

MILL POND PROFESSIONAL CENTER

**LOT PURCHASE
AND
DEVELOPMENT AGREEMENT**

THIS AGREEMENT made and entered into this ____ day of _____, 2006, by and between **MILL POND PROFESIONAL CENTER LLC**, hereafter referred to as “Developer”, _____ and _____ whose address is _____

_____ (telephone home: _____; business: _____: cell: _____, and, fax: _____), hereinafter referred to as “Owner”, provides as follows:

1. **CONSTRUCTION:** The Developer agrees, for the consideration hereinafter mentioned, to deliver to the Owner a building lot (described in Exhibit “A”) together with a 2,500 square foot office building, said Lot being situated in Wesley Hills **Professional Center**, Building # _____ (identified on attached Exhibit A) in Pasco County, State of Florida.

2. **CLOSING:** It is contemplated by this Agreement that a lot closing shall occur on or before the date that is fifteen (15) days after issuance of a site clearing or development permit, but in no event later than _____. Thereafter, construction shall commence in accordance with the terms and provisions of this Agreement. If the Owner fails to close on the lot within the aforementioned time frame and Developer does not extend the time for closing in writing prior to the above date, the building will be repriced to the current list price. At the option of the Developer, the contract may be terminated and the contract deposit(s) shall be forfeited.

3. **PURCHASE PRICE:** In consideration thereof, the Owner shall pay or cause to be paid to the Developer the sum of **\$437,500** being allocated in the following manner:*

Price of Land and improvements	\$287,500
Price of Building	\$150,000
Total Purchase Price	\$437,500

The Purchase Price shall include the lot acquisition by the Owner, together with the cost of construction for the building as further set forth herein.

* Estimate only using \$175 per square foot, please note prices will range between \$175 to \$195 depending on use and options package)

4. **PRICE GUARANTEE:** The above price is guaranteed to Owner through the time for closing set forth in Article 2. Should the date of closing be delayed beyond this time by reason of any ruling or regulation of any governmental authority, including delays in issuance of site development permits, or by reason of any other cause not the fault of the Developer, then the above price will be adjusted to include all price changes occurring after the date of this development agreement. Owner will be notified of such change and if such change is more than a 5% increase, Owner shall have the option of voiding the contract or accepting the price change as proposed by the Developer. If the contract is voided, then the deposit will be returned to the Owner less reasonable expenses of the Developer, including by way of illustration costs associated with plans, permits, application fees, administrative costs, etc.

5. **SELECTION OF MATERIALS:** Owner agrees to complete all selections including, by way of illustration, flooring material, cabinetry, security prewire, telephone and computer prewire, colors and paints prior to the start of construction of the building, time being of the essence. All selections must be in conformity with the contract, plans, specifications and any change orders executed by the parties. In the event the Owner fails to make appropriate selections within thirty (30) days after lot acquisition, the Developer, at its option, may make appropriate selections on behalf of the Owner in order to avoid any delays in construction and any additional costs associated therewith.

The Owner may use their choice of subcontractors / vendors in Owner's building, but only after it has been turned over to the Owner, the contract price has been paid in full, and the Developer is released from further work. No subcontractor or vendor of any kind that is employed by the Owner may enter and do work in any building until it has been finalized out with the Owner and the Developer has been paid in full for the building. There will be absolutely no exceptions to this policy.

6. **PAYMENT AND FINANCING:** Owner shall make an initial deposit with Developer in the amount of \$10,000.00 upon the full execution of this contract by both parties. The deposit(s) shall apply against the purchase price and may be used by Developer to pay for reasonable expenses incurred by Developer including plans, permits, etc. In the event a written loan commitment or other evidence of ability to pay for the purchase is not obtained by Owner, or Owner otherwise wishes to cancel this agreement for any reason, by _____, the Owner's deposit shall be refunded in full. In the event that Owner does not cancel by the date shown above and fails to close the purchase for any reason, the Owner's deposit will be forfeited and will not be refunded.

