Memorandum

MIAMI-DADE COUNTY

Date: July 16, 2013

Agenda Item No. 8(K)(3)

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Authorizing Execution of a Master Development Agreement, an Amended and Restated Ground Lease with Carlisle Development Group, LLC or its Assignees for Green Turnkey Public Housing Development

Resolution No. R-629-13

Recommendation:
It is recommended that the Board of County Commissioners (Board) authorize the County Mayor or County Mayor's designee to execute all necessary mixed-finance agreements and documents, including but not limited to the Master Development Agreement and an Amended and Restated Ground Lease with the developer, the Carlisle Development Group, LLC or its assignee, Green Turnkey Plaza, LTD (Local) (Developer), for the rehabilitation/redevelopment of existing public housing units at the Green Turnkey public housing development, subject to approval by the United States Department of Housing and Urban Development (Housing and Urban Development). It is further recommended that the Board authorize the County Mayor or County Mayor's designee to exercise any cancellation, termination and renewal provisions, and to exercise all other rights contained therein, and execute amendments to the annual contribution contracts (Contribution Contract), subject to Housing and Urban Development's approval.

Unrelated to this project, the Developer is under investigation for alleged inappropriate financial transactions regarding other housing developments. The County is aware that a subpoena regarding this matter was issued to the Developer July 2012. Notwithstanding the above, there are sufficient layers of compliance in place to protect the County's interest in this project. Additionally, Article VIII (Default and Termination) and Article XII (Default; Remedies) of the attached Ground Lease include default and termination provisions.

Bank of America (Lender) is the financial institution providing both the tax credit equity and construction loan for this project. The construction loan is approximately $1.2 million and the tax credit equity amount is approximately $2.5 million for the renovation of the Green Turnkey site. These amounts are extrapolated from the overall Lender investment amount of $24.4 million. Additionally, the Lender is currently honoring the original terms of financing the project however, if the financial closing is not completed by August 2013 the Lender may not be willing to adhere to the original terms of the agreement.

It is imperative that the County move forward with this item given the time-sensitivity of the Low Income Housing Tax Credit funding schedule. Without these tax credits the project is not viable.

Green Turnkey:

CONTRACT NO:	Request for Proposal No. 794-Green Turnkey (FLA 5-28)
CONTRACT TITLE:	Request for Proposal No. 794 rehabilitation/re-development of Green Turnkey (FLA 5-28)

DESCRIPTION:	The Developer will execute necessary mixed-finance documents, including but not limited to a Master Development Agreement and an Amended and Restated Ground Lease with the County and perform all requirements indicated therein. The Developer will plan and implement all aspects of the redevelopment of the site in close coordination with Public Housing and Community Development Department (Department). The Developer will facilitate and foster continued collaboration with the residents as well as key community stakeholders during the entire development process. The work for this site includes the rehabilitation/redevelopment of twenty-one (21) existing public housing units at Green Turnkey (FLA 5-28) and one (1) additional public housing unit at a separate site.
TERM:	Seventy-five (75) years from the effective date of the Ground Lease.
CONTRACTS AMOUNT:	The total estimated development cost for Green Turnkey is approximately $2,458,062.00.
DEVELOPER:	Carlisle Development Group, LLC or assignee, Green Turnkey Plaza, LTD (Local)
USING/MANAGING AGENCY:	Public Housing and Community Development Department
LIVING WAGE:	The services provided are not covered under the Living Wage Ordinance.
LOCAL PREFERENCE:	Not applicable due to public housing federal subsidy funding restrictions.
ESTIMATED CONTRACT COMMENCEMENT DATE:	Upon the approval of all mixed-finance documents by the Housing and Urban Development.
DELEGATED AUTHORITY:	Subject to the approval of this resolution and approval of the mixed-finance documents by Housing and Urban Development, the County Mayor or the County Mayor's designee will have the authority, to execute all necessary mixed-finance agreements, contracts, and other related documents, including but not limited to a Master Development Agreement and an Amended and Restated Ground Lease in the amount of $1.00. The Developer shall be entitled to 75% and the County to 25% of the Developer Fee, and the County shall be entitled to 100% of the cash flow of the

public housing units. The County Mayor or the County Mayor's designee will also have the authority to terminate the Master Development Agreement for a number of reasons, including but not limited to if the Developer fails to obtain or maintain sufficient financing to sustain the Project, including but not limited to Housing Tax Credit financing, sufficient to close no later than twelve (12) months from the execution date of this Agreement. The County Mayor or the County Mayor's designee will be further authorized to amend the Annual Contribution Contract with Housing and Urban Development, and exercise subsequent amendments and/or extensions in accordance with the terms and conditions of the contract.

SCOPE:

The development action contemplated consists of the rehabilitation/redevelopment of twenty-one (21) existing public housing units and one additional public housing unit, which will either be a single–family rehabilitated or newly constructed home located within one mile of the Green Turnkey site, or a public housing unit located in a multifamily building of approximately sixty–six (66) units that the developer will construct at 1146 NW 7th Court (Washington Square). The project is located within District 3, represented by Miami-Dade County Commissioner Audrey M. Edmonson.

COUNTY FUNDING SOURCE/
FISCAL IMPACT

The proposed action will not have a fiscal impact on the County since the development will be performed and funded solely by the developers, with sources that include Low Income Housing Tax Credits (Housing Tax Credits).

TRACK RECORD/MONITORING:

The County and the Florida Housing Finance Corporation will have oversight of these projects and the financing.

These projects will be contracted and monitored by Jorge Cibran, Director of Facilities and Development Division, Public Housing and Community Development Department.

Additionally, the Florida Housing Finance Corporation will conduct compliance monitoring and periodic audits throughout the fifteen (15) year compliance period required for tax credits. The tax credit investors will also perform a separate tax credit compliance monitoring.

Background:
Request for Proposals No. 794 was issued on July 14, 2011 to solicit offers from developers to maximize and expedite the development potential of over 100 existing public housing sites administered by the Department. The solicitation sought to establish partnerships with qualified entities to rehabilitate/upgrade existing public housing units, remove and replace obsolete public housing units, increase the number of units on underutilized sites, develop vacant land owned by the County, and also incorporate commercial and other special purpose uses, where appropriate, at particular public housing sites or vacant land sites. Additionally, the Department sought to replace its older units with new contemporary designs that resemble market-rate units (regardless of whether these are public housing, affordable or market-rate units) and incorporate creative and sustainable design solutions.

As a result of Request for Proposals No. 794, the Board, pursuant to Resolution No. R-1026-11, awarded a ground lease for the Green Turnkey site to the Developer on November 23, 2011, and approved submittal of a disposition application for this site to Housing and Urban Development on February 7, 2012 pursuant to Resolution No. R-152-12.

Green Turnkey Residents will be temporarily relocated to a comparable unit until the rehabilitation/redevelopment of the existing public housing units is completed. Residents will be provided with first right of refusal to return to the completed public housing units. Meetings have been held with all residents to discuss general information about the re-development. Additional meetings with residents will be held to review and obtain resident input on all aspects of the development process including plans for temporary relocation.

In order to proceed with the redevelopment process and to avoid possible loss of the tax credits, the County must execute a Master Development Agreement, and an Amended and Restated Ground Lease with the Developer. Therefore, it is recommended that the Board approve the attached resolution authorizing the County Mayor or County Mayor's designee to negotiate and execute same, subject to and after Housing and Urban Development's approval.

Attachments

Russell Benford, Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 16, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(K)(3)

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**
_____	**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 ____, 3/5's ____, unanimous _____) 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. 8(K)(3)
7-16-13

RESOLUTION NO. R-629-13

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A MASTER DEVELOPMENT AGREEMENT, AN AMENDED AND RESTATED GROUND LEASE IN THE AMOUNT OF $1.00, AND 100% OF THE CASH FLOW OF THE PUBLIC HOUSING UNITS, AND ALL OTHER NECESSARY MIXED-FINANCE CONTRACTS, AGREEMENTS AND RELATED DOCUMENTS WITH CARLISLE DEVELOPMENT GROUP, LLC, OR ITS ASSIGNEE, GREEN TURNKEY PLAZA, LTD (LOCAL), FOR REHABILITATION/REDEVELOPMENT OF EXISTING PUBLIC HOUSING UNITS AT THE GREEN TURNKEY PUBLIC HOUSING DEVELOPMENT, SUBJECT TO APPROVAL BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY CANCELLATION, TERMINATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN; AUTHORIZING AMENDMENTS TO ANNUAL CONTRIBUTION CONTRACT, SUBJECT TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S APPROVAL

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 this Board:

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

Section 2. The Board directs the County Mayor or County Mayor's designee to execute the Master Development Agreement and an Amended and Restated Ground Lease in the amount of $1.00 and 100% of the cash flow of the public housing units, in substantially the form attached hereto and incorporated by reference, with Carlisle Development, LLC or its assignee, Green Turnkey Plaza, LTD (Local), for the rehabilitation/redevelopment of existing public

housing units at the Green Turnkey development and one (1) additional public housing unit at a separate site, subject to approval of the United States Department of Housing and Urban Development. The Board further authorizes the County Mayor or County Mayor's designee to exercise any cancellation, termination, and renewal provisions, and to exercise all other rights contained therein.

