

DEVELOPER AGREEMENT

THIS AGREEMENT made and entered by date last signed, _____, _____ 2021, hereinafter referred to as the "Effective Date", by and between Donato Properties, LLC, a Florida limited liability company, hereinafter referred to as "Developer," and the Village of Wellington, a Municipal Corporation of the State of Florida hereinafter referred to as "Village."

WHEREAS, Developer owns or controls lands located in Palm Beach County, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property," and Developer intends to develop the Property by constructing improvements thereon; and

WHEREAS, Developer desires that the Village provide central water distribution and/or sewage collection service for Developer's Property herein described; and

WHEREAS, the Village is willing to provide, in accordance with the provisions of this Agreement and the Village's prevailing rates, regulations, codes and ordinances, as they may be modified or amended from time to time, central water and/or sewer services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive an adequate water supply and/or sewage collection and disposal service from the Village; and

WHEREAS, this Agreement shall apply to water service, sewer service, or both, as indicated below (by checking a box, this Agreement's terms and conditions shall apply with regard to the rendering of such service, but not other services – either or both boxes may be selected):

{ X } Water Service

{ } Sewer Service

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and the Village hereby covenant and agree as follows:

1. Recitals - The foregoing statements are true and correct.
2. Adherence to utility rules and regulations - Developer agrees to strictly adhere to the Village's prevailing rates, regulations, codes and ordinances, as they may be modified or amended from time to time.
3. Definitions – The following definitions apply to this Agreement:
 - a) Backbone System (BBS) means the combination of any or all of the BWDS and BWCS (as defined below).

- b) Backbone Water Distribution System (BWDS) means off-site water storage, high service pumping, transmission and other utility system assets, which provide service in the Utility (Utility) Service Area.
- c) Backbone Wastewater Collection System (BWCS) means the off-site wastewater transmission, master pumping, and other Utility system assets, which provide service in the Village Utility Service Area.
- d) Consumer Installation means all facilities on the consumer's side of the Point of Service.
- e) Engineer of Record (EOR) means the Developer's Engineer of Record who shall be a Professional Engineer registered with the Department of Business and Professional Regulation of the State of Florida and must have a license issued by the State of Florida in active status and must be in good standing.
- f) Industrial Waste shall include the discharge of any substances, materials, waters or wastes to the Utility sewer collection system in sufficient quantity or concentration to:
 - 1. create a fire or explosion hazard including, but not limited to, gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas.
 - 2. cause obstruction to the flow in sewers, or other interference with the operation of wastewater facilities due to accumulation of solid or viscous materials.
 - 3. cause corrosive damage or hazard to structures, equipment, or personnel of the wastewater facilities.
 - 4. constitutes a rate of discharge or substantial deviation from normal rates of discharge ("slug discharge") sufficient to cause interference in the operation and performance of the wastewater facilities.
 - 5. contains heat in amounts that will accelerate the biodegradation of wastes and cause the formation of excessive amounts of hydrogen sulfide in the wastewater sewer or inhibit biological activity in the wastewater treatment facilities.
 - 6. contains more than 100 milligrams per liter of non-biodegradable oils of mineral or petroleum origin.
 - 7. contains floatable oils, fat, or grease.
 - 8. contains noxious, malodorous gas or substance present in quantities that create a public nuisance or a hazard to life or property.

