

**MASTER DEVELOPMENT AGREEMENT**

**Between**

**MONROE COUNTY SCHOOL DISTRICT**

**And**

**GORMAN & COMPANY, LLC**

**FOR**

**SUGARLOAF AFFORDABLE MULTI-FAMILY HOUSING DEVELOPMENT  
(RFQ 2020022)**

## MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement (this “**Agreement**”) is entered into effective as of \_\_\_\_\_, 2020 between the Monroe County School District (“**District**”) and Gorman & Company, LLC (the “**Developer**”).

### PREAMBLE

- A. District is the owner of the real estate described on Exhibit A (the “**Property**”).
- B. District desires to redevelop the Property with the assistance of Developer.
- C. District and the Developer intend to construct a building and other improvements or structures on the Property, which is currently vacant (the “**Project**”). The Project will include approximately 20 apartment units and on-site amenities for residents. The Project will be developed in financially feasible manner, compliant with applicable federal, state, and local rules and laws. The Project will be affordable to tenants whose incomes are on average at or below the area median income, as more particularly described herein.
- D. District intends to enter into a long term lease agreement under which District would lease the Property to the Owner (as defined in Section 5.01). The Owner will develop, construct, own and operate the Project.
- E. District and Developer intend to commercial real estate financing in a construction loan (the “**Construction Loan**”), a permanent loan (the “**Permanent Loan**”), and private investor equity (the “**Private Equity**”) from equity investors (the “**Investors**”).

### AGREEMENTS

In consideration of the promises and mutual covenants set forth herein, and with the foregoing recitals incorporated herein, the parties hereto, with the intent to be legally bound hereby, agree as follows:

#### ARTICLE I - ENGAGEMENT OF DEVELOPER.

1.01 Engagement of Developer. District hereby engages the Developer to perform the obligations and services specified in this Agreement, and the Developer hereby accepts such engagement, all upon the terms and conditions set forth herein.

#### ARTICLE II - DEVELOPER SERVICES.

2.01 Design Architectural Contract. Unless otherwise agreed to by Developer and District, not later than thirty (30) days after the date on which District and Developer have both executed and delivered this Agreement (the “**Effective Date**”), the Developer shall develop and submit to District for its review and approval, approval of which shall not be unreasonably withheld, conditioned or delayed, an architectural contract for design services (the “**Design Architectural Contract**”) which shall detail the design obligations of Developer to District more particularly described on Exhibit D (the “**Design Services**”) and District payment obligations to Developer for such Design Services. The parties acknowledge that Developer will work with Authority to complete a general design of the Project (the “**Schematic Design**”) and an initial Project budget based on the Schematic Design (the “**Project Budget**”), which may be revised in accordance with Section 4.02. As part of the preparation of the Schematic Design, Developer will obtain an environmental assessment, geotechnical report, percolation report, preliminary

civil engineering schematic designs, ALTA survey (with utilities depicted), biologists' survey, market study, and obtaining a conditional use permit from Monroe County (the "**Initial Due Diligence**"). The Schematic Design shall specify, at a minimum, the contemplated configuration and number of bedrooms in the apartment units to be constructed as part of the Project, any affordability restrictions that will apply to each apartment unit, the approximate monthly rent for the apartment units, the approximate cost of the Project, the expected types and sources of financing, and the total Development Fee (as defined in Section 6.01) to be paid to Developer. The Schematic Design shall also include an initial Development Schedule (defined below), which may be revised in accordance with Section 4.01, and alternatives to the Schematic Design in the event of construction cost overruns or the Project proves to be financially infeasible. In the event the parties cannot agree on a Schematic Design and Project Budget or in the event any of the Initial Due Diligence prevents the Developer, in its sole discretion, from proceeding with the Schematic Design in accordance with the Project Budget, then each party shall have the right to terminate this Agreement by providing written notice of the same to the other party in accordance with Article XII - Article XII - below. District shall pay Developer for the Design Services and out-of-pocket costs related to the Initial Due Diligence rendered in connection with the Design Architectural Contract, but no further payments to Developer shall be due and Developer shall have no further obligations. The documents produced from the Initial Due Diligence shall be delivered to the District, together with all ownership rights thereto. The District's decision whether to proceed shall be governed by the timelines set forth in Section 3.02, commencing after Developer has provided the Design Services in accordance with the Design Architectural Contract.

2.02 Developer's Obligation to Develop. The Developer shall use commercially reasonable efforts to cause the financial closing of the Project (the "**Closing**") to occur in accordance with the Development Plan on or prior to the date shown in the Development Schedule, subject to reasonable extensions of time, including as noted in Section 4.03.

2.03 Developer Services. Except for the services to be provided by District pursuant to Section 3.01, the Developer shall provide, or arrange for the provision of, all such services as are necessary for the development and construction of the Project, including without limitation the following services (collectively the "**Development Services**"):

(a) Project Planning and Predevelopment Services. All planning and predevelopment services listed on Exhibit B (the "**Project Planning and Predevelopment Services**").

(b) Financing Services. All financing services listed on Exhibit C (the "**Financing Services**").

(c) Design/Planning Services. All design/planning services listed on Exhibit D (the "**Design Services**").

(d) Site Preparation Services. All site preparation services listed on Exhibit E (the "**Site Preparation Services**").

(e) Construction Services. All construction services listed on Exhibit F (the "**Construction Services**").