The payment schedule necessary for the construction of the building shall be in accordance with the draw schedule established by the Owner's Lender and shall be subject to the reasonable requirements of Owner's Lender. Developer shall submit monthly draw requests to Owner and / or Owner's Lender which shall be promptly processed by the Owner and Lender. In the event that a draw request remains outstanding

past the date for submission of the next monthly draw for any reason whatsoever, all construction activity will cease and will not be restarted again until both the delinquent draw and the current draw have been paid. The Developer shall have the right but will not be obligated to stop work in the event that any draw request is outstanding for more than 15 calendar days, and any stoppage pursuant to this section shall automatically extend Developer's time for completion set forth in paragraph 8 below. If Developer stops work pursuant to this section more than once, the second and any subsequent restart will be subject to a remobilization fee of 5% of the outstanding draw request and will be required to be paid prior to restart.

7. **CLOSING COSTS:** All closing costs of any kind, including but not limited to costs associated with the Owner's financing, Owner and mortgagee title insurance, intangible taxes, documentary stamps, recordings, construction interest, etc. shall be paid by Owner. Real estate taxes and assessments, including CDD fees where the development is part of a master planned community, shall be prorated as of the date of closing.

8. **COMPLETION:** Subject to the provisions of this Agreement, the Developer agrees to use its reasonable effort to deliver the completed office building and site work specified herein within 180 days from start of construction. Start of construction is defined as the date on which footings are poured. The Developer shall not be responsible for any damages, delays or inconvenience caused by the Owner for failure to complete the office building and site work within the above number of days regardless of the reason for such delay. In the event of delay in the completion of the building by the 180th day not caused by delay on the part of the Owner and not due to "Force Majeure" (as defined herein), the parties agree that as liquidated damages and not as a penalty, the Developer shall pay to owner the sum of \$25 per day for each day beyond the 180th day after the start of construction that developer fails to achieve completion of the building. The term "Force Majeure" shall mean an Act of God (such as an earthquake or a hurricane, flood, extraordinary adverse inclement weather, etc.), strike, labor disputes, unavailability of products or services, governmental restrictions, riot, insurrection, war, catastrophe or terrorist act. If owner directly contacts any governmental agency concerning permitting, inspections or occupancy without first obtaining written approval from the developer, the developer is released from all time limits set forth in the contract for completion and delivery of the building.

9. **POSSESSION:** Possession of the premises shall not be delivered to the Owner nor shall the Owner take possession of the premises until the office building and site have been fully constructed and the full contract price and any change orders or addenda to this Agreement have been paid to the Developer. In no event shall the Owner occupy the premises before a Certificate of Occupancy has been issued by the appropriate governmental authority. In the event that Owner does occupy the premises prior to issuance of a Certificate of Occupancy, Owner shall be fully liable for any and all costs, fines, fees or other charges incurred by the Contractor, Developer or Owner as a result thereof. Time is of the essence in this Agreement. At the time of such final settlement an

Affidavit of "No Liens" covering all materials and labor will be presented to the Owner by the Developer.

10. **ASSIGNMENTS:** Owner may not assign this agreement to any party without the prior consent of the Developer, which must be in writing and is subject to the complete discretion of the Developer. Approval may be withheld for any reason in the sole discretion of the Developer.

11. **PLANS AND SPECIFICATIONS:** The Owner acknowledges that all plans and specifications, whether generated by the Owner or made at the request and direction of the Owner, are the sole and exclusive property of the Developer and shall not be appropriated by the Owner for any use other than for the construction of a commercial building by the Developer. In the event the Owner requests the Developer to prepare custom made plans, the Owner warrants and represents that the proposed plans were not generated or obtained from any other builder nor were they derived from any copyrighted plans owned by a third party. The Owner further warrants and represents that any custom made drawings and plans were generated by the Owner and prepared at the Owner's request and direction. The Owner hereby agrees to indemnify and hold the Developer harmless from any claim, demand, action or proceeding that may be asserted against the Developer relative to the unauthorized use of any plans or specifications that may be the property of any third party.

