

# MEMORANDUM

Agenda Item No. 14(A)(4)

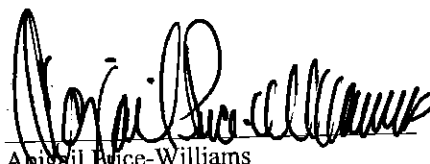
**TO:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**DATE:** July 23, 2019

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution authorizing the County Mayor to submit an amendment to Miami-Dade County's disposition and/or demolition applications to the United States Housing and Urban Development to permit RUDG, LLC or its subsidiary, The Gallery at Smathers Plaza, LLC ("subsidiary"), to construct a third phase of the Smathers Plaza redevelopment project to be known as The Gallery at Smathers, to execute, in accordance with section 125.35, Florida Statutes, a 75-year ground lease with an annual rental amount equal to \$30,000.00 (increasing annually at four percent) and a one-time capitalized lease payment between \$300,000.00 and \$350,000.00 for a total between \$13,758,941.00 and \$13,808,941.00, to execute a sub-ground lease(s), to exercise all provisions contained in the ground lease and sub-ground lease(s), to execute joinders and consents to an Easement Agreement between Smathers Preservation Phase One, LLC and subsidiary, and an Easement Agreement between Smathers Phase Two, LLC and subsidiary for the purpose of granting non-exclusive easements to these entities and the residents to among other things allow them to access parking and walkways, and to execute all necessary mixed-finance agreements, all other documents related to The Gallery at Smathers, and amendment(s) to the Annual Contribution Contract(s), subject to the United States Housing and Urban Development's approval; and waiving the requirements of Resolution No. R-130-06

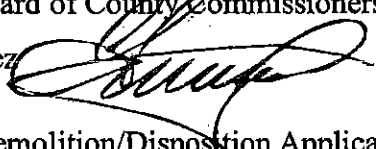
The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Xavier L. Suarez.

  
Abigail Price-Williams  
County Attorney

APW/uw

**Date:** July 23, 2019

**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez   
Mayor

**Subject:** Amendment to Demolition/Disposition Application for the Project Known as The Gallery at Smathers, and Execution of Joinders and Consents to Easement Agreements, and Related Mixed-Finance Agreements and Documents

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**Recommendation**

It is recommended that the Board of County Commissioners ("Board"):

- 1) Authorize the County Mayor or the County Mayor's designee to submit an amendment to Miami-Dade County's disposition and/or demolition application to the United States Housing and Urban Development ("HUD") to permit RUDG, LLC or its subsidiary, The Gallery at Smathers Plaza, LLC (collectively referred to as "RUDG"), to construct a third phase of the Smathers Plaza redevelopment project to be known as The Gallery at Smathers;
- 2) In accordance with section 125.35, Florida Statutes, and subject to HUD's approval, authorize the County Mayor or the County Mayor's designee to execute a 75-year ground lease with RUDG with an annual rental amount equal to \$30,000.00 (increasing annually at four percent) and a one-time capitalized lease payment between \$300,000.00 and \$350,000.00 for a total between \$13,758,941.00 and \$13,808,941.00, related to the development of The Gallery at Smathers, to execute a sub-ground lease(s) as provided for in the ground lease, and to exercise all provisions contained therein, including, but not limited to, termination, amendment, and modification provisions, subject to HUD's approval;
- 3) Authorize the County Mayor or the County Mayor's designee to execute the joinders and consents to the Easement Agreement between Smathers Preservation Phase One, LLC and The Gallery at Smathers Plaza, LLC, and the Easement Agreement between Smathers Phase Two, LLC and The Gallery at Smathers Plaza, LLC for the purpose of granting non-exclusive easements to these entities and the residents for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the entire Smathers Plaza project, and for parking in the unreserved parking spaces located throughout such project;
- 4) Authorize the County Mayor or the County Mayor's designee to execute all necessary mixed-finance agreements and all other documents related to The Gallery at Smathers, subject to HUD's approval;
- 5) Authorize the County Mayor or the County Mayor's designee to execute amendment(s) to the Annual Contribution Contract(s), which provides for the County's receipt of public housing subsidy, subject to HUD's approval; and
- 6) Waive the requirements of Resolution No. R-130-06, which requires that all contracts must be fully negotiated and executed by a non-County party, because neither the County nor RUDG can

execute any mixed-finance agreements and other related documents without HUD's prior approval.

### **Scope**

The Gallery at Smathers will be generally located at 1040 SW 29 Court, Miami, Florida, which is located in District 7, which is represented by Commissioner Xavier L. Suarez.

### **Fiscal Impact/Funding Source**

The fiscal impact to the County is anticipated at approximately \$2.89 million in documentary stamp surtax funds. The actual amount will vary (but will not exceed amount indicated) upon final disposition of other funding applications for which RUDG has applied. Additionally, RUDG applied to the Housing Finance Authority of Miami-Dade County (Florida) for multifamily mortgage revenue debt financing assistance in an aggregate principal amount not to exceed \$20,500,000.00, in one or more series, at the same time or at different times to finance a portion of the costs of the acquisition and construction of The Gallery at Smathers. On December 18, 2018, the Board adopted Resolution No. R-1291-18, which approved the issuance of the debt.

RUDG will pay the County an annual rental amount equal to \$30,000.00 (increasing annually at four percent) and a one-time capitalized lease payment between \$300,000.00 and \$350,000.00, related to the development of The Gallery at Smathers, for a total between \$13,758,941.00 and \$13,808,941.00.

### **Track Record/Monitor**

Michael Liu, Director, Public Housing and Community Development Department (PHCD) will monitor this project.

### **Background**

Request for Proposals (RFP) No. 794 was issued on July 14, 2011, to solicit proposals from developers to maximize and expedite the development or redevelopment of over 100 existing public housing sites and vacant land sites administered by PHCD. On November 23, 2011, the Board adopted Resolution No. R-1026-11, which, among other things, awarded site control through a master ground lease to RUDG for the redevelopment of Smathers Plaza public housing development. On December 16, 2014, the Board also adopted Resolution No. R-1114-14, which, in part, authorized the County Mayor or the County Mayor's designee to submit a demolition and/or disposition application to HUD for Smathers Phase Two, a 133 unit building. On April 10, 2018, the Board further adopted Resolution No. R-336-18, which authorized the County Mayor or the County Mayor's designee to proceed with Smathers Phase One, which included the rehabilitation of 182 units. The HUD's Special Application Center approved the County's applications for Smathers Preservation Phase One (Application No. DDA0008251) and for Smathers Phase Two (Application No. DDA0005821) on April 5, 2018 and April 7, 2015, respectively.

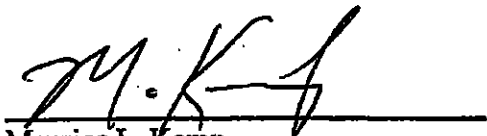
The original Smathers Plaza site consisted of 5.68 acres. This site was subsequently bifurcated under the HUD disposition approvals for Smathers Phase One (3.48 acres) and Smathers Phase Two (2.20 acres). The Gallery at Smathers, where the development of additional affordable housing and replacement of the existing community center is being proposed, will consist of 1.29 acres from Phase One and .44 acres from Phase Two, for a total of 1.73 acres. Utilizing a portion of the land from the two sites (Smathers Phase One and Smathers Phase Two) will allow the construction of a new tax-credit elderly affordable housing

development consisting of a residential building with up to 140 units, amenities and a community center. The project will include 60 units of Section 8 Project-Based Vouchers and up to 80 affordable tax credit units. Total development cost is expected to be approximately \$31.3 million.

In order to proceed with the disposition or demolition of its public housing developments, including, but not limited to, the execution of the ground lease, mixed-finance agreement and related documents, the County, as a public housing authority, must first seek prior approval from HUD. Although the Master Development Agreement, which was approved by the Board and subsequently executed by the County and RUDG, contemplates the development of a third phase of the project, neither the Board's resolutions nor the prior disposition applications submitted by the County to HUD, specifically addressed this third phase. Accordingly, the County must submit an amendment to the applications to HUD, subject to the Board's approval.

In accordance with HUD's disposition and demolition regulations located at 24 C.F.R. part 970, the County must consult with residents who will be affected by the proposed action with respect to all demolition or disposition applications. The County has met this requirement by meeting with the residents and their appointed resident councils on October 3rd, 2018. No written comments were received from the residents.

RUDG has requested that the County, as the landlord and a lender, execute joinders and consents to an easement agreement between Smathers Preservation Phase One, LLC and The Gallery at Smathers Plaza, LLC, and an easement agreement between Smathers Phase Two, LLC and The Gallery at Smathers Plaza, LLC for the purpose of granting non-exclusive easements to these entities and the residents for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the entire Smathers Plaza project and for parking in the unreserved parking spaces located throughout such project. Accordingly, PHCD recommends that the Board authorize the County Mayor or the County Mayor's designee to execute the joinders and consents attached to the easement agreements.



Maurice L. Kemp  
Deputy Mayor

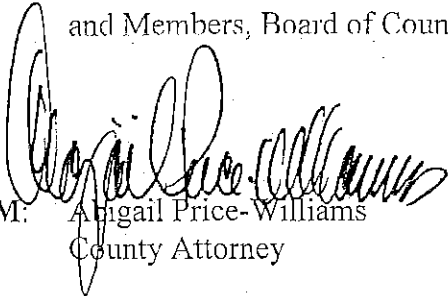


# MEMORANDUM

(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

DATE: July 23, 2019

FROM:   
Angail Price-Williams  
County Attorney

SUBJECT: Agenda Item No. 14(A)(4)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 14(A)(4)  
7-23-19

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO SUBMIT AN AMENDMENT TO MIAMI-DADE COUNTY'S DISPOSITION AND/OR DEMOLITION APPLICATIONS TO THE UNITED STATES HOUSING AND URBAN DEVELOPMENT TO PERMIT RUDG, LLC OR ITS SUBSIDIARY, THE GALLERY AT SMATHERS PLAZA, LLC ("SUBSIDIARY"), TO CONSTRUCT A THIRD PHASE OF THE SMATHERS PLAZA REDEVELOPMENT PROJECT TO BE KNOWN AS THE GALLERY AT SMATHERS, TO EXECUTE, IN ACCORDANCE WITH SECTION 125.35, FLORIDA STATUTES, A 75-YEAR GROUND LEASE WITH AN ANNUAL RENTAL AMOUNT EQUAL TO \$30,000.00 (INCREASING ANNUALLY AT FOUR PERCENT) AND A ONE-TIME CAPITALIZED LEASE PAYMENT BETWEEN \$300,000.00 AND \$350,000.00 FOR A TOTAL BETWEEN \$13,758,941.00 AND \$13,808,941.00, TO EXECUTE A SUB-GROUND LEASE(S), TO EXERCISE ALL PROVISIONS CONTAINED IN THE GROUND LEASE AND SUB-GROUND LEASE(S), TO EXECUTE JOINDERS AND CONSENTS TO AN EASEMENT AGREEMENT BETWEEN SMATHERS PRESERVATION PHASE ONE, LLC AND SUBSIDIARY, AND AN EASEMENT AGREEMENT BETWEEN SMATHERS PHASE TWO, LLC AND SUBSIDIARY FOR THE PURPOSE OF GRANTING NON-EXCLUSIVE EASEMENTS TO THESE ENTITIES AND THE RESIDENTS TO AMONG OTHER THINGS ALLOW THEM TO ACCESS PARKING AND WALKWAYS, AND TO EXECUTE ALL NECESSARY MIXED-FINANCE AGREEMENTS, ALL OTHER DOCUMENTS RELATED TO THE GALLERY AT SMATHERS, AND AMENDMENT(S) TO THE ANNUAL CONTRIBUTION CONTRACT(S), SUBJECT TO THE UNITED STATES HOUSING AND URBAN DEVELOPMENT'S APPROVAL; AND WAIVING THE REQUIREMENTS OF RESOLUTION NO. R-130-06

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:**

**Section 1.** The foregoing recitals are incorporated in this resolution and are approved.

**Section 2.** This Board authorizes the County Mayor or the County Mayor's designee to submit an amendment to Miami-Dade County's disposition and/or demolition applications to the United States Housing and Urban Development ("HUD") to permit RUDG, LLC or its subsidiary, The Gallery at Smathers Plaza, LLC (collectively referred to as "RUDG"), to construct a third phase of the Smathers Plaza redevelopment project to be known as The Gallery at Smathers.

**Section 3.** In accordance with section 125.35, Florida Statutes and subject to HUD's approval, this Board authorizes the County Mayor or the County Mayor's designee to execute a 75-year ground lease with RUDG, as tenant, with an annual rental amount equal to \$30,000.00 (increasing annually at four percent) and a one-time capitalized lease payment between \$300,000.00 and \$350,000.00 for a total between \$13,758,941.00 and \$13,808,941.00, in substantially the form attached hereto as Exhibit 1 and incorporated herein by reference, for the development of The Gallery of Smathers to be located on the property more fully described in Exhibit "A" of such ground lease. This Board further authorizes the County Mayor or the County Mayor's designee to execute a sub-ground lease(s) as provided for in the ground lease. This Board further authorizes the County Mayor or the County Mayor's designee to exercise all provisions contained in the ground lease and sub-ground lease(s), including, but not limited to, termination, amendment, and modification provisions.

**Section 4.** This Board authorizes the County Mayor or the County Mayor's designee to execute the joinders and consents to the Easement Agreement between Smathers Preservation Phase One, LLC and The Gallery at Smathers Plaza, LLC, and the Easement Agreement between

Smathers Phase Two, LLC and The Gallery at Smathers Plaza, LLC, in substantially the form attached hereto as Exhibits 2 and 3 and incorporated herein by reference, for the purpose of granting non-exclusive easements to these entities and the residents for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the entire Smathers Plaza project, and for parking in the unreserved parking spaces located throughout such project.

**Section 5.** This Board authorizes the County Mayor or the County Mayor's designee to execute all necessary mixed-finance agreements and all other documents related to The Gallery at Smathers, subject to HUD's approval.

**Section 6.** This Board authorizes the County Mayor or the County Mayor's designee to execute amendment(s) to the Annual Contribution Contract(s), which provides for the County's receipt of public housing subsidy, subject to HUD's approval.

**Section 7.** This Board waives the requirements of Resolution No. R-130-06, which requires that all contracts must be fully negotiated and executed by a non-County party, because neither the County nor RUDG can execute any mixed-finance agreements and other related documents without HUD's prior approval.

**Section 8.** This Board directs the County Mayor or County Mayor's designee to provide an executed copy of the ground lease and operating agreement to the Property Appraiser's Office pursuant to Resolution No. R-791-14.

**Section 9.** This Board directs the County Mayor or the County Mayor's designee, pursuant to Resolution No. R-974-09, to record in the public record the ground lease, sub-ground lease(s), or memorandum of ground lease or sub-ground lease(s), covenants, reverters and mortgages creating or reserving a real property interest in favor of the County and to provide a

copy of such recorded instruments to the Clerk of the Board within 30 days of execution and final acceptance. This Board directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

The foregoing resolution was offered by Commissioner \_\_\_\_\_ ,  
who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_  
and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto

The Chairperson thereupon declared the resolution duly passed and adopted this 23<sup>rd</sup> day of July, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Terrence A. Smith

**EXHIBIT 1**

**GROUND LEASE**

Dated as of \_\_\_\_\_, 2019

between

**MIAMI-DADE COUNTY**

Landlord

and

**THE GALLERY AT SMATHERS PLAZA, LLC**

Tenant

## **GROUND LEASE**

THIS GROUND LEASE ("Lease"), made as of \_\_\_\_\_, 2019 (the **Lease Date**) by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida and a "public housing agency" as defined in the United States Housing Act of 1937 (42 U.S.C. §1437 *et seq.*, as amended) (**Landlord**) and **THE GALLERY AT SMATHERS PLAZA, LLC**, a Florida limited liability company (**Tenant**).

## **WITNESSETH:**

**WHEREAS**, Landlord is the owner of the Land (as defined below) consisting of certain real property located in Miami-Dade County, Florida, on which is located the public housing development known as Smathers Plaza (FLA 5-18).