2.04 Progress Reports and Information.

(a) Progress Reports. Developer shall provide District with progress reports regarding the Project from time to time, or as requested by District (but no more frequently than monthly). Such reports may include (a) documentation of compliance with applicable employment and contracting

requirements, (b) material variances between actual Development Services completion dates and the Development Schedule, (c) a summary of any meetings, (d) information on contracts, including changes under consideration or proposed contract changes, (e) actions taken when the requirements of any contract are not being satisfied, (f) material variances between actual predevelopment expenditures and the Project Budget and (g) all material changes and material modifications proposed to the Project Budget and Development Schedule. In addition, the Developer shall, upon reasonable request by District, furnish District with copies of any work product prepared by the Developer (not including the Developer's attorneys' work product) in connection with its Development Services.

(b) Additional Materials. The Developer shall furnish to District the following upon written request by District from time to time:

(i) Copies of any material correspondence, notices or orders of any government agency concerning the Project;

(ii) Copies of any complaints, or any actions or arbitration or investigatory proceedings with respect to the Project; and

(iii) An unaudited financial statement for the Project prepared on a modified cash basis, including open accounts payable, in accordance with conventional practice consistently applied.

2.05 Additional Services. District may request the Developer to undertake certain additional services which are not included as Development Services (the "**Additional Services**"), the compensation for which shall be paid to the Developer at the times and in the manner set forth in a separate agreement or agreements. The scope of any Additional Services must be mutually acceptable to District and the Developer. The Developer shall have no obligation to provide any Additional Services unless agreed to in writing by the Developer. The Developer shall provide such Additional Services as an independent contractor and not as an agent of District, unless the agreement providing for such Additional Services shall otherwise specifically provide.

### **ARTICLE III - AUTHORITY RESPONSIBILITIES.**

3.01 District Responsibilities. District shall have the responsibilities set forth on Exhibit G. If District incurs any third-party expenses in connection with such responsibilities, such expenses shall be borne by District unless they are preauthorized by Developer, in its sole discretion, to be included in a revised Project Budget and, in such case, only reimbursable to District at Closing.

3.02 District Approvals. District recognizes that the Developer's ability to perform hereunder depends in part on District's responsiveness and District pledges to give reasonably timely attention to submissions and requests made to District by the Developer under the terms of this Agreement and shall review such submissions and requests on a timely basis. In furtherance of the foregoing, District shall provide its approval or denial of the submissions and requests for approvals by the Developer required under this Agreement, including, without limitation, proposed Development Schedules, Project Budgets, or revisions thereto within fourteen (14) calendar days of receipt of the request, but only to the extent that such requests do not involve financial expenditures by the District. To the extent such requests do require financial expenditure by the District, the District shall have thirty (30) calendar days from receipt of the request to provide its approval or denial. Notwithstanding anything to the contrary herein, if District does not respond in writing to any proposed submission or request from Developer, within fourteen (14) or thirty (30) calendar days, as applicable, of receipt of the submission or the request, District shall be deemed to have approved the submission or request. For the avoidance of doubt, the thirty (30) calendar day timeline

shall apply to the District's decision whether to proceed with this project, in accordance with the timeline set forth within Exhibit B.

3.03 Property. District will either sell the Property to the Owner or enter into a lease the Property to the Owner pursuant to the terms of a lease agreement to be entered into between District and the Owner, which shall include an easement for access (the "**Access Easement**") across real property adjacent to the Property that is owned by the District and will be used by Project tenants for ingress and egress, as well as a clause causing termination of the lease upon the occurrence of any material breach by Developer. If the Property is sold to the Owner, the sale price will be \$100.00. If the Property is subject to a ground lease, the lease will have an annual lease payment of \$100.00 lump-sum payable within one year of the Effective Date and a term of 99 years. District and the Owner shall negotiate, draft and approve the form of the lease agreement or sale agreement, as applicable, no later than thirty (30) days prior to the scheduled closing, the form of which must be acceptable to the Project's lenders and Investor. The Access Easement shall be at no additional cost to the Owner. In the event the Access Easement requires repair or maintenance, the District shall provide such repair or maintenance; if the District does not so provide, the Owner may elect to have the repair or maintenance work done and charge the District for such work.

3.04 Environmental Conditions. If there are any Hazardous Materials (as defined below) on the Property, or there are any violations of Environmental Law (as defined below) with respect to the Property (collectively, an "**Environmental Condition**"), and an Environmental Condition is known to Developer and District prior to the date the Property is leased to Owner, District and Developer shall include the costs of remediating such Environmental Condition in the Project Budget. In the event the actual costs of remediating any known Environmental Condition exceeds the budgeted amount, or in the event there are any costs associated with remediating any unknown Environmental Condition (*i.e.*, an Environmental Condition not known until after the date the Property is leased to Owner), District and Developer shall use their best efforts to cause such additional costs to be paid out of the Project Budget. In the event any such additional costs cannot be paid out of the Project Budget, District shall be responsible for paying for such costs. Developer shall be responsible for any Environmental Condition that occurs on the Property during the time the Property is leased to Owner, unless such Environmental Condition is caused by District, in which event District shall be solely responsible for all costs associated with the condition including, without limitation, all costs of remediating the Environmental Condition and any costs incurred by a third party (including the Investor or a lender) as a result of the Environmental Condition.

3.05 Hazardous Materials. For purposes of this Agreement, "**Hazardous Materials**" shall mean (a) "hazardous substances" as defined by CERCLA (as defined below); (b) "hazardous wastes" as defined by RCRA (as defined below); (c) any hazardous, dangerous or toxic pollutant, chemical, waste, contaminant or substance within the meaning of any Environmental Law (as defined below) that governs the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant, chemical, waste, contaminant or substance; (d) petroleum, crude oil or fraction thereof; (e) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. Section 2011 et seq. and amendments thereto and reauthorizations thereof; (f) asbestos-containing materials in any form or condition; or (g) polychlorinated biphenyls in any form or condition.