Section 3. The Board further authorizes the County Mayor or County Mayor's designee to take all necessary action to accomplish and execute all necessary mixed-finance contracts, agreements and other related documents, subject to the approval United States Department of Housing and Urban Development.

Section 4. The Board also authorizes the County Mayor or County Mayor's designee to amend the Annual Contribution Contract, subject to the approval United States Department of Housing and Urban Development.

Section 5. The County Mayor or the County Mayor's designee, pursuant to Resolution No. R-974-09, shall record in the public record all deeds, covenants, reverters and mortgages creating or reserving a real property interest in favor of the County and shall provide a copy of such recorded instruments to the Clerk of the Board within thirty (30) days of execution and final acceptance. The 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 **Lynda Bell**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

Rebecca Sosa, Chairwoman
Lynda Bell, Vice Chair **aye**

Bruno A. Barreiro	**absent**	Esteban L. Bovo, Jr.	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**absent**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**absent**
Sen. Javier D. Souto	**absent**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 16th day of July, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: *Christopher Agrippa*
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith

MASTER DEVELOPMENT AGREEMENT

BETWEEN

MIAMI-DADE COUNTY

AND

CARLISLE DEVELOPMENT GROUP, LLC

FOR

GREEN TURNKEY

Table of Contents

Statutes

MASTER DEVELOPMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CARLISLE DEVELOPMENT GROUP, LLC

Carlisle Development Group, LLC ("**Developer**") and 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, as amended (the "**County**"), hereby enter into this Master Development Agreement (the "**Agreement**") to memorialize certain business terms, conditions and agreements regarding future rehabilitation and redevelopment of Green Turnkey, a 21-unit public housing development [FLA 5-28], in Miami-Dade County, Florida (together with expansion units described below, the "**Development**").

1. Definitions.

(a) "Act" shall have the meaning set forth in Section 4(b)(v).

(b) "Agreement" shall mean this Master Development Agreement.

(c) "County" shall mean Miami-Dade County.

(d) "Default Notice" shall have the meaning set forth in Section 10.

(e) "Developer" shall mean Carlisle Development Group, LLC.

(f) "Development" shall mean the redevelopment of Green Turnkey, as further described in Section 3.

(g) "Effective Termination Date" shall have the meaning set forth in Section 8(e)(i).

(h) "FHFC" shall have the meaning set forth in Section 3(b).

(i) "Financial Closing" shall mean closing on construction financing.

(j) "Force Majeure Event" shall have the meaning set forth in Section 9(c).

(k) "HUD Safe Harbor Standards" shall have the meaning set forth in Section 5(a).

(l) "IPSIG" shall have the meaning set forth in Section 26.

(m) "LIHTC" shall have the meaning set forth in Section 3(b).

(n) "Management Agent" shall have the meaning set forth in Section 7(a).

(o) "Management Agreement" shall have the meaning set forth in Section 7(a).

(p) "Material Changes" shall have the meaning set forth in Section 3(b).

(q) "Owner Entity" shall have the meaning set forth in Section 3(c).

(r) "PHA-Assisted Units" shall have the meaning set forth in Section 3(b).

(s) "Partner" shall have the meaning set forth in Section 3(a).

(t) "Project Stabilization" shall have the meaning set forth in Section 3(c).

(u) "Proper Invoice" shall mean as defined in Section 6.

(v) "RFP" shall have the meaning set forth in Section 3.

(w) "Redevelopment Budget" shall have the meaning set forth in Section 3(b).

(x) "Redevelopment Schedule" shall have the meaning set forth in Section 3(b).

(y) "Relocation Plan" shall have the meaning set forth in Section 4(a)(ix)(4).

(z) "Section 42" shall have the meaning set forth in Section 3(b).

(aa) "Termination for Cause" shall have the meaning set forth in Section 8(b).

2. **Nature of Agreement**. This Agreement sets forth the principal terms that have been agreed to by the parties concerning the Development (as defined below). It is anticipated that this agreement will constitute the "Master Development Agreement" for the Development. The parties are executing this Agreement to establish the principal terms of the transaction in order to enable both parties to proceed with an understanding of their obligations and agreements with regard to the Development.

3. **Development Feasibility and Structure.**

(a) Request for Proposals and Developer's Response. On July 14, 2011, the County sought proposals under Request for Proposals No. 794 (the "**RFP**") for the Development from qualified housing developers. Carlisle Development Group, LLC submitted a response to the RFP and the County selected Carlisle Development Group, LLC's proposal as the most qualified response to the RFP. The County approved, and hereby reaffirms, the designation of the Developer as the developer for the development of the Green Turnkey site, and as the County's "**Partner**," as described in 24 CFR § 941.604, for the mixed-finance development of public housing units, subject to and in accordance with the terms and conditions provided herein.

(b) Development Overview: The Parties hereby agree that the Development shall be a mixed finance development consisting of (i) the existing Green Turnkey building and site (the "**Green Turnkey Site**") containing twenty-one (21) public housing units ("**PHA-Assisted Units**") to be rehabilitated, and (ii) a single PHA-Assisted Unit (the "**Extra Unit**") which will either be situated in a single-family home to be identified, acquired and rehabilitated that is located within one mile of the

Green Turnkey Site, or in a multifamily building of approximately sixty-six (66) units that Developer will construct at 1146 Northwest Seventh Court ("**Washington Square**"). The Parties agree and understand that this Agreement only governs the rehabilitation of the PHA-Assisted Units described herein.

i. The County will request that HUD confirm it has authority for any PHA-Assisted Units in excess of 21, under the "Faircloth Amendment" and otherwise.

ii. All units at the Green Turnkey Site and the Extra Unit, wherever located, shall be PHA-Assisted Units and shall continue to be set aside as 'public housing', as that term is defined in the U.S. Housing Act of 1937 and will be operated and maintained as qualified Low Income Housing Tax Credit ("**LIHTC**") Units under Section 42 of the Internal Revenue Code of 1986 ("**Section 42**"), as amended, for a period of not less than the Tax Credit Compliance Period and any applicable extended use period (as such term is defined in Section 42 and required by the Florida Housing Finance Corporation ("**FHFC**")).

iii. A scope of work is attached hereto as Exhibit A (hereinafter referred to as the "**Scope of Work**"), a development budget (including uses funded by undefined sources) is attached hereto as Exhibit B (hereinafter referred to as the "**Redevelopment Budget**"). A development schedule is attached hereto as Exhibit C (hereinafter referred to as the "**Redevelopment Schedule**"). A description of the unit types, sizes and targeted income levels (the "**Unit Mix**") is attached as Exhibit D. A Subcontractor / Supplier Listing Form is attached as Exhibit E. An Applicable HUD General Conditions for Construction Documents is attached as Exhibit F. A list of key development team members ("**Team List**") is attached as Exhibit H. As development proceeds, the parties may mutually agree to supplement such exhibits including with a more refined budget containing achievable sources, which budget shall be tied to a redevelopment schedule and realistic timeframes for securing development sources. Developer will submit proposed updates to the Redevelopment Schedule, the Redevelopment Budget, the Subcontractor/Supplier Listing Form, the Unit Mix and the Team List for the County's review and comment, and Developer shall be required to obtain County's approval, such approval not to be unreasonably withheld, with respect to "**Material Changes**". The following shall be considered "**Material Changes**":

(1) Changes to the Unit Mix or Team List;

(2) An increase in the Redevelopment Budget by more than 10%; or

(3) Changes to the Redevelopment Schedule that delay completion or lease-up by more than ninety (90) calendar days.

(c) Ownership Entities for Rental Phase and Selection of Investor. The Developer has formed Green Turnkey Plaza, Ltd. (the "**Owner Entity**") to own the Development. The Owner Entity will have a managing member that will be a limited liability company controlled by the Developer. The principal equity interest in the Owner Entity will be owned by a low income housing tax credit investor that is selected by the Developer in its sole discretion.

(d) IOI Waiver. The County agrees to take all reasonably necessary action to assist Developer in obtaining an identity of interest waiver from HUD to utilize Developer's affiliated general contractor, if requested.

(e) Extra Unit. As of the date hereof, Developer has not yet resolved where it will locate the Extra Unit. Developer acknowledges that the Extra Unit must comply with all applicable public housing requirements relating to the new development (whether by new construction or acquisition/rehabilitation) of a public housing unit, including without limitation requirements relating to site-and-neighborhood, accessibility, housing quality standards, and any other requirements set forth in this Agreement. As soon as feasible, Developer will present a development plan to the County containing all information reasonably required for the County to evaluate whether the proposal complies with applicable requirements. Approval will not be unreasonably delayed, conditioned or withheld. The County will, as expeditiously as possible, forward such development plan to HUD in order to obtain HUD approvals, if required.