**WHEREAS**, Tenant has proposed to newly construct up to 140 units on the Land, including 60 units of Section 8 Project-Based Vouchers and up to 80 affordable tax credit units; and

**WHEREAS**, Tenant intends to apply for various sources of private and public funding, which may include Low Income Housing Tax Credits (LIHTC) through the Florida Housing Finance Corporation (FHFC), and is required to meet certain requirements as a condition of being awarded such financing; and

**WHEREAS**, such application requires Tenant to present evidence of site control over the Land at the time of the application; and

**WHEREAS**, evidence of site control over the Land includes a ground lease; and

**WHEREAS**, Landlord and Tenant are willing to enter into this Lease of the Land conditioned on Tenant obtaining financing, which may include FHFC awarding Tenant LIHTC,

**NOW, THEREFORE**, in consideration of the premises and the mutual obligations of the parties set forth herein, Landlord and Tenant do hereby covenant and agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

#### **1.1. Definitions.**

The following terms shall have the following definitions in this Lease:

(a) **ACC** means the Consolidated Annual Contributions Contract between HUD and Landlord as amended in relation to the Premises by the ACC Amendment.

(b) **ACC Amendment** means the Mixed-Finance Amendment to Consolidated Annual Contributions Contract, dated on or about the Commencement Date, by Landlord and HUD, and incorporating the Public Housing Units, as the same may be further amended from time to time.

(c) **Act** means the United States Housing Act of 1937 (42 U.S.C. § 1437, *et seq.*), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.

(d) **Applicable Public Housing Requirements** means the Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), and all other Federal statutory, executive order, and regulatory requirements applicable to public housing, as such requirements now exist or as they may be amended from time to time; the ACC, and the ACC Amendment, as applicable to the Public Housing Units during the term thereof or the period required by law.

(e) **Bankruptcy Laws** has the meaning set forth in Section 8.1(d).

(f) Reserved.

(g) **Commencement Date** means the date on which the Tenant closes on its construction financing for the rehabilitation, redevelopment or new construction, as applicable, of the Improvements and the sale or syndication of the LIHTC.

(h) **Declaration of Restrictive Covenants** means any Use Agreement, Declaration or similar covenant in favor of HUD to be recorded against the Land prior to any leasehold mortgage and this leasehold which obligates Tenant and any successor in title to the Premises, including a successor in title by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent), to maintain and operate the Premises in compliance with the Applicable Public Housing Requirements for the period stated therein.

(i) **Development** means the construction (or rehabilitation), maintenance and operation of the Premises in accordance with this Lease.

(j) **Environmental Assessments** means the environmental studies and reports to be obtained by Tenant on or before the Commencement Date.

(k) **Environmental Laws** means any present and 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 protection of land, water, air or the environment, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.* (**CERCLA**); the Resource, Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (**RCRA**); the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (**TOSCA**); the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Clean Water Act, 33 U.S.C. §1251 *et seq.* and any so-called "Superfund" or "Superlien" law; as each is from time to time amended and hereafter in effect.

(l) **Event of Default** has the meaning set forth in Section 8.1.

(m) **Governing Documents** means the Declaration of Restrictive Covenants, the ACC, ACC Amendment and the Regulatory and Operating Agreement. In the event of a conflict between the Regulatory and Operating Agreement and the ACC, ACC Amendment and Declaration of Restrictive Covenants, the ACC and the Declaration of Restrictive Covenants shall govern.

(n) **Hazardous Substances** means (i) "hazardous substances" as defined by CERCLA or Section 311 of the Clean Water Act (33 USC § 1321), or listed pursuant to Section 307 of the Clean Water Act (33 USC § 1317); (ii) "hazardous wastes," as defined by RCRA; (iii) any hazardous, dangerous or toxic chemical, waste, pollutant, material, element, contaminant or substance ("pollutant") within the meaning of any Environmental Law prohibiting, limited or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, disposal or recycling of such pollutant; (iv) petroleum crude oil or fraction thereof; (v) any radioactive material, including any source, special nuclear or by-product material as defined in 42 U.S.C. §2011 et seq. and amendments thereto and reauthorizations thereof; (vi) asbestos-containing materials in any form or condition; (vii) polychlorinated biphenyls or polychlorinated biphenyl-containing materials in any form or condition; (viii) a "regulated substance" within the meaning of Subtitle I of RCRA, as amended from time to time and regulations promulgated thereunder; (ix) substances the presence of which requires notification, investigation or remediation under any Environmental Laws; (x) urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (xi) lead-based paint or lead-based paint-containing materials; and (xii) radon or radon-containing or producing materials.

(o) **HUD** means the United States Department of Housing and Urban Development.

(p) **Improvements** means all repairs, betterments, buildings and improvements hereafter constructed or rehabilitated on the Land, and any additional parking areas, walkways, landscaping, fencing or other amenities on the Land.

(q) **Land** means that certain real property located in Miami-Dade County, legally described in Exhibit A, together with all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the real property. The Land and the Improvements are sometimes referred to herein as the "**Project**".

(r) **Landlord** means Miami-Dade County, a political subdivision of the State of Florida and a "public housing agency" as defined in the Act.

(s) **Lease** means this ground lease as the same shall be amended from time to time.

(t) **Lease Year** means, in the case of the first lease year, the period from the Commencement Date through the last day of the 12<sup>th</sup> month of that year; thereafter, each successive twelve-calendar month period following the expiration of the first lease year of the Term; except that in the event of the termination of this Lease on any day other than the last day of a Lease Year then the last Lease Year of the Term shall be the period from the end of the preceding Lease Year to such date of termination.

(u) **Partial Taking** has the meaning set forth in Section 6.2(d).

(v) **Operating Agreement** means the Amended and Restated Operating Agreement of Tenant to be entered into on or about the Commencement Date and pursuant to which the Tenant's equity investor (the "Investor") will be admitted as a member of the Tenant.

(w) **Permitted Encumbrances** means such recorded title matters as are disclosed pursuant to the title commitment to be obtained by Tenant pursuant to Section 7.1 and are not identified by Tenant as objectionable matters pursuant to the procedure provided in Section 7.3.

(x) **Personal Property** means all fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), fittings, appliances, apparatus, equipment, machinery, chattels, building materials, and other property of every kind and nature whatsoever, and replacements and proceeds thereof, and additions thereto, now or at any time hereafter owned by Tenant, or in which Tenant has or shall have an interest, now or at any time hereafter affixed to, attached to, appurtenant to, located or placed upon, or used in any way in connection with the present and future complete and comfortable use, enjoyment or occupancy for operation and maintenance of the Premises, excepting any personal property or fixtures owned by any tenant (other than the Tenant) occupying the Premises and used by such tenant in the conduct of its business in the space occupied by it to the extent the same does not become the property of Tenant under the lease with such tenant or pursuant to applicable law.

(y) **Plans and Specifications** means the plans and specifications for the Improvements to be constructed (or rehabilitated) on the Land by Tenant.

(z) **Premises** means the Land, the Improvements and the Personal Property.

(aa) **Public Housing Units** means the units on the Premises regulated as public housing units in accordance with the Regulatory and Operating Agreement.

(bb) **RAD "Rental Assistance Demonstration,"** to mean a HUD program authorized in FY12 Congressional Appropriations Bill to restructure assistance to Public Housing projects.

(cc) **Regulatory Default** has the meaning set forth in Section 8.5.

(dd) **Rent** means the amount payable by Tenant to Landlord pursuant to Section 3.1.

(ee) **Sales Notice** has the meaning set forth in Section 11.1.

(ff) **Sales Offer** has the meaning set forth in Section 11.2.

(gg) **Sublessee** means any sublessee to which Tenant subleases a portion of the ground leasehold estate created hereby, as provided in Section 5.7(b).

(hh) **Taking** means any taking of the title to, access to, or use of the Premises or any portion thereof by any governmental authority or any conveyance under the threat thereof, for any public, or quasi-public use or purpose. A Taking may be total or partial, permanent or temporary

(ii) **Tenant** means The Gallery at Smathers, LLC, a Florida limited liability company.

(jj) **Term** means a period of time commencing with the Lease Date and continuing until the date which is seventy-five (75) calendar years thereafter.

(kk) **Total Taking** has the meaning set forth in Section 6.2(c).

## 1.2. Interpretation.

The words "hereof," "herein," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section, subsection or subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine

and neuter genders. Words importing the singular number shall include the plural and vice versa unless the context shall otherwise indicate.

1.3. Exhibits.

Exhibits to this Lease are incorporated by this reference and are to be construed as a part of this Lease.

**ARTICLE II**

**PREMISES AND TERM**

Landlord leases and demises to Tenant and its successors and assigns, subject to and with the benefit of the terms, covenants, conditions and provisions of this Lease, the Land for the Term unless sooner terminated in accordance with the provisions contained in this Lease.

**ARTICLE III**

**RENT**

3.1. Rent. Tenant covenants and agrees to pay to Landlord as rent under this Lease:

- (i) an annual rental amount equal to \$30,000 (increasing each year at four percent (4%) per year, commencing in the year following Landlord's receipt of the first payment of Annual Rent hereunder) ("**Annual Rent**"), payable out of fifty percent (50%) of the available (net) cash flow that is distributable by Tenant to its manager, after payment of any deferred developer fees, and
- (ii) a one-time capitalized lease payment, to be paid upon the Commencement Date in an amount between \$300,000 and \$350,000 (the "**Capitalized Payment**"), which amount is calculated by multiplying the number of units (i.e., 140) times \$2,500.00.

"**Rent**" means the sum of Annual Rent and the Capitalized Payment. If less than 140 units are constructed at the Premises, the Capitalized Payment shall be adjusted on a unit-for-unit basis. Annual Rent shall be payable within ninety (90) days following the end of the Project's fiscal year. Any portion of the Annual Rent not paid with respect to any given year shall be deferred to the following year. No Annual Rent shall accrue until after full payment of any deferred developer fees payable to Tenant. Rent shall be made payable to the Board of County Commissioners, c/o Public Housing and Community Development, 701 N.W. 1<sup>st</sup> Court, 16<sup>th</sup> Floor, Miami, Florida 33136, or at such other place and to such other person as Landlord may from time to time designate in writing, as set forth herein. Prior to the Commencement Date, Tenant is not obligated to pay Rent or any other sums to the Landlord under this Lease.

3.2. Surrender. Upon the expiration of this Lease by the passage of time or otherwise, Tenant will quietly yield, surrender and deliver up possession of the Premises to Landlord. In the event Tenant fails to vacate the Premises and remove such personal property as Tenant is allowed to remove from the Premises at the end of the Term, or at the earlier termination of this Lease, Landlord shall be deemed Tenant's agent to remove such items from the Premises at Tenant's

sole cost and expense. Furthermore, should Tenant fail to vacate the Premises in accordance with the terms of this Lease at the end of the Term, or at the earlier termination of this Lease, the Tenant shall pay to Landlord a charge for each day of occupancy after expiration or termination of the Lease in an amount equal to 150% of Tenant's Rent prorated on a daily basis. Such charge shall be in addition to any actual damages suffered by Landlord by Tenant's failure to vacate the Premises, for which Tenant shall be fully liable, it being understood and agreed, however, that Tenant shall under no circumstances be liable to Landlord for any incidental, indirect, punitive or consequential damages (including, but not limited to, loss of revenue or anticipated profits).

3.3. Utilities. Tenant shall pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat, other energy sources or power, telephone or other service used, rendered or supplied to Tenant in connection with the Premises.

3.4. Other. Tenant covenants to pay and discharge, when the same shall become due all other amounts, liabilities, and obligations which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest and cost which may be added for nonpayment or late payment thereof (provided that Tenant shall not be liable for any payment or portion thereof which Landlord is obligated to pay and which payment Landlord has failed to make when due); and, in the event of any failure by Tenant to pay or discharge the foregoing, Landlord shall have all the rights, powers and remedies provided herein, by law or otherwise in the case of nonpayment of Rent.

3.5. Taxes. Tenant understands and agrees that as a result of the Landlord's fee ownership of the Premises, for State law purposes, the Premises may become exempt from any ad valorem taxes. Landlord represents to Tenant that any such exemption should remain in effect notwithstanding that Landlord is entering into this Lease. However, during the Term of this Lease, should, for any reason whatsoever, the Premises become exempt and then again become subject to ad valorem taxes or any other real estate taxes, fees, impositions and/or charges imposed during the Term and any Extensions upon the Premises and the building and/or other improvements constructed on the Premises by Tenant ("Real Estate Taxes"), Tenant shall be required to pay all Real Estate Taxes, prior to delinquency without notice or demand and without set-off, abatement, suspension or deduction. In the event that the folio identification number applicable to the Premises shall also contain other property not specifically included in, or a part of, the Premises, then Tenant shall only be required to pay the portion of such taxes exclusively attributable to the Premises. In addition, Tenant shall be required to pay for any water, electric, sewer, telephone or other utility charges incurred by Tenant during the Term or any Extensions which are limited solely to the Premises and/or any structures and/or improvements thereon.

#### **ARTICLE IV**

##### **INDEMNITY, LIENS AND INSURANCE**

4.1. Indemnity for Tenant's Acts. Landlord shall continue to operate the Premises until the Commencement Date as provided in Section 5.1(b), below. From and after the Commencement Date, Tenant shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Landlord or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Lease by the Tenant or its employees, agents, servants, members, principals or subcontractors. Tenant shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of

any kind or nature in the name of the Landlord, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon, provided, however, nothing herein contained shall obligate or hold Tenant responsible prior to the Commencement Date for any costs, expenses, claims or demands made by any party associated with the Premises or for any claims stemming from Landlord's and/or its officers', employees' or agents' misconduct or negligence, unless such costs, expenses, claims or demands arise from the acts or omissions of the Tenant, its agents, contractors, employees, members, or invitees. Tenant expressly understands and agrees that any insurance protection required by this Lease or otherwise provided by Tenant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Landlord or its officers, employees, agents and instrumentalities as herein provided.

#### 4.2. Landlord's Environmental Responsibility and Representations.

(a) Except to the extent that an environmental condition is aggravated or exacerbated by the negligent or willful acts or omissions of Tenant, its agents or contractors, Tenant shall not be responsible under this Lease for any claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement action of any kind, and all costs and expenses incurred in connection therewith arising out of: (i) the presence of any Hazardous Substances in, on, over, or upon the Premises first affecting the Premises as of or prior to the Commencement Date, whether now known or unknown; or (ii) the failure of Landlord or its agents or contractors prior to the Commencement Date to comply with any Environmental Laws relating to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Substances into, on, under or from the Premises at any time, whether or not such failure to comply was known or knowable, discovered or discoverable prior to the Commencement Date.

(b) Landlord represents and warrants to Tenant that, as of the date hereof:

1. except as may be referenced in the Environmental Assessments, and to the best of Landlord's actual knowledge, neither the Land nor any part thereof has been used for the disposal of refuse or waste, or for the generation, processing, storage, handling, treatment, transportation or disposal of any Hazardous Substances;
2. except as may be referenced in the Environmental Assessments, and to the best of Landlord's actual knowledge, no Hazardous Substances have been installed, used, stored, handled or located on or beneath the Land, which Hazardous Substances, if found on or beneath the Land, or improperly disposed of off of the Land, would subject the owner or occupant of the Premises to damages, penalties, liabilities or an obligation to perform any work, cleanup, removal, repair, construction, alteration, demolition, renovation or installation in or in connection with the Premises (**Environmental Cleanup Work**) in order to comply with any Environmental Laws;
3. except as may be referenced in the Environmental Assessments, and to the best of Landlord's actual knowledge, no notice from any governmental authority or any person has ever been served upon Landlord, its agents or employees, claiming any violation of any Environmental Law or any liability thereunder, or requiring or calling any attention to the need for any Environmental Cleanup Work on or in connection with the Premises, and neither Landlord, its agents or employees has

ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order; and

4. except as may be referenced in the Environmental Assessments, and to the best of Landlord's knowledge, no part of the Land is affected by any Hazardous Substances contamination, which for purposes hereof, shall mean: (i) the contamination of any improvements, facilities, soil, subsurface strata, ground water, ambient air, biota or other elements on or of the Land by Hazardous Substances, or (ii) the contamination of the buildings, facilities, soil, subsurface strata, ground water, ambient air, biota or other elements on, or of, any other property as a result of Hazardous Substances emanating from the Land.