3.06 Environmental Law. For purposes of this Agreement, "**Environmental Law**" means any present or future federal, state or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning, or otherwise addressing the environment, health or safety, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("**CERCLA**"); the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("**RCRA**"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.;

and the Clean Water Act, 33 U.S.C. Section 1251 et seq. and any so-called “Superfund” or “Superlien” law; and the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq., as each is from time to time amended and hereafter in effect.

#### **ARTICLE IV - GENERAL DEVELOPMENT ACTIVITIES.**

4.01 Development Schedule. Not later than ninety (90) days after the Effective Date, the Developer shall prepare and submit to District for review and approval a schedule for the performance of the Project (the “**Development Schedule**”). District shall not unreasonably withhold, condition or delay approval of the Development Schedule and shall work with Developer to mutually agree on any matters in dispute. The Developer shall, as necessary, supplement the Development Schedule with schedules for submissions and responses of necessary deliverables associated with tasks covered by the Development Schedule, taking into account appropriate scheduling for submission, review and approval by the District. An updated Development Schedule will be provided to District when deemed necessary by the Developer or when reasonably requested by District. Proposed material revisions to the Development Schedule will be submitted by the Developer to District with identification and explanation of changes. District will promptly review all such proposed material revisions which, upon approval by District, shall be deemed to constitute the revised Development Schedule.

4.02 Project Budget. Not later than ninety (90) days after the Effective Date, the Developer shall prepare and submit to District for approval a development budget (the “**Project Budget**”). District shall not unreasonably withhold, condition or delay approval of the Project Budget and shall work with the Developer to mutually agree upon any costs in dispute. The Project Budget shall encompass all sources of funds for the Project and all expenses to be paid out of the Project, as may be reasonably agreed to by the Developer and District, and shall detail the assumptions upon which the Project Budget is based. An updated Project Budget will be provided to District on at least a quarterly basis and additionally when deemed necessary by the Developer or when reasonably requested by District. Proposed material revisions to the Project Budget will be submitted by the Developer to District with identification and explanation of changes. District will promptly review all such proposed material changes which, upon approval by District, shall be deemed to constitute the revised Project Budget.

4.03 Force Majeure; COVID. **The parties acknowledge that the COVID-19 health crisis and resulting global pandemic and national emergency has materially disrupted day-to-day life across the country, including in Monroe County, and may result in negative impacts on the capital markets, the financing markets, and the construction services markets. The foregoing disruptions, or other not yet known disruptions, might make it impossible or impractical for Developer to strictly comply with the Development Schedule or the Project Budget.** In the event the COVID-19 health result, resulting global pandemic or national emergency, or other related market disruption makes it impossible or impractical to complete the Project in accordance with the Development Schedule or the Project Budget, Developer shall provide prompt written notice to District of the same. The parties will work in good faith to revise the Development Schedule and/or Project Budget in light of the changing circumstances. In the event the parties cannot agree on a revised Development Schedule and/or Project Budget, the parties may terminate this Agreement in accordance with Article XII - .

4.04 Affordability and Targeting. Developer is proposing the development of 20 units of workforce housing (the “**Units**”), with the fifty percent (50%) of the units rented to persons earning, on average, up to 100% of AMI (as defined below) and the fifty percent (50%) of the units rented to persons earning, on average, up to 120% of AMI, or such higher AMI limits as mutually agreed to by the parties (the “**Unit Mix**”). The parties agree any change to the Unit Mix shall require consent by both parties. Subject to lender and investor approval, the District may record a use restriction against the Project to require compliance with the Unit Mix. The Units will be targeted toward households with at least one



family member that is employed at least 1000 hours per year by the District. If fifteen (15) calendar days pass without a successful lease, the management agent may lease that unit to any household, without regard for employment status with the District, but in any event, shall give preference to households with at least one family member that is employed by other public agencies in Monroe County. “**AMI**” means the median annual income for Monroe County, Florida adjusted for household size that is calculated and published annually by the United States Housing and Urban Development (“**HUD**”).

## **ARTICLE V - DEVELOPMENT PHASE ACTIVITIES AND DOCUMENTS**

5.01 Owner. The Developer shall cause the formation of a limited liability company (the “**Owner**”) to own, operate and manage the Project. The Developer shall cause the formation of a limited liability company to be the managing member of the Owner (the “**MM**”). It is intended that a portion of equity interest in the Owner will be owned by an investor or investors (whether one or more, the “**Investor**”) selected in accordance with Exhibit C hereof. District acknowledges that the Developer will be primarily responsible for negotiating such agreements with the Investor, including amount and timing of the Investor’s equity contribution to the Owner. Both parties agree to work in good faith to try to maximize the amount of such equity. The Developer, or an affiliate of the Developer, will hold own 100% of the membership interests in the MM.

5.02 Management Agent. Not later than the Closing, the Owner shall enter into a management agreement with a qualified professional property management firm (the “**Management Agent**”) approved by District, all lenders, the Investor and Developer. District hereby consents to Developer (or its affiliate) and/or Royal American to become the Management Agent if Developer desires to undertake such role. In the event the Management Agent (a) is not Developer or its affiliate and (b) breaches its obligations under the Management Agreement or operates the Project in such a way as to potentially cause the Developer to be placed in financial risk related to its guarantees to the lenders and/or Investor, the Developer shall have sole authority on the action to be taken against the Management Agent (including termination, if appropriate). If the Developer decides to terminate the Management Agent, District and Developer must mutually agree on the replacement Management Agent. The management fee shall be consistent with market fees and as shall be more specifically set forth in a management agreement to be entered into by and between the Owner and the Management Agent (“**Management Agreement**”). The Management Agreement shall provide that the Management Agent shall be responsible to the Owner for management of the Project in accordance with the terms of the Management Agreement and other applicable requirements referenced therein.

