ORDINANCE NO. 2019-002

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING THE DEVELOPMENT AGREEMENT BETWEEN F03-4, LLC, AND F99-5, LLC, FLORIDA LIMITED LIABILITY COMPANIES, AND THE CITY OF HIALEAH, FLORIDA, A COPY OF WHICH IN SUBSTANTIAL FORM IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1". PROPERTY COMPRISING APPROXIMATELY 326.50 ACRES WITHIN AN AREA GENERALLY LOCATED AT THE SOUTHWEST INTERSECTION OF NW 97 AVENUE AND NW 154 STREET; ALL LOCATED IN HIALEAH, FLORIDA. PROPERTY HAVING A LAND USE CLASSIFICATION OF INDUSTRIAL AND TO BE DEVELOPED WITHIN THE PARAMETERS OF THE MH (INDUSTRIAL DISTRICT) ZONING CLASSIFICATION. REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of December 12, 2018 recommended approval of this ordinance; and

WHEREAS, the City of Hialeah and F03-4, LLC, and F99-5, LLC, desire to enter into a development agreement pursuant to the Florida Local Development Agreement Act, sections 163-3220 et seq., Florida Statutes; and

WHEREAS, the Development Agreement provides for the dedication of certain portions for principal roadways to the City, development of internal roads within the approximately 326.50 acre development, and a mechanism of site plan approval according to a project program for a development of commercial/retail uses to serve the community located in the Hialeah Heights.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby approves the Development Agreement between F03-4, LLC, and F99-5, LLC, and the City of Hialeah, Florida, a copy of which in substantial form is attached hereto and made a part hereof as Exhibit "1" and in furtherance thereof, the City of Hialeah authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into the Development Agreement and execute any document relating thereto. The Development Agreement covers property comprising approximately 326.50 acres within an area generally located at the Southwest Intersection of NW 97 Avenue and NW 154 Street; all located in Hialeah, Florida. Property having a land use classification of Industrial and to be developed within the parameters of the MH (Industrial District) Zoning Classification.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 22 day of January, 2019.

THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.

Vivian Casáls-Muñoz
Council President

Attest:

Approved on this 25 day of January, 2019.

Marbelys Fatjo, City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena Bravo, City Attorney

Ordinance was adopted by a 6-0-1 vote with Councilmembers, Caragol, Zogby, Lozano, Casáls-Munoz, Garcia-Martinez and Cue-Fuente voting "Yes", and with Councilmember Hernandez absent.

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EXHIBIT 1

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter the "Agreement") is made and entered into this _____ day of _____, 2018 (the "Effective Date"), by and between F03-4, LLC and F99-5, LLC, Florida limited liability companies (hereinafter, the "Developer"), and the City of Hialeah, Florida, a Florida municipal corporation (hereinafter, the "City").

WITNESSETH:

WHEREAS, Developer is the owner of approximately 336 acres of land, located at the southeast corner of the intersection of NW 107 Avenue and theoretical NW 154 Street within the boundaries of the City and identified by Miami-Dade County Tax Folio Nos. 04-2020-002-0010 and 04-2020-002-0021 (hereinafter, the "Property"), the legal description of which is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, the Property is vacant and undeveloped and the Developer owns the east 30 feet of the forty foot right-of-way east of the west section line of Section 20, Township 52, Range 40, identified as NW 107 Avenue, abutting the Property from theoretical NW 154 Street south for approximately 1,301 feet (hereinafter, the NW 107 Avenue Right-of-Way), the location sketch and legal description of which is attached hereto and made a part hereof as Exhibit "B"; and

WHEREAS, the Property also abuts, on its eastern boundary, what is planned for public right of way as theoretical NW 102 Avenue, north of NW 142 Street up to NW 145 Place for the length of approximately 568 feet and 35 feet in width, which Developer desires to dedicate pursuant to the terms and conditions of this Agreement (hereinafter, the NW 102 Avenue Right-of-Way), the location and legal description of which is attached hereto and made a part hereof as Exhibit "C"; and