(f) Partial Over 55 Requirement. The County agrees that, in consultation with the Developer, it will seek any HUD approvals or waivers that may be required and will approve such changes to its own policies as may be required to permit Developer to operate at least five (5) PHA-Assisted Units as "over 55" units. Without committing to or limiting options, or presuming HUD approval, the parties recognize that necessary policies may include:

i. Developer utilizing a limited admission preference for up to five over 55 units;

ii. The County referring residents who qualify as over 55.

4. **Redevelopment Responsibilities.**

(a) Developer Responsibilities: As more specifically set forth herein, Developer shall be responsible for development services in connection with the rehabilitation, construction and continued occupancy of the Development, as well as carrying out all other work for which Developer is responsible, as such responsibilities are detailed in this Agreement. Notwithstanding the use of the term "Developer" herein, Carlisle Development Group, LLC or an affiliate will serve both as general partner of any Owner Entity, and as developer pursuant to a development services agreement with the Owner Entity, and will have distinct responsibilities in those two roles that are not clearly distinguished in this Agreement. Those

respective responsibilities shall be established by development services agreements or similar agreements entered into between such development and ownership entities, and the provisions hereof shall be disregarded entirely in any interpretation of such other agreements for purposes of distinguishing between owner Entity fee payments and distributions.

(b) Development Services: The actual services delivered shall include all development services reasonably required to complete the rehabilitation of the Development and, except as otherwise provided herein, to cause each Owner Entity to facilitate the rehabilitation of the Development, including, but not limited to:

i. establishing phasing and timetables, structuring and securing financing and obtaining necessary city and county approvals, and hiring a general contractor or construction manager;

ii. obtaining financing for the project and identifying and securing additional financing as needed;

iii. providing all required third-party guarantees including investor and completion guarantees;

iv. assisting in preparing the Mixed-Finance Proposal; assisting in preparing or coordinating all documents necessary for closing of the financing in accordance with, as applicable, public housing, mixed-finance requirements; collaborating with the County to finalize documents and assist in the preparation of the evidentiary submission to HUD; and scheduling the Financial Closing;

v. entering into contracts or agreements, consistent with the terms of this Agreement, necessary or convenient for completion of the Development, which contracts or agreements may be assigned, as appropriate, by the Developer to the related Owner Entity at or prior to the financial closings. Awards shall be made to the bidder or offeror whose bid or offer is most advantageous to the Development, taking into consideration price, quality and other factors deemed by the Developer to be relevant; Developer shall not employ or contract with any third party contractor which has been debarred by HUD or the County and shall promptly terminate any contracts with any third party contractor that is subsequently debarred;

vi. determining all necessary governmental approvals for such plans;

vii. carrying out pre-construction and construction activities, including design, engineering, and rehabilitation of the Development, guaranteeing completion of same (as of closing), and ensuring compliance with all applicable laws, rules and regulations;

viii. carrying out property management of the Development, including resident relocation and subsequent re-occupancy of the Development, maintaining all applicable occupancy standards and maintaining all requisite reports, certifications and data in accordance with applicable requirements;

ix. maintaining regular communication with County regarding its development activities; and

x. Design, Construction and accessibility requirements:

(1) Developer shall conduct value engineering reviews during design and construction document phases to minimize construction cost and maximize scope of work to be done with allocated funding. The County will have access to design drawings and may provide comments and requests to changes in design, finishes and all aspects of the design development process.

(2) The Developer will provide the County with all cost certifications and reports from the investor and lender and the County will have the opportunity to review and comment on such certifications and reports.

(3) The County will have the opportunity to approve all change orders that require the approval of the investor and the lender (i.e. in excess of those minimum thresholds per occurrence and in the aggregate that do not require the approval of the investor and lender), such approvals not to be unreasonably withheld. Such approvals by the County shall be provided in a timely manner.

(4) Developer shall meet or exceed federal accessibility requirements including those indicated herein. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and 24 CFR, Parts 8 and 9, prohibits discrimination against persons with disabilities in any program or activity receiving Federal Financial assistance. 24 CFR § 40.4 established the Uniform Federal Accessibility Standards (UFAS) as the standard design, construction, or alteration of residential structures. UFAS became effective July 11, 1988. For new construction and/or rehabilitation projects, the Developer shall provide at a minimum (unless more stringent requirements apply) five percent (5%) or at least one (1) unit (whichever is greater) for mobility, impaired persons. An additional minimum of two percent (2%) or at least one (1) unit (whichever is greater) is required for people with hearing or vision impairments. UFAS compliance is required for all areas required by UFAS including interior and exterior of units, common areas, site, etc. A third party certification of UFAS Compliance is required in a form and format reasonably acceptable to the County. On-going information concerning UFAS

units and its occupants may also be required by the County. Developer shall provide required UFAS – related information as reasonably required by the County. In addition, developers are highly encouraged to provide units that are easily "adaptable" to UFAS units.

(5) Davis-Bacon wage requirements: Developer shall meet all applicable Davis-Bacon wage requirements and shall monitor and ensure Davis-Bacon Wage compliance by General Contractors , sub-contractors, sub-sub- contractors and any other person affiliated with the Development (contractors), and shall ensure that all contracts and sub-contracts incorporate the Davis – Bacon requirements. Developer shall carefully review Davis-Bacon requirements with all contractors, and sub-contractors on site on an on-going basis, shall appoint a Davis-Bacon compliance officer to ensure compliance during the entire construction duration, and shall provide Davis-Bacon compliance reporting to County as it may require in accordance with Exhibit F Section 15. Any costs incurred by the County due to Davis-Bacon non-compliance by the Developer and/or any of its contractors, shall be reimbursable to the County by the Developer.

(6) For preservation/rehabilitation projects, maximize the storage capacity (kitchen cabinets, closets, pantry, vanity, etc.) for existing units as to not reduce existing capacity, whenever possible.

(7) The County has retained an Energy Performance Contractor (EPC) to conduct an energy audit on all public housing sites and provide recommendations to implement energy efficient systems, components, etc. The Developer shall coordinate its work with the EPC, attend meetings with EPC and the County as necessary, submit its drawings and specifications for EPC review and incorporate EPC comments received into the design documents, unless this requirement is waived by the County.

xi. County Approvals:

(1) On preservation/rehabilitation projects, Developer shall not reduce the size of existing units in any material respect to obtain more units within the same building envelope or change the unit designation (family, elderly, mixed-population, etc.) without a written request to and written approval from PHCD, provided that PHCD has provided Developer a written description of such unit designation.

(2) Developer shall forward the drawings for preservation/rehabilitation and/or new construction to PHCD as

these are developed for review, comment and approval, such approval not to be unreasonably withheld, withdrawn, or deleted.

(3) Developer shall closely coordinate with PHCD and attend meetings with public housing residents as reasonably required to inform and receive input from residents on all aspects of the development plans. Developer shall give good faith consideration to incorporate input received from residents, in coordination with PHCD, as feasible and consistent with applicable codes, zoning, federal requirements, etc. PHCD will coordinate and schedule meetings with residents.

(4) Developer shall submit a detailed relocation plan ("**Relocation Plan**") for review and approval by PHCD, such approval not to be unreasonably withheld, withdrawn, or deleted. The Relocation Plan shall include appropriate notification and minimum disruption/convenience for residents, safety and provision of temporary housing as major considerations. Developer shall provide a "relocation coordinator" to plan, organize, implement and monitor all aspects of the Relocation Plan, closely coordinate all aspects required for relocation including phasing and duration, moving and storage of furnishings, transportation, meals, pets, mail, etc.

xii. The Developer and its consultants shall carefully review all change orders, contingency adjustments and/or any other additional costs (herein change orders) to confirm that these are appropriate and to minimize said costs whenever possible and appropriate. Such review shall include but not be limited to compliance with contract documents, the party requesting the change order, and the reason for such request (justification), hidden or unforeseen conditions, A/E error and/or omissions, critical path analysis for time extensions and other contract requirements.

xiii. Consultant Coordination

(1) Developer shall carefully review and coordinate the works of its consultants to minimize architect/engineer errors and omissions and minimize any change orders, including additional costs and time extensions on the project.