5.03 General Contractor Contract. At least thirty (30) days in advance of the Closing, the District and the Developer or its affiliate shall enter into a general construction contract for the construction of the Project in accordance with the Schematic Design, the Project Budget, and the Development Schedule, such contract to be in a form reasonably agreeable to the District and the Developer and based on the AIA form of standard construction contract based on a lump-sum amount.

5.04 Construction Architectural Contract. Unless otherwise agreed to by Developer and District, not later than thirty (30) days after the approval by the District of the Schematic Design, Construction Schedule, and Project Budget, the District and the Developer or its affiliate shall enter into a construction architectural contract (the “**Construction Architectural Contract**”) to provide for the development of construction drawings in connection with the Project, such contract to be in a form reasonably acceptable to the District and the Developer and based on the AIA standard form of architect agreement. For the avoidance of doubt, the Construction Architectural Contract may be contained within the Design Architectural Contract, such that both Schematic Design and construction drawings are contained in the Design Architectural Contract, but the obligation to perform any construction drawings shall be conditioned upon payment for the Schematic Design as set forth therein; and the right to proceed

to construction drawings is conditioned upon receiving written notice from the District that it may proceed. Upon the execution of the Construction Architectural Contract, the District shall assign rights and interests to an entity created by and under common control with the Developer.

#### **ARTICLE VI - DEVELOPMENT FEE; PROJECT CASH FLOW; PREDEVELOPMENT COSTS**

6.01 Development Fee. The Developer shall be entitled to a development fee to be earned and paid during the development period (the “**Development Fee**”), as shown and agreed upon in the Project Budget. The Development Fee shall comply with all HUD requirements, and be in an amount permitted under the Code. In the event of a cost overrun in excess of any contingency set forth in the Project Budget, the Development Fee shall be deferred, as necessary, to pay for such overrun. The parties intend that the Development Fee will be subject to the Project Budget, with the Developer receiving 80% of the Development Fee and the District receiving 20% of the Development Fee. The Development Fee will be paid on a *pari passu* basis, as received.

6.02 Predevelopment Costs. The Project Budget shall include a budget of estimated predevelopment costs, which shall be paid by Developer (other than District’s payment to Developer pursuant to the Design Architectural Contract and the Initial Due Diligence). At Closing, Developer shall be repaid the predevelopment costs it has incurred in connection with the Project for which it has not previously been paid.

6.03 Developer has prepared a Predevelopment Fee Schedule setting forth estimated predevelopment costs and the timeline in which said costs are to be incurred by Developer (attached hereto within Exhibit B). In the event the District terminates this Agreement in accordance with the terms of Article XII prior to the issuance of Notice to Proceed by the District as set forth in the Predevelopment Fee Schedule, the District shall be responsible to pay Developer only the costs set forth in the Schedule, or other costs as mutually agreed upon by the Parties, prior to termination of the Agreement.

#### **ARTICLE VII - SELECTION OF PROFESSIONALS, CONTRACTORS AND CONSULTANTS.**

7.01 Selection. Developer shall select any party that will be providing any services in connection with the Project including, without limitation, attorneys, accountants, and consultants. District agrees that (a) Developer is authorized to act as the architect for the Project, (b) Gorman General Contractors, LLC (an affiliate of Developer) is authorized to act as the general contractor for the Project, (c) if it desires, Developer or its affiliate is authorized to act as the Management Agent for the Project, and (d) District shall maintain the ability to retain its own legal counsel and consultants throughout the duration of the Project (at District’s sole expense).

#### **ARTICLE VIII - REPRESENTATIONS AND WARRANTIES.**

8.01 Developer Representations. The Developer hereby represents and warrants as follows:

(a) It has the legal and financial capacity to assume responsibility for compliance with all applicable laws, regulations, rules, programs and agreements and to enter into this Agreement and to perform all of the undertakings set forth herein.

(b) The Developer is a duly organized and validly existing legal entity under the laws of the State of Wisconsin.



(c) This Agreement has been duly and validly executed and delivered by the Developer and constitutes a valid and legally binding obligation of the Developer enforceable in accordance with its terms.

(d) The Developer is not a party to any contract or agreement or subject to any charter or other legal restriction of any kind which materially and adversely affects the business, property or assets, or the condition, financial or otherwise, of the Developer. Neither the execution and delivery of this Agreement, nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any law or any regulation, order or decree of any court or governmental agency, or any indenture or other agreement or instrument to which the Developer is subject, or will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer pursuant to the terms of any such indenture or agreement or instrument, and will not require the approval of any federal regulatory body or of any state or local commission or authority having jurisdiction with respect thereto, unless such approval has been obtained and is in full force and effect on the date hereof.

(e) There is no action, proceeding or investigation now pending before any court or any governmental department or agency nor any basis therefor, known or believed to exist which: (i) questions the validity of this Agreement or any action or act taken or to be taken by the Developer pursuant to this Agreement, or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition of the Developer which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

8.02 District Representations. District hereby represents and warrants as follows:

(a) It has legal and financial capacity to assume responsibility for compliance with all applicable laws, regulations, rules, programs and agreements and to enter into this Agreement and to perform all the undertakings set forth herein.

(b) District is a validly existing legal entity under the laws of the State of Florida.