WHEREAS, the Developer and City mutually desire that the NW 107 Avenue Right-of-Way and the NW 102 Avenue Right-of-Way is built and improved in its entirety as expeditiously as possible; and

WHEREAS, the Developer has agreed to accelerate the dedication of the NW 107 Avenue Right-of-Way and NW 102 Avenue Right-of-Way to City or City's assignee (Miami-Dade County), in exchange for the payment, construction and improvement of both the NW 107 Avenue and NW 102 Avenue Rights-of-Way and the City's reservation of concurrency capacity for all public facilities required to accommodate the impacts of development of the Property, including but not limited to transportation, water, sanitary sewer, solid waste, drainage, parks and recreational, schools, fire and police; and

WHEREAS, the Developer and City mutually desire that the Property be developed with a mix of uses that may include warehouse, retail/service, office, manufacturing, business, hotels, restaurants, automotive, recreation, floating solar utilities, and schools, consistent with the City's Comprehensive Plan and pursuant to the "MH Industrial District," Hialeah Code §98-1601; and

WHEREAS, the City initiated the rezoning of the Property from "GU General Use" to "MH Industrial District" to implement the City's Comprehensive Plan; and

WHEREAS, the Developer and the City desire to establish certain terms and conditions and rights with respect to the proposed development of the Property to provide assurance that the Property will be vested as to concurrency, zoning, and certain other regulations, as specified herein, that are existing on the Effective Date, subject to the terms of this Agreement; and

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

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference. All exhibits to this Agreement are hereby deemed a part hereof.

2. Definitions.

a. "Comprehensive Plan" means the plan adopted by the City pursuant to Chapter 163, Florida Statutes as found in compliance by the State land planning agency or the Florida Department of Economic Opportunity.

b. "Developer" means the person or entity undertaking the development of the Property, as defined in the preamble to this Agreement, or any successors, assigns, or heirs thereof.

c. "Development" means the carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels and such other activities described in Section 163.3221(4), Florida Statutes, as amended: provided, however, that the activities and uses set forth in Section 163.3221(4)(b), F.S. shall not constitute development.

d. "Development permit" includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

e. "Effective Date" is the date this Agreement is recorded in the public records of Miami-Dade County.

f. "Entire Term" is the total term of this Agreement is the Initial Term and all Additional Terms, as defined herein.

g. "Governing body" means the Hialeah City Council or successor entity.

h. "Initial Term" is thirty (30) years commencing on the Effective Date.

i. "Land" means the earth, water, and air, above, below, or on the surface and includes any improvements or structures customarily regarded as land, except as provided herein.

j. "Land Development Regulations" means ordinances, rules and policies enacted or customarily implemented by the City for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulation or any other regulations controlling the development of or construction upon land in effect as of the Effective Date.

k. "Laws" means all ordinances, resolutions, regulations, comprehensive plans, land development regulations, and rules adopted by the City of Hialeah affecting the development of land, specifically including the zoning and sign regulations of the City of Hialeah; the provisions of the Hialeah Land Development Code; and Hialeah, Fla., Comprehensive Plan 2015-2025.

l. "Public facilities" means major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities for which the City's Comprehensive Plan provides a level of service.

m. "Utility" includes any person, firm, corporation, association or political subdivision, whether private, municipal, county or cooperative, which is engaged in the sale, generation, provision or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service or telecommunication service.

3. Intent. It is the intent of the Developer and the City that this Agreement shall be construed and implemented as a development agreement among the parties pursuant to the Florida Local Government Development Agreement Act, Section 163.3220 through 163.3243, F.S., (hereinafter, the "Act").