9. contains radioactive wastes in harmful quantities as defined by applicable State and Federal regulations.
 10. contains any garbage that has not been properly shredded.
 11. contains any substances, which have concentrations of metals or other toxins determined by the Village to have an unacceptable impact on the wastewater treatment facility, including sludge disposal.
 12. has a pH greater than 9 or less than 6 or has a biochemical oxygen demand greater than 400 mg/l or suspended solids greater than 400 mg/l.
- g) Off-Site Facilities include, but are not limited to: (i) raw water transmission and supply facilities; (ii) water production and treatment plants, storage and pumping facilities, and water transmission mains designated by the Village as BWDS facilities; and (iii) wastewater treatment, wastewater force mains, gravity sewers and lift stations designated by the Village as BWCS facilities.
- h) On-Site Facilities mean those facilities not designated as Off-Site Facilities, and which are located within the Property and are for the benefit of the Property. Examples of On-Site Facilities include water transmission main(s), wastewater collection force mains, gravity sewers, manholes, lift stations, hydrants, services, sewer laterals, easements, rights-of-way, parcels upon which the facilities are located, inclusive of all other related appurtenances as required by the Village, located in the easements, street or streets within the boundaries of the Developer's Property. Occasionally, the Village may choose to locate BWDS or BWCS within the Property. If the Village chooses to do so, Developer will be required to provide necessary easements for such facilities, at such locations as the Village and Developer shall reasonably agree, as set forth in paragraph 9 of this Agreement, but such facilities shall not be considered On-Site Facilities for any other purpose.
- i) Point of Service for water distribution systems means the point at which the Developer's pipe connects to the Utility System's pipe immediately on the discharge side of the meter. The Point of Service for wastewater service will be reasonably established by the Village at the time of detailed construction plan approval, but generally is located at the service lateral connects to the wastewater collection system. The Village shall, according to the terms and conditions hereof, own all pipes and appurtenances to the Point of Service. Unless otherwise provided, the pipes and appurtenances on the Developer's side of the Point of Service belong to Developer.
- j) Service means the readiness and ability on the part of the Village to furnish and maintain water and sewer service to the Point of Service.

- k) Village Utility System means the water and wastewater system owned and operated by the Village.
 - l) Utility Director means the Utility Director of the Village of Wellington or her designee.
4. Assurance of Title - At the time of execution of this Agreement, the Developer agrees to deliver to the Village an opinion of title with a good through date not less than 90 days from the date of the opinion from a qualified attorney-at-law addressed to the Village in a form and substance reasonably satisfactory to the Village with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.
5. Fees - To induce the Village to provide water and/or sewer service to the Property, Developer hereby agrees to pay to the Village all fees and charges assessed by the Village, which generally include, but may not necessarily be limited to, the following fees:
- a. Capacity Charges - Payment for the allocable portion of water treatment plant, sewage treatment plant, master water transmission lines and master pumping stations and sewage force mains. Capacity Charges may also be referred to herein as "Connection Charges". The amount of Capacity Charges for Developer's proposed project on the Property is set forth in Exhibit "B". No portion of this administrative fee shall be refundable.
 - b. Administrative Fee - Payment to defray the cost of document preparation, plan review, inspection and engineering coordination. This fee shall be paid to the Village at the time plans are submitted for review. No portion of this fee shall be refundable.
 - c. Meter Fee - The charge imposed by the Village for the water meter, meter box, and appurtenances, together with the installation of these facilities, installed at the request of Developer. Said charge shall be paid in accordance with the Village's Water Service Policy.
 - d. Deposit - This fee shall be paid upon submittal of the water and/or sewer service application form.

Payment of Capacity Charges vests the Property with only the amount of capacity thereby reserved. If the use of the Property as developed is less intense than that for which capacity was reserved, neither Developer, nor any other party, shall be entitled to a refund of Capacity Charges, but the Property shall remain vested for the full amount of capacity reserved. If the use of the Property is more intense than that for which capacity was reserved, Developer, or the then owner of the

Property, must pay additional Capacity Charges for the additional capacity required to serve the increased intensity of use through a larger or additional meter(s).

Payment of the Capacity Charges does not and will not result in the Village waiving any of its rates or rules and regulations, codes or ordinances, and their enforcement shall not be affected in any manner whatsoever by Developer making payment of same. The Village shall not be obligated to refund to Developer any portion of the value of the Capacity Charges for any reason whatsoever, nor shall the Village pay any interest or rate of interest upon the Capacity Charges paid. The Property, however, shall remain vested for the capacity reserved by payment of the Capacity Charge.

Neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise having an interest in the Property, shall have any present or future right, title, claim or interest in and to the Capacity Charges paid to the Village, and all prohibitions applicable to Developer with respect to no refund of Capacity Charges, no interest payment on said Capacity Charges and otherwise, are applicable to all persons or entities.

Any user or consumer of water or sewer Service shall not be entitled to offset any bill or bills presented by the Village for payment for such service or services against the Capacity Charges paid. Developer shall not be entitled to offset the Capacity Charges against any claim or claims against the Village, including claims for breach of contract, damages or charges of any kind.