(c) This Agreement has been duly and validly executed and delivered by District and constitutes a valid and legally binding obligation of District enforceable in accordance with its terms.

(d) District is not a party to any contract or agreement or subject to any charter or other legal restriction of any kind which materially and adversely affects the business, property, or assets, or the condition, financial or otherwise, of District. Neither the execution and delivery of this Agreement, nor compliance with the terms, conditions and provisions hereof will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any law or any regulation, or decree of any court or governmental agency, or of any indenture or other agreement or instrument to which District is subject, or will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of District pursuant to the terms of any such indenture or agreement or instrument and will not require the approval of any federal regulatory body or of any state or local commission or authority having jurisdiction with respect thereto, unless such approval has been obtained and is in full force and effect on the date hereof.

(e) There is no action, proceeding or investigation now pending before any court or any governmental department or agency nor any basis therefor, known or believed to exist which: (i) questions the validity of this Agreement or any action or act taken or to be taken by District pursuant to this Agreement, or (ii) is likely to result in a material adverse change in the authority, property, assets,

liabilities or condition of District which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

#### **ARTICLE IX - COOPERATION.**

9.01 Cooperation. The parties hereto agree to cooperate with each other and provide all necessary documentation, certificates and consents and to take all necessary action in order to satisfy the terms and conditions hereof and the applicable laws, regulations and agreements relating thereto.

#### **ARTICLE X - ACCOUNTING RECORDS.**

10.01 Books and Records. The Owner's books and records shall, prior to Closing, be kept on a modified cash basis, including open accounts payable, in accordance with conventional practice, and consistently applied and after Closing shall be kept in accordance with generally accepted accounting principles. All books and records must conform to all regulatory and Investor requirements. District shall have access to all such books and records.

#### **ARTICLE XI - DISPUTES.**

11.01 Disputes. In the event of a dispute arising under this Agreement, the parties shall, without delay and in good faith attempt to amicably resolve such dispute. Should the parties be unable to resolve any dispute between themselves within ten (10) business days of both parties notice of such dispute ("**10-Day Dispute Period**") the parties will, within three (3) business days following the 10-Day Dispute Period select a neutral mediator experienced in mediation and in matters customarily related to the area of dispute. The dispute will be submitted to the mediator for non-binding mediation, the decision of such mediation not to extend beyond sixty (60) days from the conclusion of the 10-Day Dispute Period. If the parties do not reach a resolution to their dispute within the period referenced above, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be submitted to arbitration in Miami-Dade County, Florida in accordance with the Commercial Arbitration Rules and practices of the American Arbitration Association.

#### **ARTICLE XII - TERM; TERMINATION.**

12.01 Term. This Agreement shall commence upon the execution hereof and shall terminate at Closing.

12.02 Termination by Parties. This Agreement may be terminated:

- (a) By the mutual agreement of the Developer and District;
- (b) By the Developer or District if there has been a default in the performance or observance of any term or condition of this Agreement by the other party that is not cured within thirty (30) days after receipt of written notice thereof from the non-defaulting party; provided that, if such default cannot reasonably be cured within thirty (30) days, and the defaulting party shall have commenced to cure such default within such 30-day period, then the defaulting party shall have such additional time as is reasonably necessary to cure the default if the defaulting party promptly and diligently proceeds to cure the same, it being agreed that no extension shall be for a period in excess of one hundred and eighty (180) days unless mutually agreed to by the parties;
- (c) Immediately, upon written notice by the Developer to District, if Developer is no longer able to comply with the Project Budget or Development Schedule as a result of force majeure,

including, without limitation, further uncertainty related to COVID-19 and its reverberating economic impacts, and District is unwilling or unable to provide approval to changes in the Project Budget or Development Schedule;

(d) Immediately, upon written notice by the Developer to District, if the parties cannot agree upon a Project Budget, Development Schedule, or Schematic Design, in which case District shall be obligated to pay Developer for services rendered prior to the termination pursuant to the Design Architectural Contract but not for any further services contemplated pursuant to this Agreement;

(e) Immediately by the Developer or District, if the other party ceases doing business as a going concern, makes an assignment for the benefit of creditors, files a voluntary petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under the federal bankruptcy laws or any similar federal or state statute, law or regulation, or files an answer admitting the material allegations of such a petition or consents to or acquiesces in the appointment of a trustee, receiver or liquidator of all or any part of its assets or properties. The parties specifically acknowledge that the current receivership status of the District does not constitute grounds for termination of this Agreement pursuant to this provision.

(f) By the District prior to the issuance of a Notice to Proceed in accordance with the Predevelopment Fee Schedule (attached hereto within Exhibit B), with at least thirty (30) days notice to Developer. In the event the District terminates this Agreement in accordance with this provision, the District shall be responsible to pay Developer only the costs set forth in the Schedule, or other costs as mutually agreed upon by the Parties, prior to termination of the Agreement.

(g)

12.03 Damages. In the event the Developer or District terminates this Agreement under section 12.02(b) or 12.02(e), the defaulting party shall be liable for any and all damages incurred by the non-defaulting party including, without limitation, reasonable attorneys' fees and other costs and expenses resulting from termination of this Agreement.