4. Effective Date and Duration. Within fourteen (14) days of approval at two public hearings and execution by all parties, the City shall record the Agreement in the public records of Miami-Dade County. This Agreement shall become effective on the date it is recorded. This Agreement shall run with the land, remain in full force and effect, and be binding on all parties and all persons claiming under it for an Initial Term of thirty (30) years from the Effective Date, and may be extended by mutual consent of the governing body and the Developer pursuant to Section 163.3225, F.S., ("Additional Terms"). Consent to any extension of this Agreement is within the sole discretion of each party to this Agreement. No notice of termination shall be required by either party upon the expiration of this Agreement and thereafter the parties hereto shall have no further obligations under this Agreement.

5. Permitted Development Uses and Building Intensities ("Development Plan").

(a) *Permitted Development Uses.* The City has designated the Property as "Industrial" on the City's Comprehensive Plan. The zoning district that correlates with this future land use designation is "MH Industrial District" in the City's Land Development Regulations. The Property may be used for the purposes permitted in that comprehensive plan designation and zoning district. The Development Plan consists of a maximum of eight million square feet (8,000,000 s.f.) of a mix of uses including warehouse, retail/service, office, manufacturing, business, hotels, restaurants, automotive, recreation, floating solar utilities, and schools.

(b) *Building Heights, Setbacks and Intensities.* The maximum building heights, setbacks and intensities for any development on the Property shall be regulated by the Laws of the City of Hialeah. The parties acknowledge that the maximum intensity, building heights and setbacks are governed by the provisions of the Hialeah Code § 98-1601, MH Industrial District, in effect as of the Effective Date of this Agreement, and based on development that complies with Laws.. .

(c) *Fill Option.* The parties further acknowledge that the Developer has the option to fill the water body to create dry land after the Effective Date, as permitted by law and all applicable rules and regulations of any regulatory agency having jurisdiction (the "Fill Option"). Notwithstanding the designation of the water body on the Property as "Water" on the Future Land Use Plan Map of Hialeah, Fla., Comprehensive Plan 2015-2025, as amended, a land use amendment or rezoning shall not be required in order to permit the Fill Option and/or to permit the development of the water body consistent with the "Industrial" land use designation or MH Industrial District.

6. Public Services and Facilities; Concurrency. The City and the Developer anticipate that the Property, will be served by those public services and facilities currently in existence as provided by the State of Florida, Miami-Dade County, or the City, or as contemplated in this Agreement. The Property will also be served by any and all public facilities provided in the City's Comprehensive Plan, specifically including but not limited to, those public facilities described in the Comprehensive Plan's Capital Improvements Element. For the purposes of concurrency, the City hereby agrees to provide, reserve, and allocate sufficient public facility capacity, including but not limited to transportation, water, sanitary sewer, solid waste, drainage, parks and recreational, schools, fire and police to serve the Development Plan on the Property. Specifically, the City reserves public facility concurrency for a total of eight million square feet (8,000,000 s.f.) and a maximum of ~~twenty~~ five thousand five hundred forty six (4,546) external

The trip generation of any category of use shall be controlled by the PM Peak Hour Trip Generation Rates in the Institute of Transportation Engineers Trip Generation Manual, 10th Edition. All subsequent development orders or permits sought to be issued for the Development Plan and this Agreement are hereby found to meet concurrency standards set forth in the Comprehensive Plan (concurrency regulations) and to be consistent with Land Development Regulations, so long as the Developer develops the Property in substantial compliance with the Laws of the City of Hialeah. ~~It is expressly provided that the~~The Development Plan is ~~not~~ vested to ~~any~~ the particular rate for ~~the~~ City impact fees ~~or~~ and connection charges that apply to the development of the Property as of the Effective Date. Developer shall pay all City impact fees and assessments at the time of the master building permit for the Development Plan or each phase of the Development Plan, in the manner in which it is developed.