#### 4.3. Liens.

(a) Tenant agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the Premises for work or materials furnished to Tenant it being provided, however, that Tenant shall have the right to contest the validity thereof. Tenant shall not have any right, authority or power to bind Landlord, the Premises or any other interest of the Landlord in the Premises and will pay or cause to be paid all costs and charges for work done by it or caused to be done by it, in or to the Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto. IN THE EVENT THAT ANY MECHANIC'S LIEN SHALL BE FILED, TENANT SHALL EITHER (A) PROCURE THE RELEASE OR DISCHARGE THEREOF WITHIN NINETY (90) DAYS EITHER BY PAYMENT OR IN SUCH OTHER MANNER AS MAY BE PRESCRIBED BY LAW OR (B) TRANSFER SUCH LIEN TO BOND WITHIN NINETY (90) DAYS FOLLOWING THE FILING THEREOF. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE TENANT OR TO ANYONE HOLDING ANY OF THE PREMISES THROUGH OR UNDER THE TENANT, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS, SHALL ATTACH TO OR AFFECT THE INTEREST OF THE LANDLORD IN AND TO ANY OF THE PREMISES. THE LANDLORD SHALL BE PERMITTED TO POST ANY NOTICES ON THE PREMISES REGARDING SUCH NON-LIABILITY OF THE LANDLORD.

(b) Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms, and corporations doing any work, furnishing any materials or supplies or renting any equipment to Tenant or any of its contractors or subcontractors in connection with the construction, reconstruction, furnishing, repair, maintenance or operation of the Premises, and in all events will bond or cause to be bonded, with surety companies reasonably satisfactory to Landlord, or pay or cause to be paid in full forthwith, any mechanic's, materialmen's or other lien or encumbrance that arises, whether due to the actions of Tenant or any person other than Landlord, against the Premises.

(c) Tenant shall have the right to contest any such lien or encumbrance by appropriate proceedings which shall prevent the collection of or other realization upon such lien or encumbrance so contested, and the sale, forfeiture or loss of the Premises to satisfy the same; provided that such contest shall not subject Landlord to the risk of any criminal liability or civil penalty, and provided further that Tenant shall give reasonable security to insure payment of such lien or encumbrance and to prevent any sale or forfeiture of the Premises by reason of such nonpayment, and Tenant hereby indemnifies Landlord for any such liability or penalty. Upon the termination after final appeal of any proceeding relating to any amount contested by Tenant

pursuant to this Section 4.3, Tenant shall immediately pay any amount determined in such proceeding to be due, and in the event Tenant fails to make such payment, Landlord shall have the right after five (5) business days' notice to Tenant to make any such payment on behalf of Tenant and charge Tenant therefor.

(d) Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, expressed or implied, to or for the performance of any labor or services or the furnishing of any materials for construction, alteration, addition, repair or demolition of or to the Premises or of any part thereof.

#### 4.4. Insurance Requirements.

Beginning on the Commencement Date and continuing until the expiration or earlier termination of the Term, Tenant shall at all times obtain and maintain, or cause to be maintained, insurance for Tenant and the Premises as described in Exhibit B.

### ARTICLE V

#### USE OF PREMISES; COVENANTS RUNNING WITH THE LAND

##### 5.1. Use; Covenants.

(a) Tenant and Landlord agree that Tenant shall construct or rehabilitate multifamily residential housing for low-income, family, elderly, disabled, special needs or other population and uses acceptable to the County on the Land after HUD's approval of Landlord's disposition application and all applicable mixed-finance agreements and documents.

(b) Tenant covenants, promises and agrees that during the Term of this Lease it shall not devote the Premises or any part thereof to uses other than those consistent with this Lease and the requirements of all applicable documents to be executed between Landlord and Tenant (collectively, the "Landlord/Tenant Documents"). Without limiting the generality of the foregoing sentence, or the duration of the use restrictions applicable during the Term, Tenant covenants, promises and agrees that:

(i) 100% of the units in the Premises will be set aside for occupancy by workforce, low-, very low- and extremely low-income households.

(ii) Except as otherwise provided in the Act, the Premises shall be maintained and operated under the terms and conditions applicable to public housing, as set forth in the Applicable Public Housing Requirements, during the 20-year period that begins on the latest date on which modernization with public housing capital funds is completed, as required by Section 9(d)(3)(B) of the Act (or any successor provision);

(iii) Except as otherwise provided in the Act, no portion of the Premises may be disposed of before the expiration of the 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, as required by Section 9(e)(3) of the Act (or any successor provision);

(iv) Neither the Premises, nor any part thereof, may be demolished other than in accordance with the Applicable Public Housing Requirements.

Notwithstanding the foregoing, prior to the Commencement Date, the Tenant agrees that Landlord shall have a continued right of entry onto the Premises for the purposes of the Landlord's continued operation of the Improvements and maintenance of the Premises during the period prior to the Commencement Date. Landlord shall, during this period, continue to operate the Improvements in the manner in which Landlord has operated them prior to the Lease Date and shall be responsible for all aspects of maintaining, leasing, operating, insuring and administering the Premises. If, prior to the Commencement Date, the Premises is destroyed or damaged, or becomes subject to a taking by virtue of eminent domain, to any extent whatsoever, Tenant may, in its sole discretion, terminate this Lease by written notice to the Landlord, whereupon neither party hereto shall have any further rights or obligations hereunder.

(c) The provisions of the Applicable Public Housing Requirements and this Section 5.1 are intended to create a covenant running with the land and, subject to the terms and benefits of the Applicable Public Housing Requirements, to encumber and benefit the Premises and to bind for the Term Landlord and Tenant and each of their successors and assigns and all subsequent owners of the Premises, including, without limitation, any entity which succeeds to Tenant's interest in the Premises by foreclosure of any Permitted Leasehold Mortgage or instrument in lieu of foreclosure.

(d) In the event of a conflict between the Public Housing Requirements and this Lease, the Public Housing Requirements shall govern.

## 5.2. Residential Improvements.

(a) Tenant shall construct the Improvements on the Land in conformance with the Plans and Specifications. Tenant shall cause the Improvements to be substantially completed and placed in service in accordance with the Landlord/Tenant Documents. Tenant shall construct the Improvements and make such other repairs, renovations and betterments to the Improvements as it may desire (provided that such renovations and betterments do not reduce the number of units or bedroom count at the Premises) all at its sole cost and expense, in accordance with (i) the Landlord/Tenant Documents and (ii) any mortgage encumbering the Tenant's leasehold estate, in a good and workmanlike manner, with new materials and equipment whose quality is at least equal to that of the initial Improvements, and in conformity with all applicable federal, state, and local laws, ordinances and regulations. Tenant shall apply for, prosecute, with reasonable diligence, procure or cause to be procured, all necessary approvals, permits, licenses or other authorizations required by applicable governmental authorities having jurisdiction over the Improvements for the construction and/or rehabilitation, development, zoning, use and occupation of the Improvements, including, without limitation, the laying out, installation, maintenance and replacing of the heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems, fixtures, wires, pipes, conduits, equipment and appliances and water, gas, electric, telephone, drain and other utilities that are customary in developments of this type for use in supplying any such service to and upon the Premises. Landlord shall, without expense to Landlord absent consent therefor, cooperate with Tenant and assist Tenant in obtaining all required licenses, permits, authorizations and the like, and shall sign all papers and documents at any time needed in connection therewith, including without limitation, such instruments as may be required for the laying out, maintaining, repairing, replacing and using of such services or utilities. Any and all buildings, fixtures, improvements, trade fixtures and equipment placed in, on, or upon the Premises shall remain the sole and exclusive property of Tenant and its subtenants, notwithstanding their affixation to, annexation to, or incorporation into the Premises, until the termination of this Lease, at which time title to any such buildings, fixtures, Improvements trade fixtures and equipment that belong to Tenant shall vest in Landlord.

(b) Tenant shall take no action to effectuate any material amendments, modifications or any other alterations to the Development Proposals and applications, Plans and Specifications, or to increase the total number of Public Housing Units and/or other units, and/or other uses on the Land, unless authorized in accordance with the Landlord/Tenant Documents or otherwise approved by Landlord in writing and in advance.

### 5.3. Tenant's Obligations.

(a) Tenant shall, at its sole cost and expense, maintain the Premises, reasonable wear and tear excepted, and make repairs, restorations, and replacements to the Improvements, including without limitation the landscaping, irrigation, heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems; structural roof, walls, floors and foundations; and the fixtures and appurtenances as and when needed to preserve them in good working order and condition, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, and contractors. All such repairs, restorations, and replacements will be in quality and class, as elected by Tenant, either equal to or better than the original work or installations and shall be in accordance with all applicable building codes.

(b) Except as may otherwise be approved or deemed approved in accordance with the Landlord/Tenant Documents, Tenant shall not make any alteration, improvement, or addition to the Premises having a cost greater than \$50,000, or demolish any portion thereof, without first presenting to Landlord complete plans and specifications therefor and obtaining Landlord's written consent thereto, which consent shall not unreasonably be withheld so long as, in Landlord's reasonable judgment such alteration, improvement, addition or demolition will not violate this Lease or impair the value of the Project.

### 5.4. Compliance with Law.

(a) Tenant shall, at its expense, perform all its activities on the Premises in compliance, and shall cause all occupants of any portion thereof to comply, with all applicable laws (including but not limited to section 255.05, Florida Statutes), ordinances, codes and regulations affecting the Premises or its uses, as the same may be administered by authorized governmental officials.

(b) Without limitation of the foregoing, but expressly subject to the provisions of Section 5.4, Tenant agrees to fulfill the responsibilities set forth below with respect to environmental matters:

1. Tenant shall operate the Premises in compliance with all Environmental Laws applicable to Tenant relative to the Premises and shall identify, secure and maintain all required governmental permits and licenses as may be necessary for the Premises. All required governmental permits and licenses issued to Tenant and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Tenant shall comply therewith and cause all third parties to comply therewith. All Hazardous Substances present, handled, generated or used on the Premises will be managed, transported and disposed of in a lawful manner. Tenant shall not knowingly permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Substances, except in such amounts as are ordinarily used, stored

or generated in similar projects, or otherwise knowingly permit the presence of Hazardous Substances in, on or under the Premises in violation of any applicable law.

2. Tenant shall promptly provide Landlord with copies of all forms, notices and other information concerning any releases, spills or other incidents relating to Hazardous Substances or any violations of Environmental Laws at or relating to the Premises upon discovery of such releases, spills or incidents, when received by Tenant from any government agency or other third party, or when and as supplied to any government agency or other third party.

#### 5.5. Ownership of Improvements/Surrender of Premises.

At all times during the Term, Tenant shall be deemed to exclusively own the Improvements and the Personal Property for federal tax purposes, and Tenant alone shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Code, with respect to the Improvements and the Personal Property, and Tenant shall have the right to amortize capital costs and to claim any other federal tax benefits attributable to the Improvements and the Personal Property. At the expiration or earlier termination of the Term of this Lease or any portion thereof, Tenant shall peaceably leave, quit and surrender the Premises, and the Improvements thereon (or the portion thereof so terminated), subject to the rights of tenants in possession of residential units under leases with Tenant, provided that such tenants are not in default thereunder and attorn to Landlord as their lessor. Upon such expiration or termination, the Premises (or portion thereof so terminated) shall become the sole property of Landlord at no cost to Landlord and shall be free of all liens and encumbrances and in the condition set forth in Section 5.3 (consistent with prudent and appropriate property management and maintenance during the Term) and, in the event of a casualty, to the provisions of Article VI. Tenant acknowledges and agrees that upon the expiration or sooner termination of this Lease any and all rights and interests it may have either at law or in equity to the Premises shall immediately cease.

#### 5.6. Easements.

Landlord agrees that Landlord shall not unreasonably withhold or delay its consent, and shall join with Tenant from time to time during the Term in the granting of easements affecting the Premises which are for the purpose of providing utility services for the Premises. If any monetary consideration is received by Tenant as a result of the granting of any such easement, such consideration shall be paid to Landlord. As a condition precedent to the exercise by Tenant of any of the powers granted to Tenant in this Section, Tenant shall give notice to Landlord of the action to be taken, shall certify to Landlord, that in Tenant's opinion such action will not adversely affect either the market value of the Premises or the use of the Premises for the Development.

#### 5.7. Transfer; Conveyance; Assignment.

(a) Except as otherwise permitted hereunder, Tenant agrees for itself and its successors and assigns in interest hereunder that it will not (1) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises generally, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, or the Improvements, or the occupancy and use thereof, other than in accordance with the Applicable Public Housing

Requirements and this Lease (including, but not limited to (i) any sale at foreclosure or by the execution of any judgment of any or all of Tenant's rights hereunder, or (ii) any transfer by operation of law), without first obtaining Landlord's express written consent thereto, which shall not be unreasonably withheld.

(b) If applicable, Tenant shall have the right to enter a sublease of any part of the premises (a "Sublease") to an entity that is affiliated with Tenant, subject to the approval and consent of Landlord, which will not be unreasonably withheld. Additionally, no Sublease shall relieve Tenant of any obligations under the terms of this Lease unless a release is granted by Landlord. Additionally, each Sublease must be for a use compatible with the standards and requirements set forth in this Section 5 or for low-income or special needs affordable housing. Tenant must give written notice to Landlord specifying the name and address of any Sublessee to which all notices required by this Lease shall be sent, and a copy of the Sublease. Tenant shall provide Landlord with copies of all Subleases entered into. Landlord agrees to grant Non-Disturbance Agreements for any Sublessee which will provide that in the event of a termination of this Lease which applies to the portion of the Premises covered by such Sublease, due to an Event of Default committed by the Tenant, such Sublessee will not be disturbed and will be allowed to continue peacefully in possession directly under this Lease as the successor tenant, provided that the Sublessee shall be in compliance with the terms and conditions of its Sublease; and the Sublessee shall agree to attorn to Landlord. Landlord further agrees that it will grant such assurances to such Sublessee so long as it remains in compliance with the terms of its Sublease, and provided further that any such Sublease does not extend beyond the expiration of the Term of this Lease.

(c) In the event Tenant's Sublessee is successful in obtaining LIHTC for that portion of the Premises which is subject to the Sublease, but Tenant is not successful in obtaining LIHTC for the portion of the property not subleased and remaining subject to this Lease, Landlord and Tenant agree to modify this Lease so as to make it a direct lease between Landlord and the Sublessee, for the subleased Premises.

#### 5.8. Creating Sustainable Buildings.

(a) Tenant shall design the Development to be consistent with a Silver certification rating from the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") or National Green Building Standards ("NGBS"), but shall not be required to obtain a Silver certification rating from LEED or NGBS relative to the Development. Though Tenant's goal is to obtain such certification rating, if Tenant does not obtain such certification rating, provided it has used its commercially reasonable efforts to do so, Tenant shall not be in default under this Lease and Landlord shall have no right to enforce the terms of this Section 5.8 or exercise any remedies relative to such absence of a certification rating.

(b) The LEED Silver certification or designation relative to the Development is outlined by the U.S. Green Building Council. Tenant agrees to regularly provide Landlord with copies of any and all records and/or reports (including but not limited to any approvals, rejections and/or comments) from the neutral and independent third-party reviewing the Development relative to the LEED Silver designation from the U.S. Green Building Council or certification from the NGBS. As noted earlier in this Section 5.8, the Development may not necessarily be constructed in a manner so as to achieve a Silver certification rating from LEED or certification from NGBS.

(c) Further, the LEED Silver certification or designation or NGBS certification is a description or label designed to establish the level of energy efficiency and sustainability for

Buildings and Improvements of the overall Development; and should substantially improve the "normal" or "regular" energy efficiency and indoor air quality for the overall Development. Beyond these environmentally responsible steps, Tenant specifically agrees to consider additional steps or means to improve and/or protect the environment with regard to the Development, and to inform Landlord of any and all such additional methods or ways that Tenant will utilize "green building standards" in the design and construction of the overall Development in an effort to achieve the important goals of creating a healthy place to work as well as an environmentally responsible development in the community. Tenant's decision whether to incorporate or adopt any such additional steps or means shall be made in Tenant's sole and absolute discretion.

## ARTICLE VI

### CASUALTY AND TAKING

#### 6.1. Casualty.

Casualty Damage. In the event the Premises should be destroyed or damaged by fire, windstorm, or other casualty to the extent that the Premises is rendered unfit for the intended purpose of Tenant, Tenant may cancel this Lease after thirty (30) days notice to Landlord, but only after removing any trash and/or debris therefrom, subject to the terms and provisions of any Permitted Leasehold Mortgage. If the Premises is partially damaged due to any other reason than the causes described immediately above, but the Premises is not rendered unusable for Tenant's purposes subject to the terms and provisions of any Permitted Leasehold Mortgage, the same shall be repaired by Tenant to the extent Tenant receives sufficient proceeds to complete such repairs from its insurance carrier under its insurance policy. Any such repairs will be completed within a reasonable time after receipt of such proceeds. If the damage to the Premises shall be so extensive as to render it unusable for Tenant's purposes but shall nonetheless be capable of being repaired within One Hundred Twenty (120) days, subject to the terms and provisions of any Permitted Leasehold Mortgage the damage shall be repaired with due diligence by Tenant to the extent Tenant receives sufficient proceeds under its insurance policy to complete such repairs. In the event that a nearby structure(s) or improvement(s) is damaged or destroyed due to Tenant's negligence, Tenant shall be solely liable and responsible to repair and/or compensate the owner for such damage or loss.