(c) County's Responsibilities. As more specifically described herein, County is responsible for the following activities related to the Development (such list is not intended to be exhaustive):

i. Developing, submitting and supplementing in coordination with the Developer as necessary all necessary property disposition applications to HUD (provided that Developer shall have an opportunity to review and comment on the same prior to submission);

ii. Approving Owner Entity admissions and occupancy criteria and related property management documents such as the Public Housing lease and Community Policies, which approvals shall not be unreasonably withheld, delayed or conditioned;

iii. Reviewing, approving, and submitting the mixed finance proposal and evidentiaries to HUD;

iv. Providing all of the operating subsidy received from HUD relative to the PHA-Assisted Units on an annual basis and subject to any HUD pro-Ration or other HUD-generated subsidy adjustment (including those "add-ons," as described at 24 CFR Part 990), except that the Developer shall pay to the County an amount equal to five percent (5%) of subsidy received;

v. Providing the PHA-Assisted Units' share of those funds appropriated to the County under Section 9(d) of the United States Housing Act of 1937, as amended (the "Act") that are permitted to be utilized as operating subsidy in accordance with Section 9(g)(1) of the Act. The percent amount to be provided shall be determined by (i) dividing the total amount of Capital Funds awarded to the County by the total number of public housing units in the County's portfolio; and (iii) multiplying the resulting per unit amount by twenty percent (20%). Additionally, the County will give good faith consideration to providing the remaining pro-rata share of Capital Funds for purposes of ongoing capital assistance if requested by Developer and approved by HUD;

vi. Coordinating with the residents, other stakeholders in the County and other stakeholders on Development-related issues; and

vii. Obtaining all necessary HUD approvals (including as related to disposition approvals, environmental approvals in accordance with 24 CFR Part 50 or Part 58, mixed finance approvals), providing reports and maintaining communications with HUD. Notwithstanding the foregoing, the County will provide copies of all items to Developer prior to submission to HUD in order to permit the Developer to provide input and comment with respect to the same.

viii. At closing, conveying the Development site to the Owner Entity pursuant to a ground lease in substantially the form attached hereto as Exhibit J (the "**Ground Lease**"); provided, however, that neither party shall unreasonably withhold its agreement to any lease modification required by an equity investor, lender, or HUD.

5. **Fees.**

(a) Developer Fee. The parties agree to seek approval from HUD of the maximum allowable developer fee permitted by the Florida Housing Finance Corporation for the Development in the budgeted amount set forth at Exhibit B hereto. The Developer shall be entitled to 75% and the County to 25% of the Developer Fee, except for any portion of such fee that is required to be paid out of a capital contribution made by the Developer or its affiliate to the Investor by approximately the thirteenth (13^{th}) anniversary of the Tax Credit Compliance Period, as required by the Partnership Agreement between Owner Entity and the Investor. The County will receive payment within five (5) days of any payment to the Developer.

(b) Ground Lease Payment. Developer covenants and agrees to pay to County as rent under the Ground Lease (or otherwise as may be required by applicable public housing requirements) 100% of net cash flow from the PHA-Assisted Units (tenant rent and County subsidies minus attributable operating costs, reserve deposits, investor asset management fees, and an attributable portion of other Owner Entity costs).

6. **Payment Provisions For County Funds (if applicable).** Developer shall submit to the County, not more often than monthly, a payment request for County funds in a form and format acceptable to the County, for expenditures for the work completed and incurred.

Each payment request shall be carefully reviewed and evaluated for accuracy, completeness and compliance with this agreement by Developer prior to its submission to the County. Each payment request shall identify, by line item and by reference to the corresponding element of the Budget, (a) the total costs to date incurred, (b) the corresponding portion of the compensation due to developer, if applicable (c) the amounts, if any, of previous payments, (d) the portion, if any, of such costs and/or fee for which a payment is requested under the payment request and any other provisions reasonably required (with reasonable advance notice) by the County. Each payment request shall be accompanied by separate billing statements or invoices from each consultant, sub-consultant, contractor or sub-contractor (herein vendors) to which payment has been made or will be made. The County shall not be required to make advance payments or deposits.

Payment requests shall not be processed until a proper payment request (herein "**Proper Invoice**") has been received by the County from the Developer. Proper invoice means an invoice which conforms to the payment requirements of the County. A Proper Invoice shall include a statement by Developer waiving claims for extra direct and indirect costs or time associated with

work preceding the date of the invoice, or a statement in sufficient detail containing all rights reserved for work already performed. All present requirements or future rules pertaining to the execution of a Proper Invoice will be made available to Developer in a timely manner. Developer shall make payments to all vendors included in each respective payment request within five (5) business days of receipt of funds from the County. Developer shall include the provisions of this section in all sub-contracts, and require all vendors to include this provision in their contracts with other vendors.

The time at which payment for service is due from the County shall be calculated from the date on which a Proper Invoice is received by the County. The time at which payment shall be due from the County to Developer shall be forty-five (45) days from receipt by the County of a Proper Invoice from the Developer (provided that the County shall make every effort to make such payment within thirty (30) days). The time at which payment shall be due from the County to a small business (as defined in Section 2-222 of the County Code) developer shall be thirty (30) days from receipt of a Proper Invoice by the County. In any case in which a Proper Invoice is not submitted by the Developer, the County shall, within ten (10) days after receipt of such invoice, notify the Developer that the invoice is improper and indicate what corrective action on the part of the Developer is needed to make the invoice proper.

For non-County funds, Developer shall provide a report, in a form and format acceptable to County, indicating payment requests and approved amounts received by the developer for all funding sources and percentage of overall project completion. In addition, the Developer shall provide, on a monthly basis, a construction schedule and construction budget, anticipated changes to the budget and schedule, along with a change order log, and Developer will meet with the County at the County's request, at reasonable times and frequency, to review and discuss the monthly report. Any proposed changes will be subject to the approval provisions set forth in this Agreement.

7. **Property Management Responsibilities.**

(a) Designation of Property Manager. The initial property manager for the Development shall be Carlisle Property Management, Inc. (the "**Management Agent**"). The Management Agent shall be responsible for the day to day operation of the Development including but not limited to compliance, collections, leasing, payment of invoices and maintenance. Specific duties shall be further detailed in the initial agreement between the Management Agent and the Owner Entity, such agreements subject to the County's reasonable approval (the "**Management Agreement**").

(b) Existing Residents and Admissions Policies. The parties agree that the occupancy will be carried out with respect to the Development as follows:

i. The existing residents of Green Turnkey (the "**Existing Residents**") shall have the right of first refusal to occupy public housing units in the Development once the scope of work described in this Agreement is complete, subject to screening by the Management Agent for low-income

housing tax credit compliance, and provided that such Existing Resident was in good standing with the County when relocated, has remained lease compliant in its relocation housing, and has not during the relocation period committed any criminal act that would subject it to lease termination under the policies of the County.

ii. Any vacancies not filled by Existing Residents (either at initial occupancy or thereafter) will be filled by applicants who are referred from the County's waiting list, subject to screening by the Management Agent for low-income housing tax credit compliance, any related factors approved by the County, and in accordance with the County's Admissions and Continued Occupancy Policy, as such related factors and Admissions and Continued Occupancy Policy may be amended and approved by the County, as applicable. The parties agree that a site-based waiting list will not be used. The parties acknowledge and agree that the County's Admissions and Continued Occupancy Policy will be revised, as necessary, to reflect the foregoing and that a referral process will be formulated by the parties to ensure that lease-up occurs in a timely manner.

(c) Property Management Fee. The Management Agent shall receive a management fee equal to the maximum fee permitted under HUD Safe Harbor Standards (which is currently Fifty-Six and 95/100 Dollars ($56.95) per unit, per month). The Management Agent will also receive a bookkeeping fee in the amount of $7.50 per unit, per month.

(d) Sub-Management Agreement. It is anticipated that the Management Agent will enter into a sub-management agreement (the **"Sub Management Agreement"**) with the County, pursuant to which the County will carry out certain frontline management services for the PHA-Assisted Units on behalf of the Management Agent on terms and conditions to be agreed to between the parties. The Sub Management Agreement will be for a one (1) year term and will be subject to termination for cause or upon the termination of the Management Agreement. The Management Agent shall retain all functions necessary to ensure compliance with LIHTC requirements.

8. **Termination.**

(a) Termination for Convenience. The County reserves the right to terminate this Agreement, in whole or in part, at any time for the convenience of the County if the County shall determine in good faith that it is infeasible, in the County's best interest, or contrary to that interest to proceed with the Development. In the event of a termination for convenience under this Agreement, the County shall deliver to the Developer a Notice of Termination within thirty (30) days specifying the extent to which the performance of the work under this Agreement is terminated, and the date upon which such termination becomes effective. If the performance

of the work under this Agreement is terminated in whole or in part, the County shall be liable to the Developer for reasonable and proper costs resulting from such termination. Within thirty (30) days of receipt of the Notice of Termination, the Developer shall present a proper claim setting out in detail: (i) the total cost of all third-party costs incurred to date of termination (including any loans from third parties); (ii) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until the County or its assignee takes possession thereof or assumes responsibility therefore; (iv) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the County; and (v) Fair Compensation to Developer for all tasks performed to date. "**Fair Compensation**" shall mean an amount equal to a percentage of the Development Fee based on the development tasks performed or accomplished to date of termination or suspension, provided that appropriate justification and back up documentation is provided. Within ninety (90) days of receipt of the claim from the Developer, the County shall make a final payment to the Developer. Furthermore, the Developer may terminate this Agreement for infeasibility, but only to the extent the Developer first made good faith efforts to pursue an alternative course of action, and in such event, shall be limited to reimbursement for those costs as set forth in (i)-(iv) of this Article 6(a) and reimbursement of Developer's reasonable overhead. In an event of a dispute regarding the claim, the parties hereto shall avail themselves of the dispute resolution process more fully described in Exhibit F, Paragraph 1.