7. Reservation or Dedication of Land. The Developer shall dedicate the NW 107 Avenue Right-of-Way consisting of the fifty feet (50') from the centerline of NW 107th Avenue by delivery of a properly executed right-of-way deed on the same date as the Effective Date. The right-of-way deed to be executed by the Developer along with this Agreement and recorded by the City on the Effective Date is attached hereto and made a part hereof as Exhibit "D". Developer shall also dedicate the NW 102 Avenue Right-of-Way consisting of the thirty-five feet (35') from the centerline of NW 102 Avenue by delivery of a properly executed right-of-way deed on the same date as the Effective Date. The right-of-way deed to be executed by Developer along with this Agreement and recorded by the City on the Effective Date is attached hereto and made a part hereof as Exhibit "E". As additional consideration for the NW 107 Avenue Right-of-Way and NW 102 Avenue Right-of-Way, the City shall pay Developer, upon acceptance of the deeds, the amount of $25,000.00. In addition, the City and Developer shall work in good faith to provide temporary construction easements and/or licenses to allow for the construction and installation of infrastructure, utilities, stormwater management, and appropriate public facilities to serve the Development Plan on the Property.

8. Local Development Permits. The Property is the subject of various development permits consistent with the Property's land use classifications. This list is a good faith attempt to list the most significant permits required for development and may be supplemented with additional requirements, as appropriate, but the failure to list permits and approvals shall not relieve the Developer from the need to obtain said permits and approvals. The City anticipates the need to approve the following additional development permits in order for the Developer to complete the Initial Development Plan in a manner consistent with the zoning and comprehensive plan designations on the Property:

(a) Lake fill and/or excavation permits;
(b) Platting;
(c) Site plan approval;

(d) Water, sewer, paving, drainage and fill permits;
(e) Building permits;
(f) Certificates of occupancy; and
(g) Any other official action of the City and/or Miami-Dade County, Florida or other applicable regulatory agencies having the effect of permitting the development of land or providing permits required for the development of land.

9. Consistency with Comprehensive Plan. The City hereby finds and declares that the Developer's exercise of the Fill Option and implementation of the Development Plan on the Property complies with the Laws of the City of Hialeah, and is consistent with the City of Hialeah's Comprehensive Plan and Land Development Code.

10. Reservation of Development Rights. For the term of this Agreement, the City hereby agrees that it shall permit the Developer's exercise of the Fill Option and development on the Property in accordance with the Initial Development Plan in accordance with Laws of the City of Hialeah, as of the Effective Date of this Agreement, subject to the conditions of this Agreement. The City's laws and policies governing the development of the Property as of the Effective Date of this Agreement shall govern the development of the Property for the term of this Agreement. Development of the Property in accordance with the Initial Development Plan shall not be subject to any future changes to the City's Land Development Regulations or Comprehensive Plan designation after the Effective Date and during the Entire Term. The City may apply subsequently adopted laws or policies to the Property only as permitted or required by the Act.

11. Lake Fill of Water Body. The Developer agrees not to exercise the Fill Option, backfill or place any material in the water body located on the Property without prior approval of all applicable regulatory agencies and the City of Hialeah. The City shall cooperate, designate one representative to facilitate, and expeditiously process any and all applications related to the Fill Option. The Developer shall not place or caused to be placed, tires or hazardous materials into the water bodies. Before any fill occurs, the Developer shall provide information to the City specifying the area of the water body to be filled, the type and quantity of fill material, schedule of completion of fill, description of the discharge method and transportation routes, and description of action to be taken to minimize the impacts of the lake fill activity.

12. Zoning and Other Approvals. The parties hereto recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances, in the exercise of the City's jurisdiction under its police power. The City hereby reserves all of its rights to exercise its police powers with

respect to the aforementioned actions, and nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.

13. Necessity of Complying with Local Regulations Relative to Development Permits. This Agreement is not and shall not be construed as a development permit or authorization to commence fill operations or development. The Developer and the City agree that the failure of this Agreement to address a particular permit, condition, fee, term or restriction in effect on the Effective Date of this Agreement shall not relieve Developer of the necessity of complying with the regulation governing said permitting requirements, conditions, fees, terms or restrictions as long as compliance with said regulation and requirements do not require the Developer to develop the Property in a manner that is inconsistent with the Laws of the City of Hialeah in existence as of the Effective Date.