Notwithstanding anything contained in this Section 6.1, or otherwise in this Lease to the contrary, as long as the Tenant's leasehold interest is encumbered by any Permitted Leasehold Mortgage, this Lease shall not be terminated by Landlord or Tenant in the event that the Premises is partially or totally destroyed, and, in the event of such partial or total destruction, all insurance proceeds from casualty insurance as provided herein shall be paid to and held by the Permitted Leasehold Mortgagee, or an insurance trustee selected by the Permitted Leasehold Mortgagee to be used for the purpose of restoration or repair of the Premises. Permitted Leasehold Mortgagee shall have the right to participate in adjustment of losses as to casualty insurance proceeds and any settlement discussion relating to casualty or condemnation.

#### 6.2. Taking.

(a) Notice of Taking. Upon receipt by either Landlord or Tenant of any notice of Taking, or the institution of any proceedings for Taking the Premises, or any portion thereof, the party receiving such notice shall promptly give notice thereof to the other, and such other party may also appear in such proceeding and may be represented by an attorney.

(b) Award. Subject to the terms of the Permitted Leasehold Mortgages (as defined in Section 8.9), the Landlord and the Tenant agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 6.2(c) or 6.2(d), this Lease shall continue in effect as to the remainder of the Premises, and the net amounts owed or paid to the Landlord or pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Landlord in collecting such award or payment (the "Award") will be disbursed in accordance with Section 6.2(c) or 6.2(d) (as the case may be) to the Landlord and/or Tenant. The Tenant and, to the extent permitted by law, any Permitted Leasehold Mortgagee, shall have the right to participate in negotiations of and to approve any such settlement with a condemning authority (which approval shall not be unreasonably withheld).

(c) Total Taking. In the event of a permanent Taking of the fee simple interest or title of the Premises, or control of the entire leasehold estate hereunder (a "Total Taking"), this Lease shall thereupon terminate as of the effective date of such Total Taking, without liability or further recourse to the parties, provided that each party shall remain liable for any obligations required to be performed prior to the effective date of such termination and for any other obligations under this Lease which are expressly intended to survive termination. The Taking of any portion of the Improvements, fifteen percent (15%) or more of the then existing parking area, the loss of the rights of ingress and egress as then established or the loss of rights to use the Easement, shall be, at Tenant's election, but not exclusively considered, such a substantial taking as would render the use of the Premises not suitable for Tenant's use. Notwithstanding any provision of the Lease or by operation of law that leasehold improvements may be or shall become the property of Landlord at the termination of the Lease, the loss of the building and other improvements paid for by Tenant, the loss of Tenant's leasehold estate and such additional relief as may be provided by law shall be the basis of Tenant's damages against the condemning authority if a separate claim therefore is allowable under applicable law, or the basis of Tenant's damages to a portion of the total award if only one award is made.

(d) Partial Taking. In the event of a permanent Taking of less than all of the Premises (a "Partial Taking"), if Tenant reasonably determines that the continued development, use or occupancy of the remainder of the Premises by Tenant cannot reasonably be made to be economically viable, structurally sound, then Tenant may terminate this Lease, and the Tenant's portion of the Award shall be paid to Tenant, provided that any and all obligations of Tenant have been fully and completely complied with by Tenant as of the date of said Partial Taking. If Tenant shall not elect to terminate this Lease, Tenant shall be entitled to a reduction of rent of such amount as shall be just and equitable. Subject to the terms of the Permitted Leasehold Mortgages, if there is a Partial Taking and the Tenant does not terminate this Lease, the Tenant shall be entitled to receive and retain an equitable portion of the Award and shall apply such portion of the Award necessary to repair or restore the Premises or the Improvements as nearly as possible to the condition the Premises or the Improvements were in immediately prior to such Partial Taking. Subject to the terms of the Permitted Leasehold Mortgages, if there is a Partial Taking which affects the use of the Premises after the term hereof, the Award shall be apportioned between the Tenant and the Landlord based on the ratio of the remaining term hereof and the remaining expected useful life of the Premises following the term hereof. Subject to the terms of the Permitted Leasehold Mortgages, notwithstanding any provision herein to the contrary, the Landlord shall be entitled to receive and retain any portion of the Award apportioned to the land upon which the Improvements are located. Should such award be insufficient to accomplish the restoration, such additional costs shall be paid by Tenant. Notwithstanding any provision of the Lease or by operation of law that leasehold improvements may be or shall become the property of Landlord at the termination of the Lease, the loss of the building and other improvements paid

for by Tenant and such additional relief as may be provided by law shall be the basis of Tenant's damages against the condemning authority if a separate claim therefore is allowable under applicable law, or the basis of Tenant's damages to a portion of the total award if only one award is made.

(e) Resolution of Disagreements. Should Landlord and Tenant be unable to agree as to the division of any singular award or the amount of any reduction of rents and other charges payable by Tenant under the Lease, such dispute shall be submitted for resolution to the court exercising jurisdiction of the condemnation proceedings, each party bearing its respective costs for such determination. Landlord shall not agree to any settlement in lieu of condemnation with the condemning authority without Tenant's consent.

(f) No Existing Condemnation. Landlord represents and warrants that as of the Commencement Date it has no actual or constructive knowledge of any proposed condemnation of any part of the Premises. In the event that subsequent to the Lease Date, but prior to the Commencement Date, a total or partial condemnation either permanent or temporary, is proposed by any competent authority, Tenant shall be under no obligation to commence or continue construction of the building and other improvements and rent and other charges, if any, payable by Tenant under the Lease shall abate until such time as it can be reasonably ascertained that the Premises shall not be so affected. In the event the Premises is so affected, Tenant shall be entitled to all rights, damages and awards pursuant to the appropriate provisions of this Lease.

### 6.3. Termination upon Non-Restoration.

Following a Partial Taking, if a decision is made pursuant to this Article VI that the remaining portion of the Premises is not to be restored, and Tenant shall have determined that the continued development, use or occupancy of the remainder of the Premises by Tenant cannot be made economically viable or structurally sound, Tenant shall surrender the entire remaining portion of the Premises to Landlord and this Lease shall thereupon be terminated without liability or further recourse to the parties hereto, provided that any Rent, impositions and other amounts payable or obligations hereunder owed by Tenant to Landlord as of the date of the Partial Taking shall be paid in full.

## ARTICLE VII

### CONDITION OF PREMISES

7.1. Condition; Title. The Premises are demised and let in an "as is" condition as of the Commencement Date. The Premises are demised and let to Tenant subject to: As-Is. Notwithstanding anything to the contrary contained herein, upon Tenant taking possession of the Premises, Tenant shall be deemed to have accepted the Premises in its "as-is" and "where-is" condition, with any and all faults, and with the understanding that the Landlord has not offered any implied or expressed warranty as to the condition of the Premises and/or as to it being fit for any particular purpose, provided, however, that the foregoing shall not in any way limit, affect, modify or otherwise impact any of Landlord's representations, warranties and/or obligations contained in this Lease.

Tenant shall, within thirty (30) days following the Lease Date, obtain a title commitment to insure Tenant's leasehold interest in the Premises. Tenant shall advise Landlord as to any title matters that Tenant deems objectionable and Landlord Landlord shall address same in accordance with Section 7.3, below.

7.2. No Encumbrances. Landlord covenants that Landlord has full right and lawful authority to enter into this Lease in accordance with the terms hereof and to grant the estate demised hereby. Landlord represents and warrants that there are no existing mortgages, deeds of trust, easements, liens, security interests, encumbrances and/or restrictions encumbering Landlord's fee interest in the Land other than the Permitted Encumbrances. Landlord's fee interest shall not hereafter be subordinated to, or made subject to, any mortgage, deed of trust, easement, lien, security interest, encumbrance and/or restriction except for an encumbrance that expressly provides that it is and shall remain subject and subordinate at all times in lien, operation and otherwise to this Lease and to all renewals, modifications, amendments, consolidations and replacements hereof (including new leases entered into pursuant to the terms hereof and extensions). Landlord covenants that it will not encumber or lien the title of the Premises or cause or permit said title to be encumbered or lien in any manner whatsoever, and Tenant may reduce or discharge any such encumbrance or lien by payment or otherwise at any time after giving thirty (30) days' written notice thereof to Landlord. Tenant may recover or recoup all costs and expenses thereof from Landlord if the Landlord fails to discharge any such encumbrance within the said thirty (30) day period. Such recovery or recoupment may, in addition to all other remedies, be made by setting off against the amount of Rent payable by Tenant hereunder. Landlord and Tenant agree to work cooperatively together to create such easements and rights of way as may be necessary or appropriate for the Premises.

7.3. Landlord's Title and Quiet Enjoyment. Landlord represents and warrants that Landlord is seized in fee simple title to the Premises, free and clear and unencumbered, other than as affected by the Permitted Encumbrances. Landlord covenants that, so long as Tenant pays rent and performs the covenants herein contained on its part to be paid and performed, Tenant will have lawful, quiet and peaceful possession and occupancy of the Premises and all other rights and benefits accruing to Tenant under the Lease throughout the Term, without hindrance or molestation by or on the part of Landlord or anyone claiming through Landlord. Landlord further represents and warrants that it has good right, full power and lawful authority to enter into this Lease. Tenant shall have the right to order a title insurance commitment on the Premises. In the event the title insurance commitment shall reflect encumbrances or other conditions not acceptable to Tenant ("Defects"), then, Landlord, upon notification of the Defects, shall immediately and diligently proceed to cure same and shall have a reasonable time within which to cure the Defects. If, after the exercise of all reasonable diligence, Landlord is unable to clear the Defects, then Tenant may accept the Defects or Tenant may terminate the Lease and the parties shall be released from further liability, so long as Tenant is not in default hereunder beyond any grace period applicable thereto, Tenant's possession of the Premises will not be disturbed by Landlord, its successors and assigns.

Notwithstanding Section 7.3 above, Landlord and its agents, upon reasonable prior notice to Tenant, shall have the right to enter the Premises for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by Tenant with its obligations under this Lease.

## ARTICLE VIII

### DEFAULTS AND TERMINATION

8.1. Default.

The occurrence of any of the following events shall constitute an event of default (**Event of Default**) hereunder:

(a) if Tenant fails to pay when due any Rent or other impositions due hereunder pursuant to Article III (except where such failure is addressed by another event described in this Section 8.1 as to which lesser notice and grace periods are provided), and any such default shall continue for thirty (30) days after the receipt of written notice thereof by Tenant from Landlord; or

(b) if Tenant fails in any material respect to observe or perform any covenant, condition, agreement or obligation hereunder not addressed by any other event described in this Section 8.1, and shall fail to cure, correct or remedy such failure within thirty (30) days after the receipt of written notice thereof, unless such failure cannot be cured by the payment of money and cannot with due diligence be cured within a period of thirty (30) days, in which case such failure shall not be deemed to continue if Tenant proceeds promptly and with due diligence to cure the failure and diligently completes the curing thereof within a reasonable period of time; provided, however, that for such time as Landlord or its affiliate is the management agent retained by Tenant, Tenant shall not be in default hereunder due to actions or inactions taken by Landlord or its affiliate in its capacity as the management agent; or

(c) If any representation or warranty of Tenant set forth in this Lease, in any certificate delivered pursuant hereto, or in any notice, certificate, demand, submittal or request delivered to Landlord by Tenant pursuant to this Lease shall prove to be incorrect in any material and adverse respect as of the time when the same shall have been made and the same shall not have been remedied to the reasonable satisfaction of Landlord within thirty (30) days after notice from Landlord; or

(d) if Tenant shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (collectively called **Bankruptcy Laws**), or if Tenant shall (a) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee or Tenant or liquidator (or other similar official) of Tenant or of any substantial portion of Tenant's property; (b) admit in writing its inability to pay its debts generally as they become due; (c) make a general assignment for the benefit of its creditors; (d) file a petition commencing a voluntary case under or seeking to take advantage of a Bankruptcy Law; or (e) fail to controvert in a timely and appropriate manner, or in writing acquiesce to, any petition commencing an involuntary case against Tenant pursuant to any bankruptcy law; or

(e) if an order for relief against Tenant shall be entered in any involuntary case under the Federal Bankruptcy Code or any similar order against Tenant shall be entered pursuant to any other Bankruptcy Law, or if a petition commencing an involuntary case against Tenant or proposing the reorganization of Tenant under the Federal Bankruptcy Code shall be filed in and approved by any court of competent jurisdiction and not be discharged or denied within ninety (90) days after such filing, or if a proceeding or case shall be commenced in any court of competent jurisdiction seeking (a) the liquidation, reorganization, dissolution, winding-up or adjustment of debts of Tenant, (b) the appointment of a receiver, custodian, trustee, United States Trustee or liquidator (or other similar official of Tenant) of any substantial portion of Tenant's property, or (c) any similar relief as to Tenant pursuant to Bankruptcy Law, and any such proceeding or case shall continue undismissed, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect for ninety (90) days; or

(f) Tenant vacates or abandons the Premises or any substantial part thereof for a period of more than thirty (30) consecutive days (or, if applicable, such longer period as may be permitted in accordance with Section 6.1 or 6.2); or

(g) This Lease, the Premises or any part thereof are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not stayed or discharged within ninety (90) days after its levy; or

(h) Tenant makes any sale, conveyance, assignment or transfer in violation of this Lease.

#### 8.2. Remedies for Tenant's Default.

Upon or after the occurrence of any Event of Default which is not cured within any applicable cure period, and so long as same remains uncured, Landlord may terminate this Lease by providing not less than thirty (30) days' written notice (which notice may be contemporaneous with any notice provided under Section 8.1) to Tenant, setting forth Tenant's uncured, continuing default and Landlord's intent to exercise its rights to terminate, whereupon this Lease shall terminate on the termination date therein set forth unless Tenant's default has been cured before such termination date. Upon such termination, Tenant's interest in the Premises shall automatically revert to Landlord, Tenant shall promptly quit and surrender the Premises to Landlord, without cost to Landlord, and Landlord may, without demand and further notice, reenter and take possession of the Premises, or any part thereof, and repossess the same as Landlord's former estate by summary proceedings, ejectment or otherwise without being deemed guilty of any manner of trespass and without prejudice to any remedies which Landlord might otherwise have for arrearages of Rent or other impositions hereunder or for a prior breach of the provisions of this Lease. The obligations of Tenant under this Lease which arose prior to termination shall survive such termination.

8.3. Termination. Termination by Landlord: The occurrence of any of the following shall give Landlord the right to terminate this Lease upon the terms and conditions set forth below:

(a) Tenant fails to cause (i) HUD approval of all applicable evidentiary documents and a disposition by HUD to occur, and (ii) the Commencement Date to occur, within eleven (11) months following the Lease Date.

(b) Tenant and Landlord fail to obtain final approval of this Lease by the Miami-Dade Board of County Commissioners, which shall be within the Board's sole discretion (signature of this Lease by the Landlord shall be *prima facie* evidence of such approval).

(c) Institution of proceedings in voluntary bankruptcy by the Tenant.

(d) Institution of proceedings in involuntary bankruptcy against the Tenant if such proceedings continue for a period of Ninety (90) days or more.

(e) Assignment of Lease by Tenant for the benefit of creditors.

(f) A final determination of termination of this Lease in a court of law in favor of the Landlord in litigation instituted by the Tenant against the Landlord, or brought by the Landlord against Tenant.

(g) Tenant's failure to cure, within thirty (30) days following Tenant's receipt of written notice from Landlord with respect to Tenant's failure to cure a condition posing a threat to health or safety of the public or patrons (or such longer period if the default is not capable of being cured in such 30 day period).

8.4. Remedies Following Termination. Upon termination of this Lease, Landlord may:

1. retain, at the time of such termination, any Rent or other impositions paid hereunder, without any deduction, offset or recoupment whatsoever; and
2. enforce its rights under any bond outstanding at the time of such termination; and
3. require Tenant to deliver to Landlord, or otherwise effectively transfer to Landlord any and all governmental approvals and permits, and any and all rights of possession, ownership or control Tenant may have in and to, any and all financing arrangements, plans, specifications, and other technical documents or materials related to the Premises.