12.04 Failure to Secure Financing and Investment. The Developer and District acknowledge that the feasibility of the Project is predicated upon (a) the Project being financial feasible and obtaining a Construction Loan and Permanent Loan in amounts reasonable necessary to construct and operate the Project in accordance with the Schematic Design, Development Schedule, and Project Budget; and (b) the Project receiving an equity contribution in an amount deemed satisfactory to the Developer. Notwithstanding anything to the contrary in this Agreement, in the event that (x) Developer is unable to procure a Construction Loan and a Permanent Loan on terms satisfactory to Developer or (y) an equity contribution in an amount deemed satisfactory to the Developer, this Agreement shall terminate upon Developer notifying District in writing that it was unable to procure a Construction Loan, Permanent Loan commitment, and/or equity contribution in an amount satisfactory to the Developer. Neither party shall be liable to the other party for any damages or cost reimbursement in the event this Agreement is terminated under this Section 12.04, except that District shall pay any amounts due and owing for services rendered or costs incurred prior to termination of the Agreement pursuant to the Design Architectural Contract.,

12.05 Survival. Notwithstanding any expiration or termination of this Agreement, all indemnification obligations contained in of this Agreement, and the provisions contained in Articles III, V, VI, VIII, XI and XII of this Agreement shall continue in effect after termination of this Agreement.

### **ARTICLE XIII - CONSENT; NO ASSIGNMENT.**

13.01 Consent. In any request, approval, consent or other determination by any party required under this Agreement, the party shall act reasonably, in good faith and in a timely manner unless a different standard is explicitly stated.

13.02 Assignment. Neither party shall assign, subcontract or transfer any services, obligations, or interests in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

### **ARTICLE XIV - PUBLIC STATEMENTS.**

14.01 Public Statements. The parties agree to cooperate and consult with each other regarding any public statements or publication made regarding the Project. Each party shall provide the other with drafts of any written material prepared in connection with the Project for a government agency or other third party prior to submission. Each party shall revise such drafts in accordance with reasonable requests of the other.

### **ARTICLE XV - MISCELLANEOUS.**

15.01 Notices. All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when actually received or two days after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Developer:

Gorman & Company, LLC  
200 North Main Street  
Oregon, WI 53575  
Attn: Southeast Market President  
Fax: 608-835-3922  
Phone: 404-403-2925

With a copy to:

William R. Cummings, Esq.  
Reinhart Boerner Van Deuren s.c.  
1000 North Water Street, Suite 1700  
Milwaukee, WI 53202  
Fax: 414-298-8097  
Phone: 414-298-8330

If to District:

Monroe County School District  
241 Trumbo Road  
Key West, FL 33040  
Attn: \_\_\_\_\_  
Fax: (305) \_\_\_\_\_  
Phone: (305) \_\_\_\_\_

With a copy to:

Atty. Gaelan P. Jones  
Vernis & Bowling Of The Florida Keys, P.A.  
81990 Overseas Highway, 3<sup>rd</sup> Floor  
Islamorada, FL 33036  
Fax: (305) 664-5414  
Phone: (305) 664-4675

15.02 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute one and the same instrument. Signatures sent via facsimile or e-mail transmission shall be deemed original signatures for purposes of creating a binding Agreement.

15.03 Public Records. Pursuant to Florida Statute 119.0701, Developer agrees to:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by District in order to perform the service.
- (b) Upon request from District's custodian of public records, provide District with a copy of the 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 this chapter 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 contractor does not transfer the records to the District.
- (d) Upon completion of the contract, transfer, at no cost, to District all public records in possession of the contractor or keep and maintain public records required by the District to perform the service. If the contractor transfers all public records to District upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to District, upon request from District's custodian of public records, in a format that is compatible with the information technology systems of the School Board.

Failure of Developer to comply with this section and F.S. §119.0701 may include, but not be limited to, District holding the contractor in default, termination of the contract or legal action.

**IF DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (Records@KeysSchools.com OR MAIL TO: MONROE COUNTY SCHOOL DISTRICT, ATTN: CUSTODIAN OF PUBLIC RECORDS, 241 TRUMBO ROAD, KEY WEST, FL 33040 OR CALL (305)293-1400).**

15.04 Further Assurances. Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transactions contemplated by this Agreement.

15.05 Background Checks / Fingerprinting. In accordance with the legislative mandate set out in sections 1012.32, 1012.465 and 435.04, Florida Statutes as well as with the requirements of HB 1877, The Jessica Lunsford Act, Developer agrees that all of its employees and sub-contractors, including employees of sub-contractors, who provide or may provide services under this Contract, and who are required to be subject to background screening under the Jessica Lunsford Act, have completed all background screening requirements through a Monroe County School Board designee pursuant to the above-referenced statutes. It is recognized and agreed that the provisions and exceptions relating to the dictates of The Jessica Lunsford Act, and codified at sections 1012.321, 1012.465, 1012.467 and 1012.468 of the Florida Statutes, shall apply to the requirements of this paragraph where so applicable.

Developer agrees to bear any and all costs associated with acquiring the required background screenings, provided that such costs shall be included in the Project Budget. Developer agrees to require all affected employees and sub-contractors to sign a statement, as a condition of employment with

Developer in relation to performance under this Contract, that the employee and/or sub-contractor will abide by the terms and notify Developer/Employer of any arrest or conviction of any offense enumerated in section 435.04, Florida Statutes within forty-eight (48) hours of their occurrence. Developer agrees to provide District with a list of all employees and/or sub-contractors who have completed background screenings as required by the above-referenced statutes and that meet the statutory requirements contained therein. Developer agrees that it has an ongoing duty to maintain and update these lists as new employees and/or sub-contractors are hired and in the event that any previously screened employee fails to meet the statutory standards. Developer further agrees to notify District immediately upon becoming aware that one of its employees or its sub-contractor's employees, who was previously certified as completing the background check, and meeting the statutory standards, is subsequently arrested or convicted of any disqualifying offense. Failure by Developer to notify District of such arrest or conviction within forty-eight (48) hours of being put on notice by the employee/sub-contractor and within 5 days of its occurrence shall constitute grounds for immediate termination of this contract by District. The parties further agree that failure by Developer to perform any of the duties described in their paragraph shall constitute a material breach of the contract entitling District to terminate this Contract immediately.