(b) Termination for Cause. Either Party may terminate this Agreement for cause, at any time, on the giving of notice to the other party of the grounds asserted for such termination and failure of the other Party to cure such grounds within thirty (30) days from receipt of such notice ("**Termination for Cause**"). Notwithstanding anything to the contrary contained herein, suspension from participation in any government programs, which suspensions, for the purposes hereof, are defined to include but not be limited to any sanctions imposed by HUD pursuant to 24 CFR Part 24, shall be grounds for termination of this Agreement for cause without opportunity for cure. By execution of this Agreement, Developer hereby certifies to the County that it is not suspended, debarred or otherwise prohibited from participation in any government programs.

In the event of a termination of this Agreement by the County or the Developer which is determined to constitute a breach hereof by the County or the Developer, the party in breach shall be liable to the non-breaching party in accordance with applicable law for all actual damages caused thereby.

(c) Fraud, Misrepresentation or Material Misstatement. The County may terminate this Agreement if Developer attempts to meet its contractual obligations hereunder with the County through fraud, misrepresentation or material

misstatement.

(d) Debarment. The foregoing notwithstanding, any individual, corporation or other entity that attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Developer may be subject to debarment for those reasons set forth in Section 10-38 of the County Code.

(e) Remedies. In the event that the County exercises its right to terminate this Agreement following an Event of Default, the Developer shall, upon receipt of such notice, unless otherwise directed by the County:

i. Stop work on the date specified in the notice (the "**Effective Termination Date**");

ii. Take such actions as may be necessary for the protection and preservation of the County's materials and property;

iii. Cancel orders;

iv. Upon payment by the County for such work product and payment of other amounts due in accordance with this Article 6, assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services; and

v. Take no voluntary action (unless otherwise required by legal obligations) which will increase the amounts payable by the County under this Agreement.

(f) Developer Shall Deliver Work Product in Event of Termination. In the event that this Agreement is terminated under this Article 6, Developer agrees that it shall promptly deliver to County, or cause to be delivered to County, any concrete, transferable, and useable third party work product generated in connection with the Development, and will assign to County all of its right, title, and interest to such work product, without reservation in exchange for County's payment of funds paid by Developer (including funds borrowed from third parties) for such work product, along with amounts due to the Developer hereunder. Developer shall be under no obligation to deliver any work product in its possession unless the County shall have reimbursed it for the cost thereof (and paid to the Developer any other amounts due hereunder) or shall have agreed to offset the cost thereof against any indebtedness owing from the Developer to the County.

9. Event of Default.

(a) An Event of Default by the Developer shall mean a breach of this Agreement by the Developer after expiration of any applicable notice and cure period without such cure. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:

i. the Developer has not delivered Deliverables on a timely basis;

ii. the Developer has made a Material Change to the Project Schedule without the County's approval;

iii. the Developer has refused or failed to supply enough properly skilled staff personnel;

iv. the Developer has failed to make prompt payment to subcontractors or suppliers for any Services;

v. the Developer has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Developer's creditors, or the Developer has taken advantage of any insolvency statute or debtor/creditor law or if the Developer's affairs have been put in the hands of a receiver;

vi. the Developer has failed to obtain the approval of the County where required by this Agreement;

vii. the Developer has failed in the representation of any warranties stated herein.

viii. The Developer has made a Material Change to the Project Budget without the County's approval.

ix. The Developer has failed to obtain or maintain sufficient financing to sustain the Project, including but not limited to LIHTC financing, sufficient to close no later than twelve (12) months from the execution date of this Agreement.

(b) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, and reports after payment.

(c) Notwithstanding the foregoing, this Agreement shall not be terminated for default if the delay in completing the work arises from unforeseeable causes beyond the reasonable control of the Developer (any such failure or other cause or event being referred to herein as a "**Force Majeure Event**"). Examples of such causes

include (a) acts of God or the public enemy, (b) material acts or failure to act, or delays in action, of the County, HUD, or other governmental entity in either its sovereign or contractual capacity, (c) material acts or failure to act of another contractor (other than a contractor or subcontractor to the Developer or the Owner Entity) in the performance of a contract with the County, (d) fires, (e) floods, (f) strikes or labor disputes, (g) freight embargoes, (h) unavailability of materials, (i) unusually severe weather, (j) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without fault or negligence of both the Developer and the subcontractors or suppliers, or (k) delay caused by litigation that is not between the County and the Developer.

(d) An Event of Default by the County shall mean a breach of this Agreement by the County after expiration of any applicable notice and cure period without such cure.

10. **Notice of Default – Opportunity to Cure.** Notwithstanding anything in this Agreement to the contrary, if an Event of Default occurs in the determination of the County and the County wishes to declare an Event of Default or otherwise terminate this Agreement for cause to the extent, as provided under this Agreement, the County shall notify the Developer ("**Default Notice**"), specifying the basis for such default and the extent to which performance of work under this Agreement is terminated, and advising the Developer that such default must be cured immediately or this Agreement with the County may be terminated. If the termination is stated to be for default, the Default Notice thereof shall specify the nature of the claimed default and, if such default shall be reasonably subject to adequate cure, the Default Notice shall state (i) the actions required to be taken by the Developer to cure the default, and (ii) the reasonable time (up to sixty (60) days) within which Developer shall respond with a showing that all required actions have been taken, provided that the Developer shall have, subject to the County's approval, not to be unreasonably withheld conditioned or delayed, such additional time as is reasonably necessary to cure such default so long as the Developer has diligently commenced and is proceeding in a reasonable diligent matter toward curing such default. During any cure period so provided, the Developer shall proceed diligently with performance of any work required by this Agreement which is not the subject of the claimed default. Following expiration of the stated cure period, the Authority shall deliver a second notice stating either that the default has been adequately cured or that the Agreement is terminated. The County shall grant an additional period of such duration as the County shall reasonably deem appropriate without waiver of any of the County's rights hereunder, so long as the Developer has commenced curing such default and is effectuating a cure with diligence and continuity during such sixty (60) day period or any other period which the County prescribes. The Default Notice shall specify the date the Developer shall discontinue the Services upon the Termination Date.

If the Developer determines that an Event of Default has occurred with respect to the County, the foregoing paragraph shall likewise apply, with the identity of the parties reversed.

11. **Remedies in the Event of Default.** If an Event of Default occurs and remains uncured pursuant to Article 8 herein, the Developer or the County, as applicable, shall be liable for all direct damages to the County or the Developer, as applicable, resulting from such Event of

Default. The defaulting party shall also remain liable for any liabilities and claims related to the defaulting party's default. The non-defaulting party may also bring any suit or proceeding for specific performance or for an injunction.

12. **Lien Waivers.** Developer 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 Developer it being provided, however, that Developer shall have the right to contest the validity thereof. Developer shall not have any right, authority or power to bind the County, the Premises or any other interest of the County 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, DEVELOPER SHALL BOND OVER, PROCURE THE RELEASE OR DISCHARGE THEREOF WITHIN NINETY (90) DAYS EITHER BY PAYMENT OR IN SUCH OTHER MANNER AS MAY BE PRESCRIBED BY LAW. NOTICE IS HEREBY GIVEN THAT THE COUNTY SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE DEVELOPER OR TO ANYONE HOLDING ANY OF THE PREMISES THROUGH OR UNDER THE DEVELOPER, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE COUNTY IN AND TO ANY OF THE PREMISES. THE COUNTY SHALL BE PERMITTED TO POST ANY NOTICES ON THE PREMISES REGARDING SUCH NON-LIABILITY OF THE COUNTY.

Developer shall promptly pay all persons or entities furnishing labor and material with respect to any work performed by Developer or its contractor on or about the Premises, and shall obtain and deliver to Landlord "releases" or waivers of liens from all parties doing work on or about the Premises, along with an affidavit from Developer stating that all bills have been paid with regard to such work and that there are no outstanding obligations, except in the ordinary course of business, owed with respect to any such work performed on the Premises.

13. **Indemnification**

(a) Developer Indemnity. The Developer shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including attorney fees and costs of defense, which the County 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 Agreement by the Developer or its employees, agents, servants, partners, principals or subcontractors. The Developer 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 County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Developer expressly understands and agrees that any insurance protection required by the Agreement or otherwise provided by the

Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. Notwithstanding anything to the contrary herein, such indemnification by Developer shall not cover claims or losses to the extent caused solely by the County's gross negligence or intentional wrongful acts or omissions.

(b) County Responsibility. The County shall indemnify and hold harmless the Developer and its affiliates, subsidiaries, officers, agents, employees, representatives, successors and assigns from any and all liability, losses, or damages, including attorney fees and costs of defense, which the Developer or its affiliates, subsidiaries, officers, agents, employees, representatives, successors and assigns 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 Agreement by the County or officers, employees, agents and instrumentalities. The County 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 Developer, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The County's indemnification obligations in this Article 12(b) shall be subject to the provisions of Section 768.28, Fla. Stat., whereby the County shall not be liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of Two Hundred Thousand and No/100 Dollars ($200,000.00), or any claim or judgments or portion thereof, which when totaled with all other occurrence, exceeds the sum of Three Hundred Thousand and No/100 Dollars ($300,000.00), but only to the extent the limitations set forth in that Statute are applicable. Notwithstanding anything to the contrary herein, such indemnification by Miami-Dade County shall not cover claims or losses to the extent caused solely by the Developer's gross negligence or intentional wrongful acts or omissions.