8.5. Regulatory Default.

Notwithstanding anything herein to the contrary, the following shall apply to any default declared as a result of any failure by Tenant to comply with the provisions of Section 8.1:

Upon a determination by Landlord that Tenant has materially breached or defaulted on any of the obligations under Section 8.1 (a **Regulatory Default**), Landlord shall notify Tenant of (i) the nature of the Regulatory Default, (ii) the actions required to be taken by Tenant in order to cure the Regulatory Default, and (iii) the time, (a minimum of sixty (60) days or such additional time period as may be reasonable under the circumstances), within which Tenant shall respond with reasonable evidence to Landlord that all such required actions have been taken.

(a) If Tenant shall have failed to respond or take the appropriate corrective action with respect to a Regulatory Default to the reasonable satisfaction of Landlord within the applicable time period, then Landlord shall have the right to terminate the Lease or seek other legal or equitable remedies as Landlord determines in its sole discretion; provided, however, that if prior to the end of the applicable time period, Tenant seeks a declaratory judgment or other order from a court having jurisdiction that Tenant shall not have incurred a Regulatory Default, Landlord shall not terminate this Lease during the pendency of such action.

(b) In addition to and not in limitation of the foregoing, if Landlord shall determine that a Regulatory Default shall have occurred by reason of a default by Tenant's management agent, and that Tenant shall have failed to respond or take corrective action to the reasonable satisfaction of Landlord within the applicable cure period, then Landlord may require Tenant to take such actions as are necessary in order to terminate the appointment of the management agent pursuant to the terms of its management agreement and to appoint a successor management agent of the Premises.

8.6. Performance by Landlord.

If Tenant shall fail to make any payment or perform any act required under this Lease, Landlord may (but need not) after giving not less than thirty (30) (except in case of emergencies and except where a shorter time period is specified elsewhere in this Lease) days' notice to

Tenant and without waiving any default or releasing Tenant from any obligations, cure such default for the account of Tenant. Tenant shall promptly pay Landlord the amount of such charges, costs and expenses as Landlord shall have incurred in curing such default.

**8.7. Costs and Damages.**

Tenant shall be liable to, and shall reimburse, Landlord for any and all actual reasonable expenditures incurred and for any and all actual damages suffered by Landlord in connection with any Event of Default, collection of Rent or other impositions owed under this Lease, the remedying of any default under this Lease or any termination of this Lease, unless such termination is caused by the default of Landlord, including all costs, claims, losses, liabilities, damages and expenses (including without limitation, reasonable attorneys' fees and costs) incurred by Landlord as a result thereof.

**8.8. Remedies Cumulative.**

The absence in this Lease of any enumeration of events of default by Landlord or remedies of either party with respect to money damages or specific performance shall not constitute a waiver by either party of its right to assert any claim or remedy available to it under law or in equity.

**8.9 Permitted Leasehold Mortgages.**

Neither the Tenant nor any permitted successor in interest to the Premises or any part thereof shall, without the prior written consent of the Landlord in each instance, engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Premises, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Premises, except for the Permitted Encumbrances and the leasehold mortgages securing the loans which will be obtained by Tenant for renovation of the Improvements and closed on or about the Commencement Date (the "**Permitted Leasehold Mortgages**"). With respect to the Permitted Leasehold Mortgages, the following provisions shall apply:

(a) When giving notice to the Tenant with respect to any default under the provisions of this Lease, the Landlord will also send a copy of such notice to the holder of each Permitted Leasehold Mortgage (each a "**Permitted Leasehold Mortgagee**"), provided that each such Permitted Leasehold Mortgagee shall have delivered to the Landlord in writing a notice naming itself as the holder of a Permitted Leasehold Mortgage and registering the name and post office address to which all notices and other communications to it may be addressed.

(b) Each Permitted Leasehold Mortgagee shall be permitted, but not obligated, to cure any default by the Tenant under this Lease within the same period of time specified for the Tenant to cure such default. The Tenant authorizes each Permitted Leasehold Mortgagee to take any such action at such Permitted Leasehold Mortgagee's option and does hereby authorize entry upon the Premises for such purpose.

(c) The Landlord agrees to accept payment or performance by any Permitted Leasehold Mortgagee as though the same had been done by the Tenant.

(d) In the case of a default by the Tenant other than in the payment of money, and provided that a Permitted Leasehold Mortgagee has commenced to cure the default and is

proceeding with due diligence to cure the default, the Landlord will refrain from terminating this Lease for a reasonable period of time (not to exceed 120 days from the date of the notice of default, unless (i) such cure cannot reasonably be completed within 120 days from the date of the notice of default, and (ii) a Permitted Leasehold Mortgagee continues to diligently pursue such cure to the reasonable satisfaction of the Landlord) within which time the Permitted Leasehold Mortgagee may either (i) obtain possession of the Premises (including possession by receiver); (ii) institute foreclosure proceedings and complete such foreclosure; or (iii) otherwise acquire the Tenant's interest under this Lease. The Permitted Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default which was the subject of the notice shall have been cured. Notwithstanding the foregoing, the Landlord will refrain from terminating this Lease in the event such Permitted Leasehold Mortgagee is enjoined or stayed in such possession or such foreclosure proceedings, and provided that the Permitted Leasehold Mortgagee has delivered to Landlord copies of any and all orders enjoining or staying such action, Landlord will grant such Permitted Leasehold Mortgagee such additional time as is required for such Permitted Leasehold Mortgagee to complete steps to acquire or sell Tenant's leasehold estate and interest in this Lease by foreclosure of its Permitted Leasehold Mortgage or by other appropriate means with due diligence; however, nothing in this Section shall be construed to extend this Lease beyond the Term.

(e) Any Permitted Leasehold Mortgagee or other acquirer of Tenant's leasehold estate and interest in this Lease pursuant to foreclosure, an assignment in lieu of foreclosure or other proceedings, any of which are permitted without the Landlord's consent, may, upon acquiring the Tenant's leasehold estate and interest in this Lease, without further consent of the Landlord and without HUD's consent, sell and assign the leasehold estate and interest in this Lease on such terms and to such persons and organizations as are acceptable to such Permitted Leasehold Mortgagee or acquirer and thereafter be relieved of all obligations under this Lease, provided such assignee has delivered to the Landlord its written agreement to be bound by all of the provisions of this Lease. Permitted Leasehold Mortgagee, or its nominee or designee, shall also have the right to further assign, sublease or sublet all or any part of the leasehold interest hereunder to a third party without the consent or approval of Landlord.

(f) In the event of a termination of this Lease prior to its stated expiration date, the Landlord will enter into a new lease for the Premises with the Permitted Leasehold Mortgagee (or its nominee), for the remainder of the term, effective as of the date of such termination, at the same Rent payment and subject to the same covenants and agreements, terms, provisions, and limitations herein contained, provided that:

(1) The Landlord receives the Permitted Leasehold Mortgagee's written request for such new lease within 30 days from the date of such termination and notice thereof by the Landlord to the Permitted Leasehold Mortgagee (including an itemization of amounts then due and owing to the Landlord under this Lease), and such written request is accompanied by payment to the Landlord of all amounts then due and owing to Landlord under this Lease and, within 10 days after the delivery of an accounting therefor by the Landlord, pays any and all costs and expenses incurred by the Landlord in connection with the execution and delivery of the new lease, less the net income collected by the Landlord from the Premises subsequent to the date of termination of this Lease and prior to the execution and delivery of the new lease, any excess of such net income over the aforesaid sums and expenses to be applied in payment of the Rent payment thereafter becoming due under the new lease, provided, however, that the Permitted Leasehold

Mortgagee shall receive full credit for all capitalized lease and Rent payments previously delivered by the Tenant to the Landlord; and

(2) Upon the execution and delivery of the new lease at the time payment is made in (1) above, all subleases which thereafter may have been assigned and transferred to the Landlord shall thereupon be assigned and transferred without recourse by the Landlord to the Permitted Leasehold Mortgagee (or its nominee), as the new Tenant.

(3) If a Permitted Leasehold Mortgagee acquires the leasehold estate created hereunder or otherwise acquires possession of the Premises pursuant to available legal remedies, Landlord will look to such holder to perform the obligations of Tenant hereunder only from and after the date of foreclosure or possession and will not hold such holder responsible for the past actions or inactions of the prior Tenant. Permitted Leasehold Mortgagee's liability shall be limited to the value of such Permitted Leasehold Mortgagee's interest in this Lease and in the leasehold estate created thereby.

Notwithstanding the foregoing and to the extent permitted by Section 42 of the Code, the deadline to complete construction of the Improvements set forth in Article V shall be extended for such period of time as may be reasonably required by the Permitted Leasehold Mortgagee or its nominee to complete construction.

## **ARTICLE IX**

### **SOVEREIGNTY AND POLICE POWERS**

#### **9.1. County as Sovereign**

It is expressly understood that notwithstanding any provision of this Lease and the Landlord's status thereunder:

1. The Landlord retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from withholding or refusing to issue any approvals of applications for tax exemption, building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Premises or the operation thereof, or be liable for the same; and
2. The Landlord shall not by virtue of this Lease be obligated to grant the Tenant any approvals of applications for tax exemption, building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Premises.

#### **9.2. No Liability for Exercise of Police Power.**

Notwithstanding and prevailing over any contrary provision in this Lease, or any Landlord covenant or obligation that may be contained in this Lease, or any implied or perceived duty or obligation including but not limited to the following:

- (i) To cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist the Tenant, regardless of the purpose required for such cooperation;
- (ii) To execute documents or give approvals, regardless of the purpose required for such execution or approvals;
- (iii) To apply for or assist the Tenant in applying for any county, city or third party permit or needed approval; or
- (iv) To contest, defend against, or assist the Tenant in contesting or defending against any challenge of any nature;

shall not bind the Board of County Commissioners, the Planning and Zoning Department, DERM, the Property Appraiser or any other county, city, federal or state department or authority, committee or agency to grant or leave in effect any tax exemptions, zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the Landlord or any other applicable governmental agencies in the exercise of its police power; and the Landlord shall be released and held harmless, by the Tenant from and against any liability, responsibility, claims, consequential or other damages, or losses to the Tenant or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the parties recognize that the approval of any building permit and/or certificate of occupancy or tax exemption will require the Landlord to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Lease, the Landlord shall have no obligation to approve, in whole or in part, any application for any type of tax exemption, permit, license, zoning or any other type of matter requiring government approval or waiver. The Landlord's obligation to use reasonable good faith efforts in the permitting of the use of County-owned property shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any requests or inquiries by Tenant as authorized by this Lease. Moreover, in no event shall a failure of the Landlord to adopt any of the Tenant's request or application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver be construed a breach or default of this Lease.

## **ARTICLE X**

### **PUBLIC RECORDS ACT**

10.1 As it relates to this Lease and any subsequent agreements and other documents related to the Development, Tenant and any of its subsidiaries, pursuant to Section 119.0701, Florida Statutes, shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by Landlord in order to perform the service;
- (b) Upon request of from Landlord's custodian of public records identified herein, provide the public with access to public records on the same terms and conditions that Landlord would provide the records and at a cost that does not exceed the

cost provided in the Florida Public Records Act, Miami-Dade County Administrative Order No. 4-48, 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 this Lease's term and following completion of the work under this Lease if Tenant does not transfer the records to Landlord; and
- (d) Meet all requirements for retaining public records and transfer to Landlord, at no cost to Landlord, all public records created, received, maintained and/or directly related to the performance of this Lease that are in possession of Tenant upon termination of this Lease. Upon termination of this Lease, Tenant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Landlord in a format that is compatible with the information technology systems of Landlord.

For purposes of this Article X, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of Landlord.

In the event Tenant does not comply with the public records disclosure requirements set forth in Section 119.0701, Florida Statutes, and this Article VIII, Landlord shall avail itself of the remedies set forth in Article 19 of this Lease.

**IF TENANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO TENANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, PLEASE CONTACT LANDLORD'S CUSTODIAN OF PUBLIC RECORDS AT:**

**Miami-Dade County  
Miami-Dade Public Housing and Community Development  
701 N.W. 1<sup>st</sup> Court, 16<sup>th</sup> Floor  
Miami, Florida 33136  
Attention: Jacqueline Dana  
Email: JDANA@miamidade.gov**

## **ARTICLE XI**

### **RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL**

#### **11.1. Landlord's Intent to Market Premises.**

If Landlord, in its sole discretion (but subject to any applicable HUD requirements relating to disposition and State laws relating to the sale or conveyance of County-owned property), decides to sell its interest in the Premises, then, prior to marketing the Premises, Landlord shall give written notice of such intent to Tenant setting forth the terms and conditions on which Landlord desires to sell the Premises (**Sales Notice**). Tenant shall have sixty (60) days thereafter

within which to notify Landlord of its intent to purchase the Premises offered for sale upon such terms and conditions as are set forth in the Sales Notice. If such Sales Notice is timely given, the Closing shall be ninety (90) days after the date of the Sales Notice. The status of title to be delivered and the instruments to be executed pursuant thereto shall be as stated in the Sales Notice and the amount of earnest money that Tenant shall be required to deposit with the notification of intent to purchase by matching the offer shall be as stated in the Sales Notice. Failure of Tenant to so notify Landlord in a timely manner shall be deemed an election not to purchase. In the event Tenant does not so timely notify Landlord of its intent to purchase the offered property upon the terms and conditions stated in the Sales Notice, Landlord shall be free to market such property on its own or through a broker and thereafter may sell the property, subject to all of the terms and conditions of the Lease and any applicable requirements of HUD or any other legal requirements; provided that Landlord may not sell the Premises on terms and conditions that are materially different from those contained in any Sales Notice received by Tenant without first offering Tenant the opportunity once again to purchase the Premises in accordance with this Section 11.1 upon such materially different terms and conditions upon which Landlord bases its offer of sale.

**11.2. Right of First Refusal.**

If Landlord is not marketing the Premises as provided in Section 11.1 above, but receives a written offer in acceptable form from an unrelated third party that Landlord is willing to accept for the purchase of the Premises (a **Sales Offer**), Landlord shall notify Tenant of the terms and conditions of such Sales Offer. Tenant shall then have sixty (60) days within which to notify Landlord of its intent to purchase the Premises by matching said Sales Offer and, in the event of such timely response, the closing of the purchase and sale of the Premises shall be in accordance with the terms of such Sales Offer. In the event that timely notice is not given by Tenant to Landlord, Tenant shall be deemed to have elected not to match said Sales Offer, and Landlord shall be free to sell the Premises to such third party on the terms and conditions set forth in the Sales Offer, subject, however, to all terms and conditions of this Lease and any applicable requirements of HUD or any other legal requirements. If Landlord fails to sell the Premises to such third party for an aggregate sales price not less than ninety-five percent (95%) of the sales price set forth in the Sales Offer and otherwise in accordance with the terms of the Sales Offer within one hundred and eighty (180) days after Landlord is entitled to sell the Premises to such third party, the right of first refusal created in this Section 11.2 shall be revived and again shall be enforceable.

**11.3. Mortgagee Rights.** Tenant's rights with respect to any option to purchase the Premises as set forth in this Section 11 shall be assignable to and may be exercised by any Permitted Leasehold Mortgagee which succeeds in interest to the Tenant, without requiring any consent or approval by Landlord.

**ARTICLE XII**

**INDEPENDENT PRIVATE INSPECTOR GENERAL  
AND MIAMI-DADE COUNTY INSPECTOR GENERAL REVIEWS**

**12.1. Inspector General.**

(a) Independent Private Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the Landlord has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the Landlord deems it appropriate to do so. Upon written notice from the Landlord, the Tenant shall make available to the IPSIG retained by the Landlord, all requested records and documentation pertaining to this Lease for inspection and reproduction. The Landlord shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Tenant incur any charges relating to these IPSIG services. The terms of this provision herein, apply to the Tenant, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the Landlord to conduct an audit or investigate the operations, activities and performance of the Tenant in connection with this Lease. The terms of this Section shall not impose any liability on the Landlord by the Tenant or any third party.

(b) Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all Miami-Dade County agreements, throughout the duration of said agreements, except as otherwise provided below.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Miami-Dade County agreements including, but not limited to, those agreements specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed Landlord and Tenant contracts, transactions, accounts, records, agreements and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to a contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Tenant, its officers, agents and employees, lobbyists, Landlord staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Tenant from the Inspector General or IPSIG retained by the Inspector General, the Tenant shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

## ARTICLE XIII

### **ADDITIONAL PROVISIONS PERTAINING TO REMEDIES**

13.1 **Reinstatement.** Notwithstanding anything to the contrary contained in the Lease, in the event Landlord exercises its remedies pursuant to Article VIII and terminates this Lease, Tenant may, within 90 days following such termination reinstate this Lease for the balance of the Term by paying to Landlord an amount equal to the actual damages incurred by Landlord as a result of the breach that resulted in such termination and any actual costs or expenses incurred by Landlord as a result of such reinstatement of this Lease.