5. Payment - Developer shall pay Capacity Charges for 100% of all capacity reserved hereunder at the time of execution of this Agreement. This payment may be for the entire project or for specific phases, however plant capacity will only be reserved for that portion for which Capacity Charges have been paid. In the event Developer elects to pay Capacity Charges in phases, it shall pay such Capacity Charges as stated above for each phase prior to the commencement of each such phase.

6. Capacity Reserved - The parties agree that the capacity needed to provide Service to the Property is determined by meter size and classification, as set forth on Exhibit "B". If the meter sizes or classifications are insufficient or change to a more intense use, additional Capacity Charges will be due.

7. On-Site Facilities - To induce the Village to provide the water treatment and sewage collection and disposal facilities, and to continuously provide consumers located on the Property with water and sewer Services, unless otherwise provided for herein, Developer hereby covenants and agrees to construct and to transfer ownership and control to the Village of the on-site water distribution and sewage collection systems represented in Exhibit "C" hereto.

Upon completion of construction, Developer's engineer of record shall submit to the Village all documentation necessary, in the Village's sole but reasonable

discretion, to ensure that the On-Site Facilities have been constructed in accordance with the Village's standards and specifications, and are properly located within the Property. Developer understands and agrees that the Village will withhold service to the Property until all required items are received and found to be acceptable to the Village.

By these presents, Developer hereby covenants to transfer to the Village title to all water distribution and sewage collection systems installed by Developer or Developer's contractor represented in Exhibit "C" of this Agreement dealing with those sanitary collection and potable water supply facilities that will be transferred from Developer to the Village, pursuant to the provisions of this Agreement. The Village, at its sole discretion, may elect to allow the Developer to defer the preparation and submission of Exhibit "C", provided however, that Exhibit "C" must, under any circumstances, be prepared and completed to the Village's sole but reasonable satisfaction prior to providing any Service to the Property. Such conveyance shall take effect at the time the Village issues its final letter of acceptance. Developer agrees to warrant and/or guaranty all utility facilities being transferred or dedicated to the Village against faulty workmanship and defective materials for a period of one (1) year from the date of the Village's final letter of acceptance. Developer covenants and agrees to indemnify and save harmless the Village for any loss, damages, costs, claims, suits, debts or demands ("Claims") by reason of defects in the systems for a period of one year from the date of the final letter of acceptance by the Village; for the avoidance of doubt, the foregoing indemnification shall not apply to any Claims caused by any reason other than faulty workmanship and defective materials, and shall not apply to any Claims resulting from acts of God or from any other form of accidental, negligent, reckless, or intentional act of any party other than Developer.

The Village agrees that the issuance of the final letter of acceptance for the water distribution and sewage collection systems installed by Developer shall constitute the assumption of responsibility by the Village for the continuous operation and maintenance of such systems from that date forward, subject to the terms and conditions contained herein. Developer understands and agrees that the Village shall assume ownership and responsibility for facilities only up to the Point of Service. Developer agrees to pay all costs associated with adjusting or relocating facilities herein transferred or dedicated to the Village during and after the warranty period when such adjustments or relocations are caused by changes initiated by Developer or its successors and assigns.

In the event that the Village, for whatever reason, does not take possession, ownership and control of On-site Facilities constructed by Developer, and provides master metered service to Developer for the use of several customers within the On-site Facilities, Developer shall be required to maintain water quality at each individual outlet that complies with all drinking water standards promulgated by the Florida Department of Environmental Protection and Palm Beach County Health Department. At no time will such water quality standards be

required to be in excess of those attained at the Village's Point of Service to the master meter.

8. Off-Site Facilities - Developer may be required to construct or improve, at its sole expense, certain Off-site water and/or sewer Facilities, if necessary, in order to connect Developer's On-site Facilities to the Village's existing water and/or sewer systems. All provisions in Section 7 above, entitled On-Site Facilities, including but not limited to those pertaining to specifications, plans, permits, approvals, and warranties shall also be applicable to all Off-site water and sewer facilities construction. If applicable, such Off-site Facilities to be transferred or dedicated to the Village shall be shown on Exhibit "C".

