties to this Agreement expressly consent to the jurisdiction of and agree to suit in a court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that venue shall lie in Broward County, Florida.

16. Amendments and Waivers. No amendment, supplement, modifications or waiver of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of these provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

17. Assignment. Owner shall not assign its obligations and benefits hereunder without the prior written consent of City, which consent shall not be unreasonably withheld. Should City agree to such assignment, the assignment shall not be valid unless and until a fully executed Agreement is entered into between the City and assignee.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: THE CITY OF MIRAMAR, through its City Commission, signing by and through the City Manager, duly authorized to execute this Agreement following City Commission approval on _____, 20__, and _____, as the duly and properly authorized agent of Owner, and who by signing below warrants and attests that he/she has the legal authority to sign this Agreement and bind the Owner to the terms and conditions thereof.

CITY OF MIRAMAR, a Florida municipal corporation

Attest:

Denise A. Gibbs, City Clerk

By: _____
Whittingham O. Gordon
City Manager

Dated: _____ day of _____, 20__

APPROVED AS TO FORM:

By: _____
City Attorney
Austin Pamies Norris
Weeks Powell, PLLC.

OWNER

Name:

Title:

Dated: _____ day of _____, 20__

Witnesses:

Name:

Name:

STATE OF FLORIDA)
) ss:
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in Broward County, Florida, to take acknowledgments, the foregoing instrument was acknowledged before me by _____, the _____ of _____, who is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal in the County and State _____ day of _____, 20__.

Notary Public
State of Florida At Large

My commission expires:

EXHIBIT "A"

SKETCH AND LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "B"

ESTIMATE OF NUMBER OF BEDROOMS
IN EACH UNIT OF THE DEVELOPMENT