13.2 **Notice.** Notwithstanding anything to the contrary contained in the Lease, Landlord shall not exercise any of its remedies hereunder without having given notice of the Event of Default or other breach or default to the Investor (following the admission of the Investor) simultaneously with the giving of notice to Tenant as required under the provisions of Article VIII of the Lease. The Investor shall have the same cure period after the giving of a notice as provided to Tenant, plus an additional period of 60 days. If the Investor elects to cure the Event of Default or other breach or default, Landlord agrees to accept such performance as though the same had been done or performed by Tenant.

13.3 **Investor.** Notwithstanding anything to the contrary contained in the Lease, following the admission of the Investor, the Investor shall be deemed a third-party beneficiary of the provisions of this Section for the sole and exclusive purpose of entitling the Investor to exercise its rights to notice and cure, as expressly stated herein. The foregoing right of the Investor to be a third-party beneficiary under the Lease shall be the only right of Investor (express or implied) to be a third-party beneficiary hereunder.

13.4 **New Manager.** Notwithstanding anything to the contrary contained in the Lease, Landlord agrees that it will take no action to effect a termination of the Lease by reason of any Event of Default or any other breach or default without first giving to the Investor reasonable time, not to exceed 60 days, to replace Tenant's manager and/or admit an additional manager and cause the new manager to cure the Event of Default or other breach or default; provided, however, that as a condition of such forbearance, Landlord must receive notice from the Investor of the substitution or admission of a new manager of Tenant within 30 days following Landlord's notice to Tenant and the Investor of the Event of Default or other breach or default, and Tenant, following such substitution or admission of the manager, shall thereupon proceed with due diligence to cure such Event of Default or other breach or default. In no event, however, shall Landlord be required to engage in the forbearance described in this section for a period longer than six (6) months, regardless of the due diligence of the Investor or the new manager.

## ARTICLE XIV

### **MISCELLANEOUS**

#### 14.1. **Construction.**

Landlord and Tenant agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section thereof.

#### 14.2. Performance Under Protest.

In the event of a dispute or difference between Landlord and Tenant as to any obligation which either may assert the other is obligated to perform or do, then the party against whom such obligation is asserted shall have the right and privilege to carry out and perform the obligation so asserted against it without being considered a volunteer or deemed to have admitted the correctness of the claim, and shall have the right to bring an appropriate action at law, equity or otherwise against the other for the recovery of any sums expended in the performance thereof and in any such action, the successful party shall be entitled to recover in addition to all other recoveries such reasonable attorneys' fees as may be awarded by the Court.

#### 14.3. Compliance with Governing Requirements.

Notwithstanding anything to the contrary herein, Landlord and Tenant hereby agree to comply with any and all applicable HUD notice and consent requirements set forth in the Governing Documents by providing notice to HUD as required in the Governing Documents.

#### 14.4. No Waiver.

Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any other provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them whether exercised by said party or not, shall be deemed to be in exclusion of any other; and two or more or all of such rights and remedies may be exercised at the same time.

#### 14.5. Headings.

The headings used for the various articles and sections of this Lease are used only as a matter of convenience for reference, and are not to be construed as part of this Lease or to be used in determining the intent of the parties of this Lease.

#### 14.6. Partial Invalidity.

If any terms, covenant, provision or condition of this Lease or the application thereof to any person or circumstances shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, the remaining terms, covenants, provisions and conditions of this Lease and their application to persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the parties, and in the place of such invalid or unenforceable provision there shall be substituted a like, but valid and enforceable, provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the parties.

#### 14.7. Decision Standards.

**14.8. Bind and Inure.**

#### 14.9. Estoppel Certificate.

#### 14.10. Recordation.

### 14.11. Notice.

**If to the Landlord:**

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Attn: Michael Liu, Director

and a copy to:

Miami-Dade County Attorney's Office  
111 N.W. 1<sup>st</sup> Street, Suite 2810  
Miami, Florida 33128  
Attn: Terrence A. Smith, Esq.  
Assistant County Attorney

If to Tenant:

The Gallery at Smathers Plaza, LLC  
315 South Biscayne Boulevard  
Miami, FL 33131  
Attn: Alberto Milo, Jr.

and a copy to:

Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Attention: Patricia K. Green, Esq.

A party may change its address by giving written notice to the other party as specified herein.

**14.12. Entire Agreement.**

This instrument contains all the agreements made between the parties hereto and may not be modified in any other manner than by an instrument in writing executed by the parties or their respective successors in interest.

**14.13. Amendment.**

This Lease may be amended by mutual agreement of Landlord and Tenant, provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of Tenant to develop and operate the Premises. Tenant and Landlord hereby expressly stipulate and agree that, they will not modify this Lease in any way nor cancel or terminate this Lease by mutual agreement nor will Tenant surrender its interest in this Lease, including but not limited to pursuant to the provisions of Section 6.3, without the prior written consent of all Permitted Leasehold Mortgagees and, following the admission of the Investor, the Tenant's Investor. No amendment to or termination of this Lease shall become effective without all such required consents. Tenant and Landlord further agree that they will not, respectively, take advantage of any provisions of the United States Bankruptcy Code that would result in a termination of this Lease or make it unenforceable.

**14.14. Governing Law, Forum, and Jurisdiction.**

This Lease shall be governed and construed in accordance with the laws of the State of Florida. Any dispute arising from this Lease or the contractual relationship between the Parties shall be decided solely and exclusively by State or Federal courts located in Miami-Dade County, Florida.

**14.15. Relationship of Parties: No Third Party Beneficiary.**

The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a principal/agent relationship exist between them.

**14.16. Access.**

Tenant agrees to grant a right of access to the Landlord or any of its authorized representatives, with respect to any books, documents, papers, or other records related to this Lease in order to make audits, examinations, excerpts, and transcripts until 3 years after the termination date of this Lease.

**14.17. Radon Gas.**

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.

**14.18. Non-Merger.**

Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or Tenant's estate created hereunder with the fee estate of the Premises or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, Tenant's estate created hereunder or any interest in this Lease or Tenant's estate (including the Improvements), and (b) the fee estate in the Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Landlord and, having an interest in (i) this Lease or Tenant's estate created hereunder, and (ii) the fee estate in the Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

**14.19. Compliance with Governing Documents.** Notwithstanding anything to the contrary herein, Landlord and Tenant hereby agree to comply with any and all applicable HUD notice and consent requirements set forth in the Governing Documents by providing notice to HUD as required in the Governing Documents.

**(SIGNATURES ON FOLLOWING PAGE)**

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this Agreement on the date first written above.

**LANDLORD:**

**MIAMI-DADE COUNTY**

\_\_\_\_\_  
Witness

Print Name:\_\_\_\_\_

By: \_\_\_\_\_

Print Name:\_\_\_\_\_

Title:\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

Print Name:\_\_\_\_\_

Attest: \_\_\_\_\_

Harvey Ruvin, Clerk of the Board

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Terrence A. Smith  
Assistant County Attorney

**TENANT:**

The Gallery at Smathers Plaza, LLC a Florida  
limited liability company

By: The Gallery at Smathers Plaza Manager, LLC ,  
a Florida limited liability company, its manager

\_\_\_\_\_  
Witness

Print Name:\_\_\_\_\_

By: \_\_\_\_\_

Alberto Milo, Jr., Vice President

\_\_\_\_\_  
Witness

Print Name:\_\_\_\_\_

## EXHIBIT A

### Land

A PORTION OF TRACT "A", PUBLIC HOUSING PROJECT FLORIDA 5-18, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 81, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT "A"; THENCE N14°12'21"W, ALONG THE WESTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 72.21 FEET; THENCE N00°22'31"E, ALONG THE WEST LINE OF SAID TRACT "A", FOR A DISTANCE OF 169.00 FEET; THENCE S89°37'29"E FOR A DISTANCE OF 191.31 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND: THENCE N00°18'34"E FOR A DISTANCE OF 128.54 FEET; THENCE N59°11'26"W FOR A DISTANCE OF 140.75 FEET; THENCE N00°22'31"E FOR A DISTANCE OF 81.62 FEET; THENCE S89°37'29"E FOR A DISTANCE OF 20.13 FEET; THENCE S89°38'04"E FOR A DISTANCE OF 197.31 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 57.27 FEET; THENCE N00°18'31"E FOR A DISTANCE OF 151.61 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 40.19 FEET; THENCE S00°18'34"W FOR A DISTANCE OF 131.36 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 34.50 FEET; THENCE S00°18'34"W, ALONG THE EAST LINE OF SAID TRACT "A", FOR A DISTANCE OF 318.96 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING AS ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 70°31'44"; THE FOLLOWING TWO (2) COURSES ARE ALONG THE EASTERLY LINE OF SAID TRACT "A", (1) THENCE SOUTHERLY AND SOUTHWESTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 30.77 FEET TO A POINT OF REVERSE CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING AS ITS ELEMENTS A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 88°42'50"; (2) THENCE SOUTHWESTERLY, SOUTHERLY, AND SOUTHEASTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 77.42 FEET; THENCE N89°41'26"W, DEPARTING SAID EASTERLY LINE, FOR A DISTANCE OF 48.01 FEET; THENCE N00°18'34"E FOR A DISTANCE OF 114.56 FEET; THENCE 89°41'26"W FOR A DISTANCE OF 29.50 FEET; THENCE N00°20'27"E FOR A DISTANCE OF 88.11 FEET; THENCE N90°00'00"W FOR A DISTANCE OF 76.71 FEET TO THE POINT OF BEGINNING.

## EXHIBIT B

### Insurance Requirements

(a) Prior to the commencement of construction by Tenant, Tenant shall furnish an "All Risk Builder's Risk Completed Value Form" policy for the full completed insurable value of the Premises in form satisfactory to Landlord.

(b) The Tenant shall furnish to the Vendor Assistance Section, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance (for professionals performing services for Tenant) in an amount not less than \$1,000,000.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

**NOTE: MIAMI-DADE COUNTY RFP NUMBER AND TITLE OF RFP MUST APPEAR ON EACH CERTIFICATE.**

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY  
111 NW 1<sup>st</sup> STREET  
SUITE 2340  
MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve Tenant of their liability and obligation under this section or under any other section of this agreement

Execution of this Lease is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after Landlord's notification to Tenant to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Lease, the Tenant shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Tenant fails to submit the required insurance documents in the manner prescribed in this Lease within twenty (20) calendar days after Landlord's notification to comply, it shall be an Event of Default pursuant to the Lease.

The Tenant shall be responsible for assuring that the insurance certificates required in conjunction with this Exhibit remain in force for the duration of the Term of the Lease, including any and all option years or extension periods that may be granted by the Landlord. If insurance certificates are scheduled to expire during the Term, the Tenant shall be responsible for submitting new or renewed insurance certificates to the Landlord at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the Landlord shall provide thirty (30) days written notice to Tenant to cure the noncompliance. In the event Tenant does not replace the expired certificates with new or renewed certificates which cover the contractual period, it shall be an Event of Default pursuant to the Lease.

(c) The Tenant agrees to cooperate with the Landlord in obtaining the benefits of any insurance or other proceeds lawfully or equitably payable to the Landlord in connection with this Lease.

(d) The "All Risk Builder's Risk Completed Value Form" policy with respect to the Premises shall be converted to an "all risk" or comprehensive insurance policy upon completion of the Improvements, naming Landlord as an additional insured thereunder and shall insure the Project in an amount not less than the full insurable replacement value of the Premises. The Tenant hereby agrees that all insurance proceeds from the All Risk Builder Risk Completed Value Form policy (or if converted, the "all risk" or comprehensive policy) shall be used to restore, replace or rebuild the Improvements, if the Tenant determines that it is in its best interest to do so, subject to the requirements of any approved mortgage lien holder's rights secured against the Premises and subject further to the terms of Article VI of the Lease.

(e) All such insurance policies shall contain (i) an agreement by the insurer that it will not cancel the policy without delivering prior written notice of cancellation to each named insured and loss payee thirty (30) days prior to canceling the insurance policy; and (ii) endorsements that the rights of the named insured(s) to receive and collect the insurance proceeds under the policies shall not be diminished because of any additional insurance coverage carried by the Tenant for its own account.

(f) If the Premises is located in a federally designated flood plain, an acceptable flood insurance policy shall also be delivered to the Landlord, providing coverage in the maximum

amount reasonable necessary to insure against the risk of loss from damage to the Premises caused by a flood.

(g) Neither the Landlord nor the Tenant shall be liable to the other (or to any insurance company insuring the other party), for payment of losses insured by insurance policies benefiting the parties suffering such loss or damage, even though such loss or damage might have been caused by the negligence of the other party, its agents or employees.

## EXHIBIT 2

This Instrument Was Prepared By:

Patricia K. Green, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler St., Suite 2200  
Miami, Florida 33130

Record and Return To:  
Patricia K. Green, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler St., Suite 2200  
Miami, Florida 33130

### EASEMENT AGREEMENT (Phase One and Gallery)

This Easement Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and between:

SMATHERS PRESERVATION PHASE ONE, LLC, a Florida limited liability company  
("Phase One Owner") and

THE GALLERY AT SMATHERS PLAZA, LLC, a Florida limited liability company  
("Gallery")

each having its principal office located at 315 South Biscayne Boulevard, Miami, FL 33131.

### RECITALS

A. Phase One Owner is the owner of a leasehold interest in the property legally described on Exhibit "A" attached hereto and made a part hereof (the "Phase One Property") pursuant to that certain lease by and between Phase One Owner, as lessee, and Miami-Dade County, a political subdivision of the State of Florida (the "County") as lessor. Phase One Owner is renovating a 182-unit public housing complex on the Phase One Property.

B. Gallery is the owner of a leasehold interest in the property legally described on Exhibit "B" attached hereto and made a part hereof (the "Gallery Property") pursuant to that certain lease by and between the County, as lessor, and Gallery, as lessee. Gallery intends to construct an up to 140-unit apartment complex on the Gallery Property, which will also include a senior center (the "Center").

C. Phase One Owner and Gallery are sometimes herein collectively referred to as the "Parties" and each, individually, as a "Party".

E. For good and valuable consideration, each of the Parties has agreed to grant to the others as an appurtenance to their respective properties, the non-exclusive easements described herein.

#### AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.
2. Phase One Access, Parking and Walkways Easement. Phase One Owner hereby grants to Gallery, for its use and benefit, and the use and benefit of its successors and assigns who acquire an interest in the Gallery Property, and its tenants, agents, employees, customers and invitees, a non-exclusive easement (i) for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the Phase One Property and (ii) for parking in the unreserved parking spaces located on the Phase One Property from time to time.
3. Gallery Access, Parking, Walkways and Center Easement. Gallery hereby grants to Phase One Owner, for its use and benefit, and the use and benefit of its successors and assigns who acquire an interest in the Phase One Property, and its tenants, agents, employees, customers and invitees, a non-exclusive easement (i) for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the Gallery Property and (ii) for parking in the unreserved parking spaces located on the Gallery Property from time to time. Gallery also hereby grants to Phase One Owner for its use and benefit, and the use and benefit of its successors and assigns who acquire an interest in the Phase One Property, and their tenants, agents, employees, customers and invitees, a non-exclusive easement for access to, and the use and enjoyment of, the Center.

4. Maintenance. Each of the Parties agrees to maintain the driveways, sidewalks, and parking spaces within its respective property for the joint use thereof by the Parties hereto, in working condition and free of material defects, subject to occasional interruption of service due to (i) ordinary wear and tear and use thereof, (ii) routine or extraordinary maintenance or (iii) events beyond the granting Party's reasonable control. Each of the granting Parties shall have the right to perform all such maintenance and repairs itself through its management company, or to select the contractor(s) of its choice in connection with all aspects of maintenance, repair and operation of its driveways, sidewalks, and parking spaces. No Party shall be obligated to pay for the use or maintenance of the other's driveways, sidewalks, or parking spaces, except to the extent any such maintenance is necessitated by the negligent or intentional act or omission of the benefitted Party. In no event shall a party have access to the other's interior facilities such as computer labs, tenant meeting rooms or exercise facilities pursuant to the easements created hereby, other than with regard to access to and use of the Center by Phase One Owner. The maintenance of the Center shall be the sole responsibility of Gallery.