15.06 Interpretation and Governing Law. This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by both parties. This Agreement shall be construed, interpreted, and governed by the laws of the State of Florida.

15.07 Severability. If any term or provision of this Agreement is invalid or unenforceable, such term or provision shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable term or provision had not been part of this Agreement.

15.08 Parties Bound. No officer, director, shareholder, employee, agent, or other person authorized to act for and on behalf of either party shall be personally liable for any obligation, express or implied, hereunder.

15.09 Final Agreement. This Agreement constitutes the final understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral including, without limitation, Developer's response to RFQ 2020022. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby.

15.10 Remedies Cumulative; No Waiver. The rights and remedies granted herein or by law or equity are separate and no one of them, whether or not exercised, shall be deemed to exclude other rights or remedies. No delay or omission by either party to insist upon the strict performance of any of the other party's obligations under this Agreement or to exercise any right or remedy available hereunder shall impair any such right or remedy or constitute a waiver thereof in the event of any subsequent occasion giving rise to such right or availability or remedy or obligation, whether of a similar or dissimilar nature.

15.11 Successors. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, and their permitted successors and assigns; provided that the Developer may not assign its interests in this Agreement without the prior written consent of District.

**[Signature Page Follows]**



The parties hereto have executed this Master Development Agreement as of the date first set forth above.

**MONROE COUNTY SCHOOL DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GORMAN & COMPANY, LLC**

By: \_\_\_\_\_  
Brian Swanton, President

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

See attached

## **EXHIBIT B**

### **PROJECT PLANNING AND PREDEVELOPMENT SERVICES**

The Developer shall be responsible for the following in conjunction with District:

1. Engaging legal counsel to represent Developer, Owner and MM in connection with the Project.
2. Organizing the Owner and MM for the Project.
3. Engaging consultants to conduct the Initial Due Diligence.
4. Negotiating all necessary agreements with lenders, Investor, and governmental bodies.
5. Preparing a marketing plan and initial lease-up program.
6. Performing such other Project planning and predevelopment services which are reasonable and necessary for the Project.
7. Overseeing all Planning Services for the Project. The Planning Services shall include collecting existing site data as required for adequate due diligence and in support of design services beyond the Initial Due Diligence, such as, topographical, ownership of adjacent properties, etc.
8. Coordinate preparation of all budgets, schedules and contracts, including those with the contractors and other parties working on the Project.
9. Coordinate a bidding package strategy.
10. Applying for and obtaining all permits (including building and construction permits), licenses, easements and approval necessary for the physical improvements contemplated by the Project and maintaining in full force and effect any and all such permits and approvals.
11. Preparing and maintaining development schedules and budget.
12. Monitoring the performance of all persons and entities related to the overall development, including design services to the Project.

**Gorman Fee Schedule****Project: Sugarloaf Key Teacher Housing****DRAFT FOR FEEDBACK****Date: Sept. 11, 2020**

| <b>Item:</b>                                 | <b>Date:</b> | <b>Cost:</b>     | <b>Source</b> |
|--|--------------|------------------|---------------|
| School Board Vote/Preliminary Meeting        | 09/22/2020   | N/A              |               |
| Pre-Application with County                  | 9/28/2020    | \$1,500          | MDA           |
| Conditional use Application                  | 9/28/2020    | \$12,500         | MDA           |
| Market Study                                 | 9/28/2020    | \$8,500          | MDA           |
| Update survey with utilities                 | 09/28/2020   | \$5,000          | MDA           |
| Authorize Geotec Report and percolation Test | 09/28/2020   | \$2,500          | MDA           |
| Authorize Fish and Wildlife Report           | 09/28/2020   | \$2,000          | MDA           |
| Authorize BIO Report Bio Survey              | 09/28/2020   | \$2,500          | MDA           |
| Preliminary Civil Engineering                | 10/5/2020    | \$7,500          | MDA           |
| Schematic Design Concept and Meeting 1       | 10/22/2020   | \$21,666         | AIA           |
| Schematic Design Concept and Meeting 2       | 11/24/2020   | \$21,666         | AIA           |
| Schematic Design Concept and Meeting 3       | 12/10/2020   | <u>\$21,666</u>  | AIA           |
| Total  |              | <b>\$106,998</b> |               |

FINAL BOARD APPROVAL AND NOTICE TO PROCEED

DECEMBER 2020

*Third Party Reports are estimated costs. Actual cost will be direct reimbursements**Application fees are in addition and will be paid directly to the permitting authority*

## EXHIBIT C

### FINANCING SERVICES

The Developer shall be responsible for obtaining all Project financing in conjunction with District, including without limitation, preparing an overall plan for the financing and equity investment necessary for the development of the Project (“**Financing Plan**”). The Financing Plan shall set forth the debt and equity to be raised, the sources for all funds and expected uses. It is expected that such financing may include private equity and conventional financing and such other sources of funds (including local government contributions) as necessary to fund the completion of the Project.

The Financing Plan shall be submitted to District simultaneously with the Project Budget for District’s approval, which shall not be unreasonably withheld, conditioned or delayed. The terms of all Project loans must be approved by District, which approval shall not be unreasonably withheld, conditioned or delayed. All financing shall be secured by the Developer on behalf of the Owner and the Developer shall be responsible for its implementation. Such implementation shall include the following:

1. Selecting an Investor for the Project. The Developer will solicit no fewer than three proposals from reputable investors, including any Investors recommended by District. District shall have the right to review and comment on all solicitation packages, syndication and Investor proposals, and the Developer shall take all such comments into consideration; provided, however, any selection of the Investor shall be at Developer’s sole discretion.
2. Procuring all construction financing for the Project.
3. Procuring all permanent financing of the Project.
4. Maintaining all Project books of account and financial records in accordance with funding requirements.
5. Performing such other Financing Services which are reasonable and necessary for the Project.