14. **Insurance.** The Developer shall furnish to the Public Housing and Community Development Department, Facilities and Development Division at 701 NW 1 Court, 16th Floor, Miami, Florida 33136-3914, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

(a) Worker's Compensation Insurance for all employees of the Developer as required by Florida Statute 440.

(b) Commercial General Liability Insurance on a comprehensive basis in an amount not less than One Million and No/100 Dollars ($1,000,000.00) 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 Five Hundred Thousand and No/100 Dollars ($500,000.00) combined single limit per occurrence for bodily injury and property damage.

(d) Professional Liability Insurance shall be carried by architects and engineers in an amount not less than One Million and No/100 Dollars ($1,000,000.00) with a deductible per claim not to exceed ten percent (10%) of the limit-liability.

All insurance coverage required above shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Developer. 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 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 Financial Services and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Developer hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

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

Compliance with the foregoing requirements shall not relieve the Developer of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days after notification of recommendation to award. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Developer shall have an additional five (5) business days from notification to submit a corrected certificate to the County. If the Developer fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Developer shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such time frame for submission has been extended by the County.

The Developer shall be responsible for ensuring that the insurance certificates required in conjunction with this Article remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Developer shall be responsible for submitting new or renewed insurance certificates to the County 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 County shall suspend the Contract until such time as the new or renewed certificates

are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

15. **Agreement Security.** Upon request by the County, but in no event earlier than the Financial Closing, then subject to the approval of Development lenders and the Investor, the Developer shall cause its General Contractor to deliver to the County an executed Performance and Payment Bond on the prescribed form or in Cash (with the County as an additional obligee, if available). The Performance and Payment Bond shall be in the amount of 100% of the construction cost of the Project, as security for the faithful performance of this Agreement and for the payment of all persons performing labor or furnishing materials in connection therewith. If Cash is used in lieu of the bonds, all terms and conditions stipulated in the bonds shall be just as applicable. The Performance and Payment Bonds shall have as the surety thereon only such surety company or companies as are acceptable to the County and are authorized to write bonds of such character and amount in accordance with the following qualifications:

(a) All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

Bond Amount	Best Rating
i. 500,001 to 1,500,000	B V
ii. 1,500,001 to 2,500,000	A VI
iii. 2,500,001 to 5,000,000	A VII
iv. 5,000,001 to 10,000,000	A VIII
v. Over 10,000,000	A IX

(b) On contract amounts of $500,000 or less, the bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:

i. Providing evidence that the Surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.

ii. Certifying that the Surety is otherwise in compliance with the Florida Insurance Code, and;

iii. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. §§ 9304-9308.

(c) Surety insurers shall be listed in the latest Circular 570 of the U.S. Department of the Treasury entitled "Surety Companies Acceptable on Federal Bonds", published annually. The bond amount shall not exceed the underwriting limitations as shown in this circular.

(d) For contracts in excess of $500,000 the provision of Section (b) will be adhered to plus the company must have been listed for at least three consecutive years, or holding a valid Certificate of Authority of at least 1.5 million dollars and on the Treasury List.

(e) Surety Bonds guaranteed through U.S. Government Small Business Administration or Developers Training and Development Inc. will also be acceptable.

(f) The attorney-in-fact or other officer who signs performance and payment bonds for a surety company must file with such bond a certified copy of his power of attorney authorizing him to do so. The performance and payment bonds must be counter signed by the surety's resident Florida agent.

The Performance Bond or Cash used in lieu of the Performance Bond shall remain in force for one (1) year from the date of final acceptance of the work to protect the County against losses resulting from defects in materials or improper performance of work under the Agreement; provided however, that this limitation does not apply to suits seeking damages for latent defects in materials or workmanship, such actions being subject to the limitations found in Section 95.11(3)(c), Florida Statutes.

16. **Compliance with Public Housing Requirements.**

(a) Treatment of HUD Funds. Any transfer of public housing funds pursuant to this Agreement will not be an assignment of public housing funds or be deemed an assignment of public housing funds. Developer will not succeed to any rights or benefits County may have under the applicable grant agreements or contracts with HUD or attain any privilege, authority, interest, or right under applicable grant agreements or contracts between the County and HUD. Nothing contained in this Agreement will be construed to create any relationship of third party beneficiary or otherwise with HUD.

(b) Development Obligations. Developer shall provide development services in accordance with this Agreement. Developer shall perform the duties and undertake the responsibilities herein set forth in a competent and professional manner using good faith reasonable efforts. The Developer is an independent contractor and not an agent of the County. Therefore, except as may be expressly set forth herein, Developer shall have no authority to bind County. Except as expressly set forth herein, Developer will provide all services, equipment, and materials for Developer and will furnish, directly or through contractors, subcontractors, professional expertise, management, labor, materials, supplies,

fixtures, equipment, tools and machinery, testing, supervision, facilities, and other services required for the completion of the Development.

(c) Reporting Requirements. Pursuant to Sections 2-8.1, 2-8.8 and 10.34 of the Code of Miami-Dade County (as amended by Ordinance No. 11-90), the Developer must report to the County the race, gender and ethnic origin of the owners and employees of its first tier subcontractors using the Subcontractor/Supplier Listing form, attached hereto as Exhibit D. In the event that the Developer demonstrates to the County that the race, gender and ethnic information is not reasonably available at that time, the Developer shall be obligated by this Agreement to exercise commercially reasonable efforts to obtain that information and to provide the same to the County not later than ten (10) business days after it becomes available and, in any event, prior to final payment this Agreement.

(d) Compliance with Laws and other Requirements. Developer shall fully comply with all applicable laws and regulations applicable to Developer with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing and other employer-employee related matters, including, without limitation, all laws, rules and regulations with respect to non-discrimination based on race, sex or otherwise, and MBE/WBE, and Section 3 of the Housing and Urban Redevelopment Act of 1968, as more fully described in Exhibit F, Applicable HUD General Conditions for Construction Contracts, which is incorporated herein by reference. Developer will further comply with all applicable public housing requirements.

17. **Warranties.**

(a) Developer's Warranties. Developer represents and warrants to the County that (a) Developer is and will continue to be duly organized, and is in good standing under the laws of and qualified to do business in the State of Florida, (b) Developer has and will have all necessary power, authority, licenses and staff resources for the undertaking of its obligations under this Agreement, (c) this Agreement has been duly entered into and is the legally binding obligation of Developer, (d) this Agreement will not violate any judgment, law, or agreement to which Developer is a party or is subject, and (e) there is no claim pending, or to the best knowledge of Developer, threatened, that would impede Developer's ability to perform its obligation hereunto. Developer shall not hereafter enter into any agreement which would, or modify any existing agreement in a manner that would, impair its ability to perform its obligations hereunder, and will notify the County if any suit is threatened or law proposed which would impair its ability to perform its obligations hereunder.

(b) County's Warranties. The County represents and warrants to Developer that (a) the County has and will have all necessary power and authority under Florida law for the undertaking of its obligations under this Agreement, (b) this Agreement has been duly entered into and is the legally binding obligation of the County, (c)

this Agreement will not violate any judgment, law, consent decree, or agreement to which the County is a party or is subject to and will not violate any law or ordinance under which the County is organized, (d) the County is, or has an affiliate who is, qualified to participate as co-managing member of a tax credit limited liability company to the extent requested by the Developer, (e) there is no claim pending, or to the best knowledge of the County, threatened, that is likely to materially impede the County's ability to perform its obligation hereunto. The County shall not hereafter enter into any agreement or consent decree which would, or modify any existing agreement or consent decree in a manner that would impair its ability to perform its obligations hereunder, and will notify Developer if any suit is threatened or law proposed which would materially impair its ability to perform its obligations hereunder.

18. **Term.** This Agreement shall begin upon execution hereof; shall survive (unless specific provisions are superseded by subsequent agreements between both parties) execution of the closing documents; and shall terminate upon completion of the Development, including all rehabilitation and the re-housing of any residents temporarily displaced by such rehabilitation, except for any obligations that by their terms expressly survive termination as more fully set forth in Section 36 below. This Agreement and the closing documents for the Development will exclusively govern the relationship between the parties to this Agreement and such closing documents to the extent described in such documents. The Developer shall provide the County with a compact disk of all Financial Closing Documents in a searchable PDF format.

19. **County's Sovereignty.** It is expressly understood that, subject to the other provisions of this Agreement:

(a) The County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from reasonably withholding or refusing to issue any approvals of applications for 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 Development or the operation thereof, or be liable for the same; and

(b) The County shall not by virtue of this Agreement be obligated to grant the Developer any approvals of applications for 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 Development.

20. **Option and Right of First Refusal.** The County shall have the option and right of first refusal to purchase the Green Turnkey Site, which will be negotiated in a Purchase Option Agreement and Right of First Refusal Agreement to be agreed upon by the parties to this agreement.