5. Indemnity. Each of the Parties hereto agrees to indemnify the other and hold it harmless from and against any and all loss, cost, expense, claims or damages suffered by a Party as a result of the negligent or willful act or omission of the other, its employees, agents and contractors, as a result of the exercise of the rights and obligations of the Parties under this Agreement, except for any such liability, loss, damage, cost or expense as may arise in whole or in part from the acts of the Party seeking indemnification. Each Party shall obtain and maintain commercial general liability insurance which provides coverage for acts occurring not only on its own property but also on the property of the other Party in connection with the exercise of any of the easement rights granted herein. Further, each of the Parties hereto agrees to indemnify the other and hold it harmless from and against any and all loss, cost, expense, claims or damages arising from any construction liens placed on a Party's property by any subcontractors or materialmen providing services or materials to the other Party.

6. Successors and Assigns. This Agreement shall bind, and the benefit thereof shall inure to, the respective successors and assigns of the Parties hereto.

7. No Public Dedication. Nothing contained in this Agreement shall, in any way, be deemed or constituted a gift of or dedication of any portion of any lands described herein to the general public or for the benefit of the general public whatsoever, it being the intention of the Parties hereto that this Agreement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

8. Remedies. Upon a default by any Party hereto the non-defaulting Party shall have any and all remedies available at law or in equity; provided, however, that no Party shall have the right to invoke any equitable remedy which would deny another Party physical access to its property.

9. Enforcement. In the event it becomes necessary for any Party including the holder of any mortgage lien to defend or institute legal proceedings as a result of the failure of either Party to

comply with the terms, covenants and conditions of this Agreement, the prevailing Party in such litigation shall recover from the other Party all costs and expenses incurred or expended in connection therewith, including, without limitation, reasonable attorneys' fees and costs, at all levels.

10. Notices to Mortgagees and Landlord. Each of the Parties agrees to furnish duplicate copies of any notices of default delivered to the other, to the holder of any mortgage lien encumbering their respective properties and to the County, as landlord of the Phase One Property and the Gallery Property, provided that the identity and address of such mortgagees have been made known to the Party sending any such notice.

11. Amendment. The Parties hereto agree that this Agreement may not be amended, released or terminated without the prior written consent of the holder of any mortgage encumbering the property to be affected by such amendment and approval by the County.

12. Third Party Beneficiary. So long as the County remains as landlord with respect to the Phase One Property or the Gallery Property, or any mortgage loan remains outstanding with respect to the Phase One Property or the Gallery Property, or any amounts are owed to the holder(s) of such mortgages, the County and such holder(s) shall be deemed an intended third-party beneficiary hereof and entitled to enforce the provisions hereof.

13. No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so in this Agreement.

14. Interpretation. No provision of this Agreement will be interpreted in favor of, or against, either of the Parties hereto by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single document.

16. Notices. All notices, demands, requests or other communications required or permitted to be given hereunder shall be deemed delivered and received upon actual receipt or refusal to receive same, and shall be made by United States certified or registered mail, return receipt requested, by nationally recognized overnight courier service such as Federal Express, or by hand delivery, and shall be addressed to the respective Parties at the addresses set forth in the preamble to this Agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto relating in any manner to the subject matter of this Agreement. No prior agreement or understanding pertaining to same shall be valid or of any force or effect, and the covenants and agreements herein contained cannot be altered, changed or supplemented except in writing and signed by the Parties hereto.

18. Severability. If any clause or provision of this Agreement is deemed illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the validity of the remainder of this Agreement shall not be affected thereby and shall be legal, valid and enforceable.

19. Venue; Jurisdiction. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Florida, without regard to its conflicts of laws provisions. Further, all Parties hereto agree to avail themselves of and submit to the personal jurisdiction of the Courts of the State of Florida in Miami-Dade County.

SIGNATURES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date and year first set forth above.

Witnesses:

PHASE ONE OWNER:

SMATHERS PRESERVATION PHASE ONE, LLC, a  
Florida limited liability company

By: Smathers Phase One Manager, LLC, a Florida  
liability company, its manager

Print: \_\_\_\_\_

By: \_\_\_\_\_  
Tony Del Pozzo, Vice President

Print: \_\_\_\_\_

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019,  
by Tony Del Pozzo, as Vice President of Smathers Phase One Manager, LLC, a Florida limited  
liability company, the manager of Smathers Preservation Phase One LLC, a Florida limited  
liability company, on behalf of the companies.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Witnesses:

GALLERY:

THE GALLERY AT SMATHERS PLAZA, LLC, a  
Florida limited liability company

By: The Gallery at Smathers Plaza Manager,  
LLC, a Florida liability company, its manager

Print: \_\_\_\_\_

By: \_\_\_\_\_  
Tony Del Pozzo, Vice President

Print: \_\_\_\_\_

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2019, by Tony Del Pozzo as Vice President of The Gallery at Smathers Plaza Manager, LLC, a  
Florida limited liability company, the manager of The Gallery at Smathers Plaza, LLC, a Florida  
limited liability company, on behalf of the companies.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit "A"**  
**Phase One - Legal Description**

**SMATHERS PHASE ONE: PORTION REMAINING  
AFTER GALLERY RELEASE**

A PORTION OF TRACT "A", PUBLIC HOUSING PROJECT FLORIDA 5-18, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 81, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT "A"; THENCE N14°12'21"W, ALONG THE WESTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 72.21 FEET; THENCE N00°22'31"E, ALONG THE WEST LINE OF SAID TRACT "A", FOR A DISTANCE OF 253.50 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND: THENCE N00°22'31"E FOR A DISTANCE OF 293.41 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING AS ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 89°37'29"; THENCE NORTHERLY, NORTHEASTERLY, AND EASTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 39.11 FEET; THENCE N90°00'00"E, ALONG THE NORTH LINE OF SAID TRACT "A", FOR A DISTANCE OF 342.56 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHWEST, HAVING AS ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 90°18'34"; THENCE EASTERLY, SOUTHEASTERLY, AND SOUTHERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 39.40 FEET; THENCE S00°18'34"W, ALONG THE EAST LINE OF SAID TRACT "A", FOR A DISTANCE OF 176.95 FEET; THENCE N89°41'26"W FOR A DISTANCE OF 34.50 FEET; THENCE N00°18'34"E FOR A DISTANCE OF 131.36 FEET; THENCE N89°41'26"W FOR A DISTANCE OF 40.19 FEET; THENCE S00°18'31"W FOR A DISTANCE OF 151.61 FEET; THENCE N89°41'26"W FOR A DISTANCE OF 57.27 FEET; THENCE N59°38'04"W FOR A DISTANCE OF 197.31 FEET; THENCE N89°37'29"W FOR A DISTANCE OF 20.13 FEET; THENCE S00°22'31"W FOR A DISTANCE OF 81.62 FEET; THENCE S59°11'26"E FOR A DISTANCE OF 140.75 FEET; THENCE S00°18'34"W FOR A DISTANCE OF 128.54 FEET; THENCE N90°00'00"W FOR A DISTANCE OF 57.35 FEET; THENCE N00°18'34"E FOR A DISTANCE OF 16.25 FEET; THENCE N62°29'44"W FOR A DISTANCE OF 150.50 FEET TO THE POINT OF BEGINNING.

ALL OF THE FOREGOING CONTAINS AN AREA OF 95,359 SQUARE FEET MORE OR LESS.

**Exhibit "B"**  
**Gallery- Legal Description**

**(THE GALLERY AT SMATHERS):**

A PORTION OF TRACT "A", PUBLIC HOUSING PROJECT FLORIDA 5-18, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 81, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT "A"; THENCE N14°12'21"W, ALONG THE WESTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 72.21 FEET; THENCE N00°22'31"E, ALONG THE WEST LINE OF SAID TRACT "A", FOR A DISTANCE OF 169.00 FEET; THENCE S89°37'29"E FOR A DISTANCE OF 191.31 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND: THENCE N00°18'34"E FOR A DISTANCE OF 128.54 FEET; THENCE N59°11'26"W FOR A DISTANCE OF 140.75 FEET; THENCE N00°22'31"E FOR A DISTANCE OF 81.62 FEET; THENCE S89°37'29"E FOR A DISTANCE OF 20.13 FEET; THENCE S89°38'04"E FOR A DISTANCE OF 197.31 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 57.27 FEET; THENCE N00°18'31"E FOR A DISTANCE OF 151.61 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 40.19 FEET; THENCE S00°18'34"W FOR A DISTANCE OF 131.36 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 34.50 FEET; THENCE S00°18'34"W, ALONG THE EAST LINE OF SAID TRACT "A", FOR A DISTANCE OF 318.96 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING AS ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 70°31'44"; THE FOLLOWING TWO (2) COURSES ARE ALONG THE EASTERLY LINE OF SAID TRACT "A", (1) THENCE SOUTHERLY AND SOUTHWESTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 30.77 FEET TO A POINT OF REVERSE CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING AS ITS ELEMENTS A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 88°42'50"; (2) THENCE SOUTHWESTERLY, SOUTHERLY, AND SOUTHEASTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 77.42 FEET; THENCE N89°41'26"W, DEPARTING SAID EASTERLY LINE, FOR A DISTANCE OF 48.01 FEET; THENCE N00°18'34"E FOR A DISTANCE OF 114.56 FEET; THENCE S89°41'26"W FOR A DISTANCE OF 29.50 FEET; THENCE N00°20'27"E FOR A DISTANCE OF 88.11 FEET; THENCE N90°00'00"W FOR A DISTANCE OF 76.71 FEET TO THE POINT OF BEGINNING.

ALL OF THE FOREGOING CONTAINS AN AREA OF 75,407 SQUARE FEET MORE OR LESS.

**JOINDER BY PHASE ONE FIRST MORTGAGEE**

The undersigned, The Bank of New York Mellon Trust Company, N.A., as Mortgagee under that certain Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated June 1, 2018, by Smathers Preservation Phase One, LLC, a Florida limited liability company, as mortgagor, to the Housing Finance Authority of Miami-Dade County (Florida), as mortgagee, recorded on June 6, 2018, in Official Records Book 31004, Page 495; as assigned to The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, by Assignment of Leasehold Mortgage and Related Documents dated June 6, 2018, recorded on June 6, 2018, in Official Records Book 31004, Page 543 (the "Mortgage") of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement, does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

The Bank of New York Mellon Trust Company,  
N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA)  
COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ The Bank of New York Mellon Trust Company, N.A.

☐ Personally Known

☐ Produced Drivers License No. \_\_\_\_\_

☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name:

Notary Public, State of Florida at Large

Commission No.:

My Commission Expires:

**JOINDER BY PHASE ONE SECOND MORTGAGEE**

The undersigned, Miami-Dade County, a political subdivision of the State of Florida, as Mortgagee under that certain Leasehold Mortgage and Security Agreement and Assignment of Leases, Rents and Profits dated June 1, 2018, by Smathers Preservation Phase One, LLC, a Florida limited liability company, as mortgagor, in favor of Miami-Dade County, as mortgagee, recorded on June 6, 2018, in Official Records Book 31004, Page 566; (the "Mortgage") of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

Approved as to form  
And legal sufficiency

Miami-Dade County, a political subdivision of the  
State of Florida

By \_\_\_\_\_  
Terrence Smith  
Assistant County Attorney

By: \_\_\_\_\_  
Maurice L. Kemp, Deputy Mayor

STATE OF FLORIDA)  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by Maurice L. Kemp as Deputy Mayor of Miami-Dade County, a political subdivision of the State of Florida

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER AND CONSENT BY AND OF LANDLORD**

The undersigned, Miami-Dade County, a political subdivision of the State of Florida, as Owner of that certain property described in Exhibits A and B of the Easement Agreement and as Landlord under that certain Ground Lease Agreement between Smathers Preservation Phase One, LLC, a Florida limited liability company, as tenant, dated January 30, 2018, and that certain Memorandum of Ground Lease, dated May 29, 2018, and recorded on June 6, 2018, in Official Records Book 31004, Page 366 (collectively the "Lease") of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

Approved as to form  
And legal sufficiency

Miami-Dade County, a political subdivision of the  
State of Florida

By \_\_\_\_\_  
Terrence Smith  
Assistant County Attorney

By: \_\_\_\_\_  
Maurice L. Kemp, Deputy Mayor

STATE OF FLORIDA)  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2018, by Maurice L. Kemp as Deputy Mayor of Miami-Dade County, a political subdivision of the State of Florida

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER BY PHASE ONE THIRD MORTGAGEE**

The undersigned, City of Miami, a municipal corporation of the State of Florida, as Mortgagee under that certain Leasehold Mortgage and Security Agreement for Smathers Preservation Phase One, LLC dated as of June 4, 2018, by Smathers Preservation Phase One, LLC, a Florida limited liability company, as mortgagor, to the City of Miami, as mortgagee, recorded on June 6, 2018, in Official Records Book 31004, Page 625 (the "Mortgage") of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Affordable Housing Covenant (the "Covenant") does hereby acknowledge that the terms of the Covenant are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

Approved as to form  
And legal sufficiency

City of Miami, a municipal corporation of the State  
of Florida

By \_\_\_\_\_  
Victoria Mendez, City Attorney

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

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF FLORIDA)  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of City of Miami, a municipal corporation of the State of Florida

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER BY PHASE ONE FOURTH MORTGAGEE AND  
COLLATERAL ASSIGNEE OF MORTGAGEE**

The undersigned, as (a) Mortgagee and (b) Collateral Assignee of Mortgagee, respectively, under that certain Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated June 6, 2018, by Smathers Preservation Phase One, LLC, a Florida limited liability company, as mortgagor, to Urgent, Inc., a Florida nonprofit corporation, as mortgagee, recorded on June 6, 2018, in Official Records Book 31004, Page 640; as affected by (a) Collateral Assignment of Loan, Loan Rights, Mortgage and Loan Documents dated June 6, 2018, between Urgent, Inc., a Florida nonprofit corporation, and Bank of America California, N.A., recorded on June 6, 2018, in Official Records Book 31004, Page 697 (the "Mortgage") of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

MORTGAGEE:

URGENT, INC., a Florida non-profit corporation

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

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of URGENT, INC.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

AHP COLLATERAL ASSIGNEE:

BANK OF AMERICA CALIFORNIA, N.A., a  
national banking association

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2019 by \_\_\_\_\_, as \_\_\_\_\_ of BANK OF  
AMERICA CALIFORNIA, N.A., a national banking association, on behalf of the banking  
association.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

### EXHIBIT 3

This Instrument Was Prepared By:

Patricia K. Green, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler St., Suite 2200  
Miami, Florida 33130

Record and Return To:  
Patricia K. Green, Esq.  
Stearns Weaver Miller Weissler  
Alhadeff & Sitterson, P.A.  
150 West Flagler St., Suite 2200  
Miami, Florida 33130

### EASEMENT AGREEMENT (Phase Two and Gallery)

This Easement Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and between:

SMATHERS PHASE TWO, LLC, a Florida limited liability company ("Phase Two Owner") and

THE GALLERY AT SMATHERS PLAZA, LLC, a Florida limited liability company ("Gallery")

each having its principal office located at 315 South Biscayne Boulevard, Miami, FL 33131.

### RECITALS

A. Phase Two Owner is the owner of a leasehold interest in the property legally described on Exhibit "A" attached hereto and made a part hereof (the "Phase Two Property") pursuant to that certain lease by and between Phase Two Owner, as lessee, and Miami-Dade County, a political subdivision of the State of Florida (the "County") as lessor. Phase Two Owner has constructed a 133-unit public housing complex on the Phase Two Property.

B. Gallery is the owner of a leasehold interest in the property legally described on Exhibit "B" attached hereto and made a part hereof (the "Gallery Property") pursuant to that certain

lease by and between the County, as lessor, and Gallery, as lessee. Gallery intends to construct an up to 140-unit apartment complex on the Gallery Property, which will also include a senior center (the "Center").

C. Phase Two Owner and Gallery are sometimes herein collectively referred to as the "Parties" and each, individually, as a "Party".

E. For good and valuable consideration, each of the Parties has agreed to grant to the others as an appurtenance to their respective properties, the non-exclusive easements described herein.