12. **BROKERAGE:** The Owner warrants and represents that Owner has not consulted, dealt or negotiated in any manner concerning the purchase of the building with any real estate broker, salesperson, or agent other than _____, and agrees to indemnify and hold harmless the Developer and any affiliates of Developer from and against any and all loss and liability, including attorney's fees, resulting from or arising out of any claim against Developer and any affiliates of Developer by any real estate broker, salesperson, or agent in connection with the transaction which is the subject of this Agreement. The Developer shall be responsible for payment of commission to _____ in the amount of \$ _____. In no event is commission applicable to any extras or additional charges over and above the base contract amount.

13. **PRE-CLOSING PROCEDURES:** Following execution of the contract, Owner shall meet as soon as practical with the Developer's architectural staff to develop a satisfactory floor plan and building design. Owner shall also be furnished with information for selections of interior finishes, including electrical, plumbing, telephone and computer and all other interior finish issues, and Developer's interior finish staff shall develop a satisfactory interior finish plan. These plans will be signed off by both Developer and Owner and any changes or additions to base pricing as a result of upgrades or selections will be agreed to at that time. Following this and prior to start of construction of the Owner's building, should the Owner desire any alterations, deviations or additions to the plans or specifications, which are acceptable to the Developer in the Developer's sole discretion, Owner shall have the right and power to request such change

or changes when practicable, and the same shall in no way injuriously affect or make void this Agreement, but the difference shall be added to, or deducted from the amount of the Agreement as the case may be, by a fair and reasonable valuation, including, by way of illustration, any architectural and engineering fees or other expenses incurred by the Developer in effecting such changes, all of which shall be set forth in a signed addendum to this Agreement.

14. **CHANGE ORDERS AFTER START OF CONSTRUCTION:** Each change requested by the Owner, subsequent to the start of construction, shall be subject to a surcharge of \$250.00 per change. All materials, labor and other costs, including supervision of Developer, for any change requested by the Owner will be charged to the Owner at Developer's cost plus 25%. All requests for change orders or changes of any kind must be submitted to the office of the Developer in writing by the Owner. No verbal requests will be honored. All requests for change will be priced by the Developer and the appropriate extension of time will be calculated and Owner will be advised of the same for acceptance or rejection before any changes are made. Changes requested and accepted by the Owner must be paid for in full before the change is made. Any change request that requires architectural time will have an architectural billing even if the change is not accepted by the Owner. The Developer can deny any change for any reason.

15. **INSURANCE AND UTILITIES:** The Developer will furnish Builder's Risk Insurance in the full amount of this contract during the construction period. The payment of any deductible shall be the responsibility of the Developer. Developer shall furnish Workers Compensation and Public Liability Insurance. Owner shall be responsible for the expense of all required surveys. It is hereby agreed that the Developer will pay utility company bills for electricity and water used during the construction.

16. **CONTINGENCIES:** This agreement is contingent upon:

- (a) Approval of both construction and interior finish plans by both the Owner and Developer;
- (b) land acquisition and site development approval by appropriate governing authorities;
- (c) zoning and site plan approval by appropriate governmental authorities, including approval of specific building size, layout and location, and
- (d) completion of all site condition preconstruction testing and approvals for the site to the satisfaction of the Developer.

In the event these contingencies are not met, the Developer may terminate this Agreement, in which event the Owner's deposit shall be refunded.

17. **LIMITED WARRANTY:** Developer hereby warrants construction of the premises against any structural, mechanical or functional defect, if any, for a period of one (1) year from the date of issuance of the Certificate of Occupancy.

The Limited Warranty, as herein provided, shall be contingent upon complete payment of all funds due Developer under this Agreement, any Addendum to this Agreement and any change orders executed by the parties. In the event the Owner fails to make payment of all sums due hereunder within the time frame provided, the warranty shall be of no force or effect. The Limited Warranty hereby provided by the Developer specifically excludes any items for which there is a manufacturer's warranty, including, by way of illustration, any appliances, air conditioning and heating systems, etc.