9. Easements - Developer hereby grants and gives to the Village, its successors and assigns, but subject to the terms of this Agreement, the exclusive right or privilege to construct, own, maintain or operate the water and sewer facilities to serve the Property; and the exclusive right or privilege to construct, own, maintain, alter, replace and operate said facilities in, under, upon, over and across the present and future streets, roads, alleys, easements, reserved utility strips and utility sites, and any public place as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants that are independent of said record plats. Developer agrees to utilize the Village's standard form of easement deed and to provide title insurance in nominal amount for all on-site and off-site easements. If Village, after consultation with Developer, reasonably determines that any off-site easements are required in order to provide service to the Property in accordance with this Agreement, Village and Developer shall cooperate in order for Developer to obtain any and all such off-site easements that may be required in order to carry out the terms, conditions and intent hereof, at Developer's expense, and shall convey same to the Village in accordance with this paragraph. Mortgagees, if any, holding prior liens on the Property shall be required to release such liens, subordinate their position or join in the grant or dedication of the easements or rights-of-way, or give to the Village assurance by way of a "non-disturbance agreement", that in the event of foreclosure, mortgagee will continue to recognize the easement rights of the Village, and not extinguish the Village's easement rights. All water distribution and sewage collection facilities, save and except consumer installations, shall be covered by easements or rights-of-way if not located within platted or dedicated roads, rights-of-way or easements dedicated for utility purposes.

Developer hereby further agrees that the foregoing grants or promises of grants include the necessary right of ingress and egress to any part of the Property upon which the Village is constructing or operating such facilities; that the foregoing grants shall be for such period of time as the Village or its successors or assigns require such rights, privileges or easements in the construction, ownership, maintenance, operation or expansion of the water and sewer facilities, that in the event Developer and the Village agree that the Village is to install any of its water or sewer facilities in lands within the Property lying outside the streets and easement areas described above, then Developer or owners shall grant to the

Village, without cost or expense to the Village, the necessary easement or easements for such "private property" installations; in connection with the foregoing, the Village and the Developer shall cooperate in order to locate such private property installations in such a manner as to not encroach upon or be unreasonably close to any existing or planned structures or material improvements. The Village covenants that it will use due diligence in ascertaining all easement locations; however, should the Village install any of its facilities outside a dedicated easement area, the Village will not be required to move or relocate any facilities lying outside a dedicated easement area, so long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. Developer shall not grant additional easements or similar interests in, on, over, under, or across easements dedicated to the Village without the Village's prior written consent.

In the event Developer fails to actually deliver such easement, upon the Village's election, this document shall serve as the Village's authorization to substitute this Agreement as a recorded easement sufficient for the Village's needs.

Developer hereby affirms that, to the best of Developer's knowledge and belief, all properties within which water and/or sewer facilities are to be constructed are free of soil and ground water contamination. Developer hereby indemnifies and holds the Village harmless for all claims and damages resulting from such contamination, whether existing before development began or occurring during or after development.

10. Bonds – The Developer shall post a bond or bonds to secure Developer's performance of its obligations under this Agreement, including but not limited to, the construction of On-site or Off-site Facilities, the securing of easements, or any other obligations contained in the Agreement. Such bonds shall be in a form acceptable to the Village in its sole but reasonable discretion.

11. Agreement to Serve - Upon the completion of construction of the On-site and Off-site water and sewer Facilities required hereunder by Developer, their inspection, the issuance of the final letter of acceptance by the Village, and when all appropriate governmental agency approvals have been received, and when utility systems are in compliance with the other terms of this Agreement, the Village covenants and agrees that it will connect or oversee the connection of the water distribution and sewage collection facilities installed by Developer to the central facilities of the Village in accordance with the terms of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. The Village agrees that once it provides water and sewer service to the Property and Developer or others have connected consumer installations to its system, that thereafter the Village will continuously provide, at its cost and expense, but in accordance with other provisions of this Agreement, including rules, regulations, ordinances, and rate schedules, water and sewer service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of utilities within the Village.