**EXHIBIT D**  
**DESIGN/PLANNING SERVICES**

The Developer shall coordinate all services listed in the Design Architect Agreement.



## **EXHIBIT E**

### **SITE PREPARATION SERVICES**

The Developer shall, in its role as general contractor, be responsible for the following in conjunction with District:

1. Preparing complete site preparation analysis, design and technical specifications services through the completion of construction documents and a project manual that includes agreements, general requirements and technical specifications.
2. Undertaking all necessary site preparation, test borings, soil samples, geotechnical analysis and other similar investigations in connection with the Project.
3. Performing the proposed construction scope of work and provide contract administration services for this work in conformance with standards and recommendations described in the civil engineering drawings and other applicable site construction documents.
4. Clearing and otherwise preparing the Project site as necessary to perform its obligations hereunder.
5. Verifying utility locations based on plats and coordinate site preparation requirements with utility systems and providers for water, wastewater, storm water, natural gas, electricity and telecommunications.
6. Obtaining all necessary construction and/or temporary easements, rights of entry and any other approvals required for the Project and infrastructure.
7. Designing and constructing all infrastructure, including roadways, sidewalks, curbs, gutters and, if applicable, underground utilities necessary for the Project.
8. Performing all such other site preparation services which are reasonable and necessary for the Project.

**EXHIBIT F**  
**CONSTRUCTION SERVICES**

The Developer shall, in its role as the general contractor, be responsible for the following in conjunction with District:

1. Preparing all construction budgets, schedules and contracts, including those with subcontractors, and other parties working on the Project.
2. Applying for and obtain all permits (including building and construction permits), licenses, easements and approvals necessary for the physical improvements contemplated by the Project.
3. Submitting suggestions or requests for changes to the construction plans which could in any reasonable manner improve the design, efficiency or cost of the Project.
4. Monitoring the performance of all persons and entities that are to provide materials, equipment or services to the Project and take such actions as are necessary to maintain adherence to quality standards, safety standards, production schedules, shipping dates, and job-site requirements.
5. Preparing construction progress reports.
6. Upon substantial completion of construction and 11 months after substantial completion, inspecting the work to determine and record the condition of the work. The Developer shall notify District of such inspection, and shall allow District representatives to accompany it on any such inspection. The Developer shall assist in the correction or replacement of faulty work.
7. Performing construction work in accordance with all applicable legal requirements and in a good and workmanlike manner, free and clear of all mechanic's, materialman's or similar liens and in accordance with good construction practices.
8. Equipping any dwelling units or causing the same to be equipped with all equipment and articles of personal property set forth in the construction plans.
9. Taking and/or causing others to take reasonable precautions for the safety of, and providing reasonable protection to prevent damage, injury or loss to, employees and other persons on and off-site where construction activities are underway. The Developer shall take reasonable precautions for the safety and protection of the improvements, materials and equipment to be incorporated therein, whether in storage on or off-site, under care, custody or control of the Developer, contractors or any subcontractor. The Developer shall further take precautions to protect the property of District or others, whether or not forming part of the improvements, located at a construction site or adjacent thereto in areas to which the Developer has access.
10. Establishing and implementing appropriate administrative and financial controls for the design and construction of the Project, including, but not limited to:
  - i. participating in conferences and rendering such advice and assistance as will aid in developing economical, efficient and desirable designs and construction procedures in connection with the Project;

ii. reviewing all requests for payment under any architectural agreement, general contractor's agreement or loan agreements with any lending institutions providing funds for the benefit of Developer for the design or construction of the Project;

iii. complying with all terms and conditions applicable to the Project contained in any governmental permit or approval required or obtained for the lawful construction or operation of the Project or in any insurance policy affecting or covering the Project, or in any surety bond obtained in connection with the Project;

iv. furnishing such consultation and advice relating to the Project as may be reasonably requested from time to time by District;

v. giving or making approvals and payments provided for in the agreements with any architect or contractor, professional or consultant retained for the Project;

vi. identifying local providers for development and construction services; and

vii. filling any notices of completion required or permitted to be filed upon the completion of any Project and taking such actions as may be required to obtain any certificates of occupancy or equivalent documents required to permit the occupancy of units.

11. Performing all such other construction services which are reasonable and necessary for the Project.

**EXHIBIT G**  
**DISTRICT RESPONSIBILITY**

District will be responsible for the following in consultation with Developer:

1. Engaging legal counsel to represent District in connection with the Project.
2. Providing access to the Property.
3. Providing any information Developer reasonably requires in connection with the Project.
4. Assist and participate in community meetings associated with approval of the Project.
5. Identifying targeted residential tenants.
6. Assisting Developer with pursuing a real estate tax exemption, if applicable. The terms of any such exemption must be acceptable to Developer.
7. Assisting Developer in obtaining all state and local approvals for the development of the Project.
8. Timely review Project plans and specifications.
9. Timely review construction budgets.
10. Assisting Developer in all other Project matters to the extent requested by Developer.
11. Timely approval of matters contemplated herein, including, without limitation, the form of ground lease, form of Design Architectural Contract, form of Construction Architectural Contract, form of construction contract, form of extended use agreement, and form of Access Easement.