18. **SPECIFICATIONS:** This Agreement shall include the following materials and specifications, all of which shall be subject to the minimum requirements of the Hillsborough County Building Code:

- (a) Steel reinforced poured concrete foundation.
- (b) Finished floor to elevation shown on site plan.
- (c) Fill foundation with clean, compacted fill in accordance with the requirements of Pasco County, Florida.
- (d) Soil poisoning treatment under slab for termite protection.
- (e) Visqueen vapor barrier under slab.
- (f) Continuous poured reinforced concrete floor.
- (g) Block construction on the first floor to 9'4" height.
- (h) Precast concrete door thresholds, window sills and lintels over openings.
- (i) Continuous poured concrete lintel block and poured corners to connect the lintel with the concrete footer for maximum strength.
- (j) Pressure treated bottom plates and starter plates at masonry walls, unless metal studs are used.
- (k) 1" x 2" pressure treated strips 24" or less on center on block walls.
- (l) 1" x 4" pressure treated lumber extending one (1) foot on either side of all windows and exterior doors.
- (m) All interior framing construction on 24" or less centers. Materials used will be either wood or metal studs.
- (n) Professionally engineered roof trusses for precise roof load bearing with hurricane straps.
- (o) R 4.2 aluminum batt insulation on exterior block walls, R-11 batt insulation on exterior frame walls, and R-19 blown insulation in trussed areas.
- (p) Aluminum or vinyl fascia and soffits.
- (q) Architectural shingle roofing over 30 pound felt for roof finish.
- (r) Plumbing to be done as per plans (app).
- (s) Standard color and models Mansfield brand are used for plumbing fixtures with Delta levers, or equivalent.
- (t) Electrical will be done app. All ceiling lighting will be surface mounted fluorescent lighting, unless otherwise specified.
- (u) Air conditioning and heating will be a high efficiency, Carrier or equal central system engineered for proper unit size.

- (v) All interior walls will be constructed using ½” drywall unless otherwise specified by code. Standard orange peel finish is applied to the walls and a knockdown textured finish is applied to the ceiling.
- (w) Exterior doors are 1-3/4” metal French or other doors with passage knob and double cylinder deadbolt.
- (x) Interior doors are hollow core Masonite 6-Panel doors.
- (y) All doors are cased in 2-1/2” colonial finger joint wood material.
- (z) All baseboards are 3-1/4” colonial finger joint wood material.
- (aa) Door hardware is Kwikset brand, or equivalent. Deadbolts will be double cylinder.
- (bb) Windows are single hung aluminum wit clear glass and factory painted frames.
- (cc) Marble window sills.
- (dd) Decorator sink wrap around with choice of mica colors in all bathrooms.
- (ee) Decorator mirrors in all bathrooms.
- (ff) Cabinetry allowance is \$ 1,500.00 for all cabinetry.
- (gg) Two coats of flat latex paint on all interior walls with a semi-gloss on all base, doors, and trim.
- (hh) Floor covering allowance of **\$1.33 per square foot** including installation, sales tax and floor prep.
- (ii) Exterior elevation and architectural design elements per approved plan.
- (jj) Final clean to complete job and make ready for move-in.
- (kk) Total area around the building is to be sodded, the front of the building will be landscaped and the site will be irrigated with a central irrigation system.
- (ll) Parking and sidewalk, as per approved plans.
- (mm) Impact fee allowance for transportation, fire, radon gas, water and sewer impact fees in the amount of \$2.00 psf.
- (nn) Permits.
- (oo) Construction plans.

Any extras or credits to these allowances not incorporated into the initial pricing will be paid by or credited to the Owner prior to final closing or occupancy. All details of materials and construction will be as per plans and specifications except as agreed to by both the Owner and the Developer in writing. These agreements are subject to any change necessitated by government regulations. All payments due the Developer under this agreement whether for damages or otherwise, shall be payable at the office of said Developer, when due. Any inconsistencies between the Contract and the approved plans shall be controlled by this Contract.

19. **IMPACT FEES:** In the event the impact fees and/or water and sewer fees must be paid in advance, the Developer will advance these fees to the appropriate governmental agencies.