12. The Village shall connect customer installations to the meter and/or lines of the Village at the Point of Service. With reference to such connections, the parties agree as follows:

- (a) Application for the installation of water meters shall be made no later than three (3) business days in advance, not including Saturdays, Sundays, and holidays.
- (b) If the Developer or the intended customer does not comply with the foregoing inspection provision described in Section 11, the Village may refuse service until compliance with these provisions is met.
- (c) The cost of constructing, operating, repairing or maintaining Developer installations up to the Point of Service shall be borne by the Developer, or its successors and assigns.
- (d) Developer agrees that wastewater to be treated by the Village from the Property will consist of wastewater typically associated with residential land uses. Developer further agrees that it will not allow any Industrial Waste to flow from the Property to the Village's wastewater treatment facility. No occupant or user of the system located on the Property shall discharge Industrial Waste unless the Developer provides suitable pretreatment, subject to Village approval, which consistently yields a product that is not defined as Industrial Waste. The Village shall have the right to require Developer to pretreat Industrial Waste prior to the discharge of such wastewater to the Village Utility System. All costs associated with the industrial pretreatment program required for occupants located within the Property will be the responsibility of Developer. In no case shall the Village Utility System be responsible for ownership or operation of a wastewater pretreatment system, including grease traps. Developer grants to the Village a right of access together with the right to sample Developer's wastewater to verify Developer's compliance with this paragraph. Should any damaging concentration of Industrial Waste be delivered to the wastewater system, Developer will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage.

13. Exclusive Right to Provide Service - Developer, as a further and essential consideration of this Agreement, agrees that Developer, or any successors and assigns of Developer, shall not (the words "shall not" being used in a mandatory definition) engage in the business or businesses of providing potable water and sewer services to the Property during the period of time the Village, its successors and assigns, provide water and sewer services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, that the Village shall have the sole and exclusive

right and privilege to provide water and sewer services to the Property and to the occupants of such residences, buildings or units constructed thereon, except for the providing by Developer, from its own sources and lines, of water solely for irrigation uses. For the avoidance of doubt, the foregoing shall not require that any occupant of the Property (whether as an owner of any interest in the Property or as a tenant of any owner of any interest in the Property) shall have a direct relationship with the village, and the foregoing shall not prohibit Developer from maintaining the service and payment relationship with the Village and including water and sewer services at no charge under a lease or other use arrangement with respect to all or any portion of the Property, or from charging a fixed monthly or other periodic fee to a tenant or user of the Property for its use of the water and sewer services, or from collecting from any tenant or user thereof an allocated share of the costs of water and sewer (whether determined based upon square footage, estimated usage, or otherwise), all as reasonably determined by the Developer in accordance with prevailing practices in the real estate development and management industry.

14. Rates – The Village agrees that the rates to be charged to Developer and individual consumers of water and sewer Services shall be those set forth in the Village's rate resolution, as may be amended from time to time. Notwithstanding any provision of this Agreement, the Village, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules so established and enforced. The Village's rate resolution currently in effect provides for a surcharge of 25% to customers located outside of the municipal boundaries of the Village.

Notwithstanding any provision in this Agreement, the Village may establish, amend or revise, from time to time in the future, and enforce policies, rules and regulations covering water and sewer services to the Property.

Any such initial or future increased rates, rate schedules, rate ordinances, and rules and regulations established, amended or revised and enforced by the Village from time to time in the future, as provided by law, shall be binding upon Developer; upon any person or other entity holding by, through or under Developer; and upon any user or consumer of the water and sewer services provided to the Property by the Village.

15. Binding Effect of Agreement - This Agreement shall be binding upon and shall inure to the benefit of Developer, the Village and their respective assigns and successors by merger, consolidation, conveyance or otherwise, subject to the terms and conditions of this Agreement as contained herein. Developer understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Developer to Third Parties, except in the case of a bona fide sale of all or any portion of Developer's Property, or other valid transfer or assignment of Property, including, without limitation, the transfer or assignment of the Property as a result of a judicial proceeding such as mortgage foreclosure or sale, and assignment for the purposes of obtaining financing. In any such case, the Developer shall provide a Notice or evidence of such assignment, or partial

assignment as the case may be, to the Village. Nothing herein shall preclude sales of individual units and assignment of rights of water and sewer service pertaining thereto.

16. Notice - Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail, facsimile, or by telegram, and if to Developer, shall be mailed or delivered to Developer at:

Donato Properties LLC

ATTN: Jeffery Friedrick

12775 50th Street S

Wellington, FL 33414

and to the Village, at:

Village of Wellington

1100 Wellington Trace

Wellington, FL 33414

Attention: Utility Director

17. Laws of Florida - Regardless of where executed, this Agreement shall be governed by the laws of the State of Florida. Notwithstanding contrary principles of conflicts of law, if any, this Agreement shall be and become effective immediately upon execution by both parties hereto, subject to any approvals that must be obtained from governmental authorities, if applicable.