14. Good Faith; Further Assurances. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of and to satisfy their obligations under this Agreement in order to secure to themselves the mutual benefits created under this Agreement. In that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement, provided that the foregoing shall in no way be deemed to inhibit, restrict, or require the exercise of the City's police power or actions of the City when acting in a quasi-judicial capacity.

15. Expiration of Agreement. The expiration or termination of this Agreement, for whatever reason, shall not be considered a waiver of, or limitation upon, the rights, including, but not limited to, any claims of vested rights or equitable estoppel, obtained or held by the Developer or its successors or assigns to in compliance with this Agreement and all prior and subsequent development permits or development orders granted by the City, including, but not limited to, those rights granted under the Hialeah, Fla. Comprehensive Plan 2003-2015.

16. Binding Effect. The obligations imposed pursuant to this Agreement upon the Developer and upon the Property shall run with and bind the Property as covenants running with the Property, and this Agreement shall be binding upon and enforceable by and against the parties hereto, their personal representatives, heirs, successors, grantees and assigns.

17. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by a recognized courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope and addressed as follows:

If to the City at:	Mayor City of Hialeah 501 Palm Avenue Hialeah, Florida 33010
With a copy to:	City Attorney City of Hialeah 501 Palm Avenue Hialeah, Florida 33010
If to the Developer at:	Mrs. Betty L. Dunn F03-4, LLC F99-5, LLC 8083 NW 103 Street Hialeah Gardens, Florida 33016
With a copy to:	Melissa Tapanes Llahues, Esq. Bercow Radell Fernandez & Larkin, PLLC 200 S. Biscayne Blvd., Suite 850 Miami, Florida 33131

18. Governing Laws, Construction and Litigation. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Developer and the City agree that Miami-Dade County, Florida is the appropriate venue in connection with any litigation between the parties with respect to this Agreement. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against any of the parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded. All of the exhibits referenced in this Agreement are incorporated in, and made a part of, this Agreement. In the event of any litigation between the parties under this Agreement for a breach thereof, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels.

19. Severability. In the event that any term or provision of this Agreement is determined by an appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

20. Entire Agreement. This Agreement sets forth the entire Agreement and understanding between the parties hereto relating in any way to the subject matter contained herein and merges all prior discussions between the Developer and the City. Neither party shall be bound by any agreement, condition, warranty or representation other than as expressly stated in this Agreement and this

Agreement may not be amended or modified except by written instrument signed by both parties hereto.

[The remainder of this page remains blank. The signature page follows.]

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

CITY:

ATTEST:

CITY OF HIALEAH, FLORIDA

_____
Marbelys Fatjo
City Clerk

By: _____
Carlos Hernandez
Mayor

Dated ___ day of _____, 2018

Approved for form and legal sufficiency:

_____
Lorena E. Bravo
City Attorney

DEVELOPER:

WITNESS:

F03-4, LLC, a Florida
Limited Liability Company

_____
Signature

_____
Print Name

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

_____
Signature

_____
Print Name

Dated this __ day of _____, 2018

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledge before me this ____ day of _____, 2018, by Betty L. Dunn, as Managing Member of F03-4, LLC, a Florida limited liability company, who is personally known to me or has produced _____ _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commissions Expires:

_____
Notary Public, State of Florida

WITNESS:

F99-5, LLC, a Florida
Limited Liability Company

_____
Signature

_____
Print Name

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

_____
Signature

_____
Print Name

Dated this __ day of _____, 2018

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledge before me this ____ day of _____, 2018, by Betty L. Dunn, as Managing Member of F99-5, LLC, a Florida limited liability company, who is personally known to me or has produced _____ _____ as identification, and acknowledged that she did execute this instrument freely and voluntarily for the purposes stated herein.

My Commissions Expires:

_____
Notary Public, State of Florida