21. **No Liability for Exercise of Police Power.** Subject to any contrary provision in this Agreement, or any County covenant or obligation that may be contained in this Agreement, the County shall have no obligation, including but not limited to the following:

(a) To assist the Developer in applying for any county, city or third party permit or needed approval; or

(b) To contest, defend against, or assist the Developer in contesting or defending against any challenge of any nature; and, except as otherwise set forth in this Agreement, this Agreement shall not bind the County Board, the Permitting, Environment and Regulatory Affairs Department, other applicable County departments, or their successor departments, or any other county, city, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or any other applicable governmental agencies in the exercise of its police power; and, except as otherwise set forth in this Agreement, the County shall be released and held harmless, by the Developer from and against any liability, responsibility, claims, consequential or other damages, or losses to the Developer 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 will require the County to exercise its quasi-judicial or police powers. Without limiting any other provision of this Agreement, the County shall have no obligation to approve, in whole or in part, any application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver. The County's obligation to use reasonable good faith efforts in the permitting of the use of County owned property regarding the Premises 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 the Developer as authorized by this Agreement. Moreover, in no event shall a failure of the County to adopt any of the Developer or Owner Entity'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 Agreement, unless such failure was unreasonable or untimely or in direct contravention to another provision of this Agreement.

22. Vendor Registration and Forms/Conflict of Interest.

(a) Vendor Registration. The Developer shall be a registered vendor with the County's Internal Services Department. Procurement Management Division, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Developer confirms its knowledge of and commitment to comply with the following:

i. *Miami-Dade County Ownership Disclosure Affidavit* (Section 2-8.1 of the County Code)

ii. *Miami-Dade County Employment Disclosure Affidavit (Section 2.8-1(d)(2) of the County Code)*

iii. *Miami-Dade Employment Drug-free Workplace Certification (Section 2-8.1.2(b) of the County Code)*

iv. *Miami-Dade Disability and Nondiscrimination Affidavit (Section 2-8.1.5* of the County Code)

v. *Miami-Dade County Debarment Disclosure Affidavit (Section 10.38 of the County Code)*

vi. *Miami-Dade County Vendor Obligation to County Affidavit (Section 2-8.1 of the County Code)*

vii. *Miami-Dade County Code of Business Ethics Affidavit (Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*

viii. *Miami-Dade County Family Leave Affidavit (Article V of Chapter 11 of the County Code)*

ix. *Miami-Dade County Living Wage Affidavit (Section 2-8.9 of the County Code)*

x. *Miami-Dade County Domestic Leave and Reporting Affidavit (Article 8, Section 11A-60 11A-67 of the County Code)*

xi. *Subcontracting Practices(Ordinance 97-35)*

xii. *Subcontractor /Supplier Listing (Section 2-8.8 of the County Code)*

xiii. *Environmentally Acceptable Packaging (Resolution R-738-92)*

xiv. *W-9 and 8109 Forms* (as required by the Internal Revenue Service)

xv. *FEIN Number or Social Security Number.* In order to establish a file, the Developer's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Developer's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

(1) Identification of individual account records

(2) To make payments to individual/Developer for goods and services

provided to Miami-Dade County

(3) Tax reporting purposes

(4) To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

xvi. *Office of the Inspector General* (Section 2-1076 of the County Code)

xvii. *Small Business Enterprises.* The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

xviii. *Antitrust Laws.* By acceptance of any contract, the Developer agrees to comply with all antitrust laws of the United States and the State of Florida.

(1) Conflict of Interest. Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593. Further the Developer shall comply with Section 1352 of Title 31 of the United States Code, which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, loan, or cooperative agreement. The Developer further agrees to comply with the requirement of such legislation to furnish a disclosure (OMB Standard Form LLQ) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been

paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, in connection with a Federal contract, grant, loan, or cooperative agreement, which payment would be prohibited if made from Federal appropriated funds. The Developer represents that:

- No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.

- There are no undisclosed persons or entities interested with the Developer in this Agreement. This Agreement is entered into by the Developer without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

o is interested on behalf of or through the Developer directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

o is an employee, agent, advisor, or consultant to the Developer or to the best of the Developer's knowledge any subcontractor or supplier to the Developer.

- Neither the Developer nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Developer shall have an interest which is in conflict with the Developer's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Developer provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to

consent to such relationship.

- The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

(2) In the event Developer has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Developer shall promptly bring such information to the attention of the County's Project Manager. Developer shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Developer receives from the Project Manager in regard to remedying the situation.

23. **Interest of Members of Congress.** No Member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

24. **Upon Written Notice to the Developer from the Inspector General or IPSIG Retained by the Inspector Employee of the County.** No member, officer, or employee of the County, no member of the governing body of the County, no member of the governing body by which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Development shall, during his or her tenure, or for two year thereafter or such longer time as the County's Code of Ethics may reasonably require, have any interest, direct or indirect, in this Agreement or the proceeds thereof, unless the conflict of interest is waived by the County and by HUD.

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

(a) ***Miami-Dade County Inspector General Review.*** According to Section 2-1076 of

the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Developer. The audit cost shall also be included in all change orders and all contract renewals and extensions.

i. Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (I) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records 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 the Agreement. 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 Developer, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption. The Developer 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 Developer'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.

26. **Notices.** All notices, requests, approvals, demands and other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed as follows (provided, that any time period for responding to any such communication shall not begin to run until such communication is actually received or delivery is refused):

If to County:	Miami-Dade County c/o Miami-Dade Public Housing and Community Development 701 N.W. 1st Court, 16th Floor Miami, FL 33136 Attn: Executive Director
With a Copy to:	Miami-Dade County Attorney's Office 111 N.W. 1st Street, Suite 2810 Miami, Florida 33128 Attn: Terrence A. Smith, Esq. Assistant County Attorney
If to Developer Partner:	Carlisle Development Group, LLC 2950 SW 27th Avenue, Suite 200 Miami, FL 33133 Attn: Matthew S. Greer, CEO
With a Copy to:	Klein Hornig LLP 1275 K Street NW Suite 1200 Washington, DC 20005 Attn: Chris Hornig

27. **Further Assurances.** Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement as mutually agreed by the Parties hereto.

28. **Assignment.** This Agreement shall not be assignable by either party, except by the Developer to the Owner Entities as contemplated herein or upon written consent of the other party.

29. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.

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

31. **Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.

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

33. **Final Agreement.** Unless otherwise provided herein, this Agreement constitutes the final understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the Parties, and except for those agreements contemplated herein. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby.

34. **Modification of Agreement.** This Agreement may be amended by mutual agreement of the County and Owner, not to be unreasonably withheld, subject to prior written approval by HUD (if required) and provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of the County or Owner to develop and operate the Public Housing Units in accordance with all Applicable Public Housing Requirements and the Ground Lease. This Agreement may not be altered, modified, rescinded, or extended orally.

35. **Survival.** The respective obligations of the parties under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof. More specifically, the parties agree that the provisions of Sections 7, 12, 13, 16, 19, 21, 25, and 26 shall survive the termination, cancellation or expiration of this Agreement for any reason, but only with respect to actions or omissions occurring or not occurring prior to the completion of the Development and subject to applicable statute of limitations in which the County may bring a claim for any underlying breach or default; provided, however, that nothing herein is intended to limit the power of any governmental or investigative agency, including but not limited to HUD, the Comptroller General of the United States, Miami-Dade Inspector General or their duly authorized representatives, or to limit the effect of any Federal or Florida law or regulation applicable to either party in connection with this Agreement.

36. **Waivers.** The failure of any party to insist in any one or more cases upon the strict performance of any of the obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver by any party of any provision of this Agreement shall be

deemed to have been made unless set forth in writing and signed by the party to be charged.

37. **Successors.** The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the Parties hereto, their successors and assigns.

38. **Certain Approvals and Reasonableness Standard.** Unless otherwise stated, all approvals or consents required of either party hereunder shall not be unreasonably withheld, conditioned or delayed and each party shall endeavor to act reasonably with respect to activities under this Agreement.

39. **Headings.** The headings in this Agreement are inserted for convenience only and shall not be used to define, limit or describe the scope of this Agreement or any of the obligations herein.

40. **Construction.** Whenever in this Agreement a pronoun is used, it shall be construed to represent either the singular or the plural, either the masculine or the feminine, as the case shall demand.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed this _____ day of _____, 2013.

Carlisle Development Group, LLC

By:_____
Matthew S. Greer, Manager

MIAMI-DADE COUNTY

By:_____

Attest: _____
Deputy Clerk

Approved as to form and legal
Sufficiency

By:_____
_____
_____

Exhibit A

Scope of Work

Exhibit B

Redevelopment Budget

Exhibit C

Redevelopment Schedule

Exhibit D

Unit Mix

Exhibit E

Subcontractor/Supplier Listing Form

Exhibit F

Applicable HUD General Conditions for Construction Contracts

Conduct of Work

1. Disputes

(a) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses entitled *Labor Standards and Labor Standards- Nonroutine Maintenance,* herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(c) All claims by the Developer shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the County against the Developer shall be subject to a written decision by the Contracting Officer.