18. Force Majeure - In the event that the performance of this Agreement by the Village is prevented or interrupted in consequence of any cause beyond the control of the Village, including, but not limited to, Acts of God or of the public enemy, war, national, state, or local emergency, including epidemics and pandemics, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, any and all governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation by governmental entities having jurisdiction over the operation of the Village or otherwise having valid legal jurisdiction, excluding any acts or rules or regulations adopted by the Village, or rule or ruling or order,

order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance.

19. Indemnification - Developer agrees to indemnify and hold the Village harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees at all trial and appellate levels) to which the Village may become subject by reason of or arising out of Developer's breach or non-performance of this Agreement. This indemnification provision shall survive the actual connection to the Village's water and sewer systems.

MISCELLANEOUS PROVISIONS

20. The parties incorporate herein the Village's water and wastewater systems construction specifications and standard details manual, its standard bills of sale, its standard no lien affidavit, its standard grant of easement, its standard consents and joinder, its standard engineering certification, its standard final cost estimate, its standard warranty, its standard cash bond, its standard maintenance surety bond, its standard hold harmless agreement, and its standard utility construction permits, all as amended from time to time (the "Village Utility Demands"). Developer shall comply with all requirements contained in the Village Utility Documents and in the event of a conflict between the terms of this Agreement and the terms of the Village Utility Documents, the Village Utility Documents shall control.

21. Recordation of Agreement - Upon completion of execution of this Agreement by Developer and the Village, the Developer shall cause to be recorded a Memorandum of Agreement in the form attached hereto as Exhibit "D" with the Clerk of the Circuit Court of Palm Beach County.

22. The rights, privileges, obligations and covenants of Developer and the Village shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.

23. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and the Village, made with respect to the matters herein contained, and when duly executed, fully constitutes the agreement between Developer and the Village. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by all signatories herein.

24. In the event that Developer does not move forward with development of the Property, or development on any parcel of the Property if the Property consists of multiple parcels, within twenty-four (24) months from the date of this Agreement, this Agreement shall become null and void. The Village shall not be required to

return any fees or charges previously paid to the Village, but the Property shall remain vested for the capacity reserved by this Agreement.

25. Whenever the singular is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

26. Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

27. The submission of this Developer Agreement for examination by Developer does not constitute an offer, but becomes effective only upon execution by the Village.

28. It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

29. The parties hereto recognize that prior to the time the Village may actually commence upon a program to carry out the terms and conditions of this Agreement, the Village may be required to obtain approval from various state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance and operation of the Village's utility system. The Village agrees that it will diligently and earnestly, at Village's sole cost and expense, make the necessary and proper applications to all governmental authorities and will pursue the same to the end and that it will use its best efforts to obtain such approval. Developer, at his own cost and expense, agrees to provide necessary assistance to the Village in obtaining the approvals provided for herein. Upon execution of this Agreement, the Village may require the payment of a reasonable fee to defray the Village's legal, engineering, accounting, administrative and contingent expenses.

30. In the event that the Village reasonably determines that relocation or improvement of existing water and sewer utilities are necessary for the Developer's Property, Developer will bear the cost in full for such improvements or relocations.

31. Failure to insist upon strict compliance of any of the terms, covenants or conditions herein shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

32. The Village shall, at all reasonable times and hours, have the right of inspection of the On-Site Facilities. This provision shall be binding on the successors and assigns of the Developer.

33. This Agreement is binding on the successors and assigns of the parties hereto.

34. There shall be no liability whatsoever on the Village for failure to deliver water and/or sewer service to Developer according to Developer's needs or schedules. This Agreement constitutes a promise of good faith and not a timetable for delivery of utility services.

35. Each party hereby agrees to grant such further assurances and provide such additional documents as may be reasonably required, each by the other, in order to carry out the terms, conditions and comply with the express intention of this Agreement.