#### AGREEMENT

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The above recitals are true and correct and by this reference are incorporated as if fully set forth herein.
2. Phase Two Access, Parking and Walkways Easement. Phase Two Owner hereby grants to Gallery, for its use and benefit, and the use and benefit of its successors and assigns who acquire an interest in the Gallery Property, and its tenants, agents, employees, customers and invitees, a non-exclusive easement (i) for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the Phase Two Property and (ii) for parking in the unreserved parking spaces located on the Phase Two Property from time to time.
3. Gallery Access, Parking, Walkways and Center Easement. Gallery hereby grants to Phase Two Owner, for its use and benefit, and the use and benefit of its successors and assigns who acquire an interest in the Phase Two Property, and its tenants, agents, employees, customers and invitees, a non-exclusive easement (i) for vehicular and pedestrian ingress and egress over, across and through the driveways and walkways constructed from time to time within the Gallery Property and (ii) for parking in the unreserved parking spaces located on the Gallery Property from time to time. Gallery also hereby grants to Phase Two Owner for its use and benefit, and the use and benefit of its successors and assigns who acquire an interest in the Phase Two Property, and their tenants, agents, employees, customers and invitees, a non-exclusive easement for access to, and the use and enjoyment of, the Center.
4. Maintenance. Each of the Parties agrees to maintain the driveways, sidewalks, and parking spaces within its respective property for the joint use thereof by the Parties hereto, in working condition and free of material defects, subject to occasional interruption of service due to (i)

ordinary wear and tear and use thereof, (ii) routine or extraordinary maintenance or (iii) events beyond the granting Party's reasonable control. Each of the granting Parties shall have the right to perform all such maintenance and repairs itself through its management company, or to select the contractor(s) of its choice in connection with all aspects of maintenance, repair and operation of its driveways, sidewalks, and parking spaces. No Party shall be obligated to pay for the use or maintenance of the other's driveways, sidewalks, or parking spaces, except to the extent any such maintenance is necessitated by the negligent or intentional act or omission of the benefitted Party. In no event shall a party have access to the other's interior facilities such as computer labs, tenant meeting rooms or exercise facilities pursuant to the easements created hereby, other than with regard to access to and use of the Center by Phase Two Owner. The maintenance of the Center shall be the sole responsibility of Gallery.

5. Indemnity. Each of the Parties hereto agrees to indemnify the other and hold it harmless from and against any and all loss, cost, expense, claims or damages suffered by a Party as a result of the negligent or willful act or omission of the other, its employees, agents and contractors, as a result of the exercise of the rights and obligations of the Parties under this Agreement, except for any such liability, loss, damage, cost or expense as may arise in whole or in part from the acts of the Party seeking indemnification. Each Party shall obtain and maintain commercial general liability insurance which provides coverage for acts occurring not only on its own property but also on the property of the other Party in connection with the exercise of any of the easement rights granted herein. Further, each of the Parties hereto agrees to indemnify the other and hold it harmless from and against any and all loss, cost, expense, claims or damages arising from any construction liens placed on a Party's property by any subcontractors or materialmen providing services or materials to the other Party.

6. Successors and Assigns. This Agreement shall bind, and the benefit thereof shall inure to, the respective successors and assigns of the Parties hereto.

7. No Public Dedication. Nothing contained in this Agreement shall, in any way, be deemed or constituted a gift of or dedication of any portion of any lands described herein to the general public or for the benefit of the general public whatsoever, it being the intention of the Parties hereto that this Agreement shall be limited to and utilized for the purposes expressed herein and only for the benefit of the persons herein named.

8. Remedies. Upon a default by any Party hereto the non-defaulting Party shall have any and all remedies available at law or in equity; provided, however, that no Party shall have the right to invoke any equitable remedy which would deny another Party physical access to its property.

9. Enforcement. In the event it becomes necessary for any Party including the holder of any mortgage lien to defend or institute legal proceedings as a result of the failure of either Party to comply with the terms, covenants and conditions of this Agreement, the prevailing Party in such litigation shall recover from the other Party all costs and expenses incurred or expended in

connection therewith, including, without limitation, reasonable attorneys' fees and costs, at all levels.

10. Notices to Mortgagees and Landlord. Each of the Parties agrees to furnish duplicate copies of any notices of default delivered to the other, to the holder of any mortgage lien encumbering their respective properties and to the County, as landlord of the Phase Two Property and the Gallery Property, provided that the identity and address of such mortgagees have been made known to the Party sending any such notice.

11. Amendment. The Parties hereto agree that this Agreement may not be amended, released or terminated without the prior written consent of the holder of any mortgage encumbering the property to be affected by such amendment and approval by the County.

12. Third Party Beneficiary. So long as the County remains as landlord with respect to the Phase Two Property or the Gallery Property, or any mortgage loan remains outstanding with respect to the Phase Two Property or the Gallery Property, or any amounts are owed to the holder(s) of such mortgages, the County and such holder(s) shall be deemed an intended third-party beneficiary hereof and entitled to enforce the provisions hereof.

13. No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so in this Agreement.

14. Interpretation. No provision of this Agreement will be interpreted in favor of, or against, either of the Parties hereto by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single document.

16. Notices. All notices, demands, requests or other communications required or permitted to be given hereunder shall be deemed delivered and received upon actual receipt or refusal to receive same, and shall be made by United States certified or registered mail, return receipt requested, by nationally recognized overnight courier service such as Federal Express, or by hand delivery, and shall be addressed to the respective Parties at the addresses set forth in the preamble to this Agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto relating in any manner to the subject matter of this Agreement. No prior agreement or

understanding pertaining to same shall be valid or of any force or effect, and the covenants and agreements herein contained cannot be altered, changed or supplemented except in writing and signed by the Parties hereto.

18. Severability. If any clause or provision of this Agreement is deemed illegal, invalid or unenforceable under present or future laws effective during the term hereof, then the validity of the remainder of this Agreement shall not be affected thereby and shall be legal, valid and enforceable.

19. Venue; Jurisdiction. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Florida, without regard to its conflicts of laws provisions. Further, all Parties hereto agree to avail themselves of and submit to the personal jurisdiction of the Courts of the State of Florida in Miami-Dade County.

SIGNATURES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date and year first set forth above.

Witnesses:

PHASE TWO OWNER:

SMATHERS PHASE TWO, LLC, a Florida limited liability company

By: Smathers Phase Two Manager, LLC, a Florida liability company, its manager

Print: \_\_\_\_\_

By: \_\_\_\_\_  
Tony Del Pozzo, Vice President

Print: \_\_\_\_\_

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Tony Del Pozzo, as Vice President of Smathers Phase Two Manager, LLC, a Florida limited liability company, the manager of Smathers Phase Two, LLC, a Florida limited liability company, on behalf of the companies.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Witnesses:

GALLERY:

THE GALLERY AT SMATHERS PLAZA, LLC, a  
Florida limited liability company

By: The Gallery at Smathers Plaza Manager,  
LLC, a Florida liability company, its manager

Print: \_\_\_\_\_

By: \_\_\_\_\_  
Tony Del Pozzo, Vice President

Print: \_\_\_\_\_

STATE OF FLORIDA                    )  
  ) SS:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2019, by Tony Del Pozzo as Vice President of The Gallery at Smathers Plaza Manager, LLC, a  
Florida limited liability company, the manager of The Gallery at Smathers Plaza, LLC, a Florida  
limited liability company, on behalf of the companies.

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Exhibit "A"**

**Phase Two - Legal Description**

**SMATHERS PLAZA-PORION REMAINING IN PHASE TWO  
AFTER RELEASE OF GALLERY LAND**

A PORTION OF TRACT "A", PUBLIC HOUSING PROJECT FLORIDA 5-18, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 81, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF SAID TRACT "A"; THENCE N14°12'21"W, ALONG THE WESTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 72.21 FEET; THENCE N00°22'31"E, ALONG THE WEST LINE OF SAID TRACT "A", FOR A DISTANCE OF 253.50 FEET; THENCE S62°29'44"E FOR A DISTANCE OF 150.50 FEET; THENCE S00°18'34"W FOR A DISTANCE OF 16.25 FEET; THENCE N90°00'00"E FOR A DISTANCE OF 134.06 FEET; THENCE S00°20'27"W FOR A DISTANCE OF 88.11 FEET; THENCE S89°41'26"E FOR A DISTANCE 29.50 FEET; THENCE S00°18'34"W FOR A DISTANCE OF 114.56 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 48.01 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHEAST, HAVING AS ITS ELEMENTS A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 71°48'53", A RADIAL LINE THROUGH SAID POINT BEARS S72°07'27"W; THENCE SOUTHEASTERLY AND EASTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 62.67 FEET TO A POINT OF CUSP; THENCE N90°00'00"W FOR A DISTANCE OF 375.09 FEET TO THE POINT OF BEGINNING.

ALL OF THE FOREGOING CONTAINS AN AREA OF 76,466 SQUARE FEET MORE OR LESS.

**Exhibit "B"**

**Gallery- Legal Description**

**(THE GALLERY AT SMATHERS):**

A PORTION OF TRACT "A", PUBLIC HOUSING PROJECT FLORIDA 5-18, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 81, PAGE 26, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID TRACT "A"; THENCE N14°12'21"W, ALONG THE WESTERLY LINE OF SAID TRACT "A", FOR A DISTANCE OF 72.21 FEET; THENCE N00°22'31"E, ALONG THE WEST LINE OF SAID TRACT "A", FOR A DISTANCE OF 169.00 FEET; THENCE S89°37'29"E FOR A DISTANCE OF 191.31 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND: THENCE N00°18'34"E FOR A DISTANCE OF 128.54 FEET; THENCE N59°11'26"W FOR A DISTANCE OF 140.75 FEET; THENCE N00°22'31"E FOR A DISTANCE OF 81.62 FEET; THENCE S89°37'29"E FOR A DISTANCE OF 20.13 FEET; THENCE S89°38'04"E FOR A DISTANCE OF 197.31 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 57.27 FEET; THENCE N00°18'31"E FOR A DISTANCE OF 151.61 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 40.19 FEET; THENCE S00°18'34"W FOR A DISTANCE OF 131.36 FEET; THENCE S89°41'26"E FOR A DISTANCE OF 34.50 FEET; THENCE S00°18'34"W, ALONG THE EAST LINE OF SAID TRACT "A", FOR A DISTANCE OF 318.96 FEET TO A POINT OF CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE NORTHWEST, HAVING AS ITS ELEMENTS A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF 70°31'44"; THE FOLLOWING TWO (2) COURSES ARE ALONG THE EASTERLY LINE OF SAID TRACT "A", (1) THENCE SOUTHERLY AND SOUTHWESTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 30.77 FEET TO A POINT OF REVERSE CURVATURE WITH A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING AS ITS ELEMENTS A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 88°42'50"; (2) THENCE SOUTHWESTERLY, SOUTHERLY, AND SOUTHEASTERLY, ALONG SAID CIRCULAR CURVE, FOR AN ARC DISTANCE OF 77.42 FEET; THENCE N89°41'26"W, DEPARTING SAID EASTERLY LINE, FOR A DISTANCE OF 48.01 FEET; THENCE N00°18'34"E FOR A DISTANCE OF 114.56 FEET; THENCE 89°41'26"W FOR A DISTANCE OF 29.50 FEET; THENCE N00°20'27"E FOR A DISTANCE OF 88.11 FEET; THENCE N90°00'00"W FOR A DISTANCE OF 76.71 FEET TO THE POINT OF BEGINNING.

ALL OF THE FOREGOING CONTAINS AN AREA OF 75,407 SQUARE FEET MORE OR LESS.

**JOINDER BY PHASE TWO FIRST MORTGAGEE  
(Bond Loan)**

The undersigned, as Mortgagee under that certain Multifamily Leasehold Mortgage, Assignment of Rents, Security Agreement and Fixture Filing from Smathers Phase Two, LLC, a Florida limited liability company, as borrower, to the Housing Finance Authority of Miami-Dade County (Florida), as lender, recorded in Official Records Book 29623, Page 3904; and as assigned by Assignment of Mortgage and Loan Documents by the Housing Finance Authority of Miami-Dade County (Florida), as assignor, to Citibank, N.A., as assignee, recorded in Official Records Book 29623, Page 3978, all of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**MORTGAGEE:**

CITIBANK, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA       )  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of Citibank, N.A.

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name:

Notary Public, State of Florida at Large

Commission No.:

My Commission Expires:

**JOINDER BY PHASE TWO SECOND MORTGAGEE**  
**(SAIL Loan; Smathers Phase Two SAIL RFA 2014-103 / 2014-306S)**

The undersigned, as Mortgagee under that certain Leasehold Mortgage and Security Agreement by Smathers Phase Two, LLC, a Florida limited liability company, as mortgagor, in favor of Florida Housing Finance Corporation as mortgagee, recorded in Official Records Book 29623, Page 4016, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement shall be binding upon the undersigned and its successors in title, upon the undersigned's acquisition of title to the estate held by the Owner.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**MORTGAGEE:**

**FLORIDA HOUSING FINANCE  
CORPORATION**

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

STATE OF FLORIDA)  
COUNTY OF LEON)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of Florida Housing Finance Corporation.

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER BY PHASE TWO THIRD MORTGAGEE  
(ELI Loan; Smathers Phase Two ELI GAP RFA 2014-103 / 2014-306S)**

The undersigned, as Mortgagee under that certain Leasehold Mortgage and Security Agreement by Smathers Phase Two, LLC, a Florida limited liability company, as mortgagor, in favor of Florida Housing Finance Corporation as mortgagee, recorded in Official Records Book 29623, Page 4068, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement shall be binding upon the undersigned and its successors in title, upon the undersigned's acquisition of title to the estate held by the Owner.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**MORTGAGEE:**

FLORIDA HOUSING FINANCE  
CORPORATION

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

STATE OF FLORIDA)  
COUNTY OF LEON)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of Florida Housing Finance Corporation.

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER BY PHASE TWO FOURTH MORTGAGEE  
(County Surtax Loan)**

The undersigned, as Mortgagee under that certain Leasehold Mortgage and Security Agreement and Assignment of Leases, Rents and Profits by Smathers Phase Two, LLC, a Florida limited liability company, as mortgagor, in favor of Miami-Dade County, as mortgagee, recorded in Official Records Book 29623, Page 4151, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**MORTGAGEE:**

Approved as to  
form and legal sufficiency:

MIAMI-DADE COUNTY, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Terrence A. Smith  
Assistant. County Attorney

By: \_\_\_\_\_  
Name: Maurice L. Kemp  
Title: Deputy Mayor

STATE OF FLORIDA            )  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by Maurice L. Kemp as Deputy Mayor of Miami-Dade County, a political subdivision of the State of Florida

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER AND CONSENT BY AND OF LANDLORD**

The undersigned, Miami-Dade County, a political subdivision of the State of Florida, as Owner of that certain property described in Exhibits A and B of the Easement Agreement and as Landlord under that certain Ground Lease Agreement between Smathers Phase Two, LLC, a Florida limited liability company, as tenant, dated May 14, 2015, and that certain Memorandum of Ground Lease, dated May 15, 2015, and recorded on May 20, 2015, in Official Records Book 29623, Page 3781 (collectively the "Lease") of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_ day of \_\_\_\_\_, 2019.

Approved as to form  
And legal sufficiency

Miami-Dade County, a political subdivision of the  
State of Florida

By \_\_\_\_\_  
Terrence Smith  
Assistant County Attorney

By: \_\_\_\_\_  
Maurice L. Kemp, Deputy Mayor

STATE OF FLORIDA)  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2018, by Maurice L. Kemp as Deputy Mayor of Miami-Dade County, a political subdivision of the State of Florida

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**JOINDER BY PHASE TWO FIFTH MORTGAGEE  
(City Loan)**

The undersigned, as Mortgagee under that certain Leasehold Mortgage and Security Agreement and Assignment of Leases, Rents and Profits by Smathers Phase Two, LLC, a Florida limited liability company, as mortgagor, in favor of City of Miami, as mortgagee, recorded in Official Records Book 29623, Page 4269, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in the foregoing Easement does hereby acknowledge that the terms of the Easement are and shall be binding upon the undersigned and its successors in title.

IN WITNESS WHEREOF, these presents have been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**MORTGAGEE:**

Approved as to  
form and legal sufficiency:

CITY OF MIAMI, a municipal corporation  
of the State of Florida

By: \_\_\_\_\_  
Victoria Mendez, City Attorney

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

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

STATE OF FLORIDA       )  
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2019, by \_\_\_\_\_ as \_\_\_\_\_ of City of Miami, a municipal corporation of the State of Florida

- ☐ Personally Known  
☐ Produced Drivers License No. \_\_\_\_\_  
☐ Produced: \_\_\_\_\_

\_\_\_\_\_  
Print or Stamp Name: \_\_\_\_\_  
Notary Public, State of Florida at Large  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_