(d) _____shall be the "Contracting Officer." The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Developer of the date by which the decision will be made.

(e) The Contracting Officer's decision shall be final unless the Developer (I) appeals in writing to a higher level in the County in accordance with the County' s policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within (30 unless otherwise indicated) days after receipt of the Contracting Officer's decision.

(f) The Developer shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

2. Lead-Based Paint

The Developer shall comply with the requirements concerning lead-based painted contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846) as implemented by 24 CFR Part 35.

3. Health, Safety, and Accident Prevention

(a) In performing this contract, the Developer shall:

i. Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

ii. Protect the lives, health, and safety of other persons;

iii. Prevent damage to property, materials, supplies, and equipment; and

iv. Avoid work interruptions.

(b) For these purposes, the Developer shall:

i. Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. § 3701 et seq.; and

ii. Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Developer shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Developer of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Developer or the Developer's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Developer shall immediately take corrective action (unless Developer disputes the notification in accordance with Section 1). If the Developer fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Developer shall not base any

claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Developer shall be responsible for its subcontractors' compliance with the provisions of this clause. The Developer shall take such action with respect to any subcontract as Miami-Dade County (the "County"), the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

4. Royalties and Patents

The Developer shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the County harmless from loss on account thereof; except that the County shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Developer has no reason to believe that the specified design, process, or product is an infringement. If, however, the Developer has reason to believe that any design, process or product specified is an infringement of a patent, the Developer shall promptly notify the Contracting Officer. Failure to give such notice shall make the Developer responsible for resultant loss.

5. Clean Air and Water

The contactor shall comply with the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. § 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

6. Energy Efficiency

The Developer shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

7. Subcontracts

(a) Definitions. As used in this contract:

i. "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

ii. "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Developer or another subcontractor.

(b) The Developer shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Developer shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Developer.

(d) The Developer shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract insofar as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the County or between the subcontractor and HUD.

8. Subcontracting with Small and Minority Firms, Women's Business Enterprise, and Labor Surplus Area Firms.

The Developer shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises; and

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

9. Equal Employment Opportunity.

During the performance of this contract, the Developer agrees as follows:

(a) The Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, or sexual orientation.

(b) The Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, or sexual orientation. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.

(c) The Developer shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Developer shall, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, or sexual orientation.

(e) The Developer shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Developer's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Developer shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Developer shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Developer shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Developer is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Developer may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Developer as provided in Executive Order 11246, as amended, the rules,

regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Developer shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Developer shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Developer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Developer may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.

10. Employment, Training, and Contracting Opportunities for Low-Income Persons, Section 3 of the Housing and Urban Development Act of 1968.

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b)agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

11. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

12. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the County, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the County was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

13. Limitations on Payments made to Influence Certain Federal Financial Transactions.

(a) The Developer agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Developer further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

14. Examination and Retention of Developer's Records

(a) The County, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Developer's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Developer agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the County, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

(d) Lunches, dinners, etc. are not acceptable reimbursable expenses.

(e) Acceptable reimbursable expenses are defined as:

(f) Payments to Developer shall be based on services rendered/work completed, not costs incurred for deposits/retainers.

15. Labor Standards - Davis-Bacon and Related Acts.

If the total amount of this contract exceeds $2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

i. All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Developer and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Developer and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

ii. Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a

classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

iii. If the Developer and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

iv. In the event the Developer, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

v. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

vi. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Developer shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

vii. If the Developer does not make payments to a trustee or other third person, the Developer may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Developer, that the applicable standards of the Davis-Bacon Act have been met. The

Secretary of Labor may require the Developer to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding of funds. HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Developer under this contract or any other Federal contract with the same prime Developer, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Developer, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Developer or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Developer, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Developer, disburse such amounts withheld for and on account of the Developer or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

i. Payrolls and basic records relating thereto shall be maintained by the Developer during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR § 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Developer shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Developers employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii. The Developer shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Developer is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

iii. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Developer or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

iv. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance" required by subparagraph (c)(2)(ii) of this clause.

v. The falsification of any of the above certifications may subject the Developer or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

vi. The Developer or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives

to interview employees during working hours on the job. If the Developer or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Developer, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

(d) Apprentices.

i. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Developer as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Developer's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency

recognized by OATELS, withdraws approval of an apprenticeship program, the Developer will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

ii. Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Developer will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

iii. Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(e) Compliance with Copeland Act requirements. The Developer shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Developer and a subcontractor as provided in 29 CFR § 5.12.

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Developer (or any of its subcontractors) and the County, HUD, the U.S. Department of Labor, or the employees or their representatives.

(i) Certification of eligibility.

i. By entering into this contract, the Developer certifies that neither it (nor he or she) nor any person or firm who has an interest in the Developer's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

ii. No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

iii. The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. § 1001.

(j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

i. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

ii. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Developer and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Developer and subcontractor

shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of the provisions set forth in subparagraph (j)(1) of this clause, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

iii. Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Developer or subcontractor under any such contract or any Federal contract with the same prime Developer, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Developer, such sums as may be determined to be necessary to satisfy any liabilities of such Developer or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph (j)(2) of this clause.

(k) Subcontracts. The Developer or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Developer shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

16. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Developer or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

i. The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. § 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

17. Procurement of Recovered Materials.

(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Developer shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Developer shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Developer determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Developer purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Developer: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.

Exhibit G - [IF APPLICABLE]

Vacancy Preparation Work

(Required to prepare existing vacant Public Housing units for temporary relocations of residents affected by the work covered by this MDA)

Should the County provide vacant units to the developer for its use for temporary relocation, the developer shall provide vacancy preparation;

1. Prior to being occupied by first relocated residents.
2. Perform maintenance and/or repairs to units during temporary occupancy period.
3. Perform a final vacancy preparation of unit after final resident(s) have been relocated back and prior to turn-over back to PHCD for its use.

Developer agrees to perform vacancy preparation work in accordance with PHCD requirements that will be provided when this vacant unit option is used for temporary relocation.

Exhibit H

Key Development Team Members

Exhibit I

County's Admissions and Continued Occupancy Policy

Exhibit J

Ground Lease

AMENDED AND RESTATED GROUND LEASE

Dated as of _____

between

MIAMI-DADE COUNTY

Landlord

and

GREEN TURNKEY PLAZA, LTD.

Tenant

AMENDED AND RESTATED GROUND LEASE

GREEN TURNKEY PLAZA

THIS GROUND LEASE ("Lease"), made as of _____ (the ***Commencement 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 **GREEN TURNKEY PLAZA, LTD.**, a Florida limited partnership (***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 the public housing development known as Green Turnkey (FLA 5-28) was located; and

WHEREAS, Tenant has proposed to rehabilitate, redevelop or newly construct a certain number of dwelling units as more fully described herein; and

WHEREAS, Landlord and Tenant have previously entered into a Ground Lease and subsequent amendments thereto for the Premises, which they now wish to amend and restate in full as of the Commencement Date;

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 Contribution Contract between HUD and Landlord dated February 2, 1996, 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) ***Base Rent*** means the annual rental payment due from Tenant to Landlord, in the amount of $1.00 per year, as described in Section 3.1.

(g) ***Commencement Date*** means the date set forth in the first line of this Lease, which said date shall be on or before the Financial Closing. For purposes of this Lease, the term "Financial Closing" means the closing on the construction financing.

(h) ***Declaration of Restrictive Covenants*** means that certain Declaration of Restrictive Covenants in favor of HUD recorded against the Land on or about the Commencement Date 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 Applicable Public Housing Requirements for the period stated therein.

(i) ***Development*** means the construction, maintenance and operation of the Premises in accordance with this Lease. The word ***Construction*** means rehabilitation, redevelopment or new construction, as applicable.

(j) ***Environmental Assessments*** means the environmental studies, reports and material correspondence identified in Exhibit D.

(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, including without limitation the rehabilitation of the existing units, 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.

(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) ***Landlord Loan Documents*** means the loan agreement, note, mortgage, and any other documents evidencing a loan from Landlord to Tenant. Nothing herein shall obligated Landlord to make such a loan.

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

(u) A ***Lease Year*** means, in the case of the first lease year, the period from the Commencement Date through December 31st 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.

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

(w) ***Partnership Agreement*** means the Amended and Restated Limited Partnership Agreement of Tenant entered into on or about the Commencement Date and pursuant to which the Tenant's equity investor (the "***Investor Partner***") will be admitted as a limited partner of the Tenant, as it may subsequently be amended.

(x) ***Permitted Leasehold Mortgage*** and ***Permitted Leasehold Mortgagee*** have the meanings set forth in Section 8.10.

(y) ***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.

(z) ***Plans and Specifications*** means the plans and specifications referenced in the Landlord Loan Documents, as they may be amended in accordance with the terms of such documents, or as otherwise approved by Landlord for the Construction of the Improvements.

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

(bb) ***Public Housing Units*** means not less than 21 units on the Premises regulated as public housing units in accordance with the ACC and other governing documents.

(cc) ***Regulatory Default*** has the meaning set forth in Section 8