IN WITNESS WHEREOF, Developer and the Village have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

THE VILLAGE OF WELLINGTON

Village Clerk

By:_____
Its:_____

Approved as to form and legal sufficiency:

By:_____
Village Attorney

Signed, sealed and delivered
in the presence of:

DEVELOPER

Donato Properties, LLC, a Florida limited
liability company

Witness Signature
Print Name _____

By:_____
JEFFERY G. FRIEDRICH, Manager

Witness Signature
Print Name _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization this _____ day of _____, 20____, by
_____ of _____, who is personally known to me
or who has produced _____ as identification.

Notary Signature

Print Name
Notary Public - State of Florida
Commission No:
My Commission Expires:

JOINDER AND CONSENT OF PROPERTY OWNER

(If other than the Developer)

WITNESSES:

PROPERTY OWNER:

Signed, sealed and delivered

In the presence of:

_____ By: _____

Witness Signature

Print Name

Print Name

Witness Signature

Title:

Print Name

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ of who is personally known to me or who has produced _____ as identification.

Notary Signature

Print Name
Notary Public - State of Florida
Commission No: _____
My Commission Expires: _____

MORTGAGEE JOINDER AND CONSENT

The undersigned Mortgagee does hereby join in and consent to this Developer Agreement for the purpose of acknowledging and agreeing that its mortgage, which is recorded in Official Record Book _____, Page _____, of the Public Records of Palm Beach County, Florida shall be subordinated to the obligations, covenants and conditions contained in the Developer Agreement and that the obligations, covenants and conditions contained in the Developer Agreement shall not be subject to extinguishment by foreclosure.

IN WITNESS WHEREOF, _____

has caused these presents to be executed in its name this _____ day of _____, 20__.

WITNESSES:

Signed, sealed and delivered

In the presence of:

_____ By: _____

Witness Signature

Print Name

Print Name

Witness Signature

Title:

Print Name

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ of who is personally known to me or who has produced _____ as identification.

Notary Signature

Print Name

Notary Public - State of Florida

Commission No: _____

My Commission Expires: _____

EXHIBIT A

PROPERTY DESCRIPTION

PCN: 73-41-44-27-00-000-7060

Tract of land located in Section 27, Township 44 south, Range 41 East, Palm Beach County, Florida, more particularly described as follows: commencing at the northwest corner of said Section 27; thence south 01d10'11" West, along the west line of said Section 27, a distance of 4715.27 feet; thence south 89d24'19" East, a distance of 1168.98 feet to the point of beginning. From the point of beginning; thence continue south 89d24'19" East, a distance of 365.0 feet; thence south 01d10'11" west, a distance of 622.0 feet, thence north 89d24'19" west, a distance of 365 feet; thence north 89d24'19" west, a distance of 365.0 feet; thence north 01d10'11" east, a distance of 622 feet to the point of beginning. Containing 5.21 acres more or less.

EXHIBIT "B"

WATER UTILITY METER AND FIRE LINE SIZE FORM
AND
ASSOCIATED CAPACITY CHARGES



Council

Anne Gerwig, Mayor
Tanya Siskind, Vice Mayor
John T. McGovern, Councilman
Michael Drahos, Councilman
Michael J. Napoleone, Councilman

Manager

Paul Schofield

WATER UTILITY METER AND FIRELINE SIZE FORM

TO: Village of Wellington Water Utility Customer Service
12300 Forest Hill Blvd
Wellington, FL 33414
Utilities_Engineering@WellingtonFL.gov

Permit Number: **UTL20-0014**

Subject: **Donato Properties LLC**
Customer Name
73-41-44-27-00-000-7060 12775 50th St S
Parcel ID & Address
Tract 55, The Meadows
Historical Plat/Official Record – Book & Page

Inside or Outside	Meter Type	Water Meter Size
Inside	Commercial	1.5

Sanitary Sewer

No

Backflow Preventer

Yes

Fees

Water: \$7,400.00
Sewer: \$0.00
Fire line: \$74,000.00
Misc:

Reviewed By:

Richard Gallant

Grease Trap

No

Total: \$81,400.00

Review Date:

Tuesday, December 1, 2020

Fire Line Tap Size

6

Notes: Meter and fire line size obtained from Water and Sewer Plan dated 10/22/2020

APPROVED (AS NOTED BELOW):

AS TO DESIGN CONCEPT ONLY INDICATED APPROVAL SHALL
NOT RELIEVE THE ENGINEER AND/OR ARCHITECT OF THE RESPONSIBILITY
OF DESIGN DETAILS.