20. **RESTRICTIVE COVENANTS:** The Owner acknowledges that the property is subject to a declaration of restrictive covenants, receipt of which is hereby acknowledged by the Owner. Owner hereby agrees to execute documentation reasonably required by the Developer as a joinder or other attachment to the restrictive covenants.

21. **SOIL CONDITION:** The Developer has no knowledge of the soil or subsurface condition of the property nor has the Developer conducted any tests to determine any soil or subsurface condition which would affect the suitability of the property for construction. If the soil is determined to be unsuitable for construction of the building contemplated by this agreement, the Developer will either remedy the condition or the contract will be voided, at the option of the Developer. The Owner shall have the right to conduct any tests necessary to discover any soil or subsurface conditions that may adversely affect the property. All tests shall be conducted within twenty days from the effective date of this contract. All test reports shall be delivered to Developer within two (2) days thereafter.

22. **RADON DISCLOSURE:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit pursuant to 404.056(8), Florida Statutes.

23. **SITE PLANS:** The owner may have been shown preliminary representations of the site plan and/or building design. Notwithstanding the foregoing, the Owner hereby acknowledges that the final site plan and/or building design may vary from the preliminary representations made to the owner. Accordingly, the Owner may not rely upon any representations made by the Builder relative to the site plan or building designed unless otherwise set forth herein.

24. **WAIVER OF JURY TRIAL AND VENUE:** To the extent such waiver is permitted by law, the parties waive trial by jury in any action or proceeding brought in connection with this Agreement. The parties agree that venue for any proceeding brought to enforce this Agreement shall be maintained in Hillsborough County, Florida.

25. **DISPUTE RESOLUTION:** This Contract will be construed under Florida law. All controversies, claims and other matters in question arising out of or relating to this transaction or this Contract or its breach will be settled as follows:

(a) All other disputes: Owner and Developer will have thirty (30) days from date a dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding arbitration to be conducted in Hillsborough County, Florida. The arbitrator may not alter the Contract terms or award any remedy not provided for in this Contract. The award will be based on the greater weight of the evidence and will state findings of fact and the

contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. This clause will survive closing.

(b) Mediation and Arbitration: Expenses: “Mediation” is a process in which parties attempt to resolve a dispute by submitting it to an impartial mediator who facilitates the resolution of the dispute but who is not empowered to impose a settlement on the parties. Mediation will be in accordance with the rules of the American Mediation Association or other mediator agreed on by the parties. The parties will equally divide the mediation fee, if any. “Arbitration” is a process in which the parties resolve a dispute by a hearing before a neutral person who decides the matter and whose decision is binding on the parties. Arbitration will be in accordance with the rules of the American Arbitration Association or other arbitrator agreed on by the parties. Each party to any arbitration will pay its own fees, costs and expenses, including attorneys’ fees, and will equally split the arbitrator fees and administrative fees of arbitration.

26. OTHER AGREEMENTS: OWNER ACKNOWLEDGES THAT THIS AGREEMENT AND THE BUILDING PLANS INCORPORATED BY REFERENCE HEREIN CONSTITUTES THE FULL AND ENTIRE UNDERSTANDING OF THE PARTIES HERETO AND THAT THIS AGREEMENT HAS NOT BEEN SIGNED IN RELIANCE UPON ANY PRIOR OR PRESENT PROMISE, REPRESENTATION OR INDUCEMENTS NOT SPECIFICALLY SET FORTH HEREIN. THIS AGREEMENT MAY NOT BE MODIFIED OR AMENDED EXCEPT IN WRITING SIGNED BY BOTH THE OWNER AND BY AN OFFICER OF THE DEVELOPER. THIS AGREEMENT SHALL BE FULLY BINDING AND OBLIGATORY UPON THE PARTIES HERETO, THEIR HEIRS, SUCCESSORS, PERSONAL REPRESENTATIVES, AND ASSIGNS.

THIS SHALL CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES.

MILL POND PROFESSIONAL CENTER LLC

By: _____ By: _____

Date: _____ Date: _____