Approved



Not Approved – Resubmit



Approved as noted

By Richard Gallant EI December 1, 2020



UTILITIES DEPARTMENT

VILLAGE OF WELLINGTON/ACME IMPROVEMENT DISTRICT

Approved by: AKP

EXHIBIT "C"

WATER AND SEWER SYSTEM CONTRIBUTIONS

The Developer shall provide, install and dedicate to the Village all pipe, services, mains and appurtenances thereto in accordance with the Village's standards and specifications as indicated on the plans drawn by Sexton Engineering Associates, Inc, Water and Sewer Plans as approved under the Village of Wellington Utility Permit UTL20-0014..

Actual materials shall be as described on the final Bill of Sale as prepared by the Developer and transmitted to the Village for approval and acceptance.

Water:

The point of delivery for this Project's water distribution system is the water meter.

Wastewater:

Not Applicable

Fire line:

The point of connection for this Project is the connection to the existing watermain.

Exhibit "D"

MEMORANDUM OF DEVELOPER AGREEMENT

BY DEVELOPER AGREEMENT dated the _____ day of _____, 20__, by and between MSH Property Holdings, LLC. , hereinafter referred to as "Developer" and the Village of Wellington, hereinafter referred to as "Village", the parties have entered into an agreement for the provision of water and/or sewer utility service(s) to the property(ies) owned and/or controlled by Developer in Palm Beach County, Florida and described in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the "Property".

In consideration of the Village executing the Developer Agreement, the terms and conditions of which are incorporated herein by reference as though fully set forth herein, Developer has agreed to certain matters, including but not limited to the following:

1. Developer has agreed to construct certain on-site and off-site water treatment and sewage collection and disposal facilities and make payment of certain rates, fees and charges to the Authority in accordance with the Village's rate resolutions as they may be amended from time to time.
2. Developer has granted the Village exclusive right to provide water and sewer service to the Property and will grant to or procure for the Village all necessary on-site and off-site easements, rights-of-way, rights of ingress and egress to any part of the property for the operation of the Village's utility facilities. In the event Developer fails to deliver any easements required by the Village's, upon the Authority's election, this Developer Agreement shall serve as the Village's authorization to substitute the Developer Agreement as a recorded easement sufficient for the Village's needs.

The Developer Agreement and this Memorandum of Developer Agreement are binding upon Developer and its respective assigns and successors by merger, consolidation, conveyance or otherwise which shall be subject to the terms and conditions of the Developer Agreement and this Memorandum of Developer Agreement, including but not limited to any allocation of hydraulic share and escalation of rates, fees and charges. In the event of a conflict between the terms of this Memorandum of Developer Agreement and the terms of the Developer Agreement, the terms of the Developer Agreement shall control. The rights and obligations of any assigns and successors of Developer can be determined by a review of the complete Developer Agreement and a copy of which can be obtained at the address of the Village as listed below.

IN WITNESS WHEREOF, this Memorandum of Developer Agreement was executed this _____ day of _____, 20__.

VILLAGE OF WELLINGTON
12300 Forest Hill Blvd.
Wellington, FL 33414

By: _____
_____, Chair

Approved as to form and legal sufficiency: Its: _____

By: _____ Attest: _____
_____, Village Attorney _____,
Village Clerk

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ and _____, Village Clerk, respectively of the Village of Wellington, who are both personally known to me.

Notary Signature

Print Name
Notary Public - State of Florida
Commission No.
My Commission Expires:

WITNESSES:

DEVELOPER:

Signed, sealed and delivered

In the presence of:

_____ By: _____

Witness Signature

Print Name

Print Name

Witness Signature

Title:

Print Name

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ of who is personally known to me or who has produced _____ as identification.

Notary Signature

Print Name

Notary Public - State of Florida

Commission No.

My Commission Expires:

JOINDER AND CONSENT OF PROPERTY OWNER
(If other than Developer)

WITNESSES:

PROPERTY OWNER:

Signed, sealed and delivered

In the presence of:

_____ By: _____

Witness Signature

Print Name

Print Name

Witness Signature

Title:

Print Name

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 20____, by _____ of who is personally known to me or who has produced _____ as identification.

Notary Signature

Print Name

Notary Public - State of Florida

Commission No. _____

My Commission Expires: _____

11-03-20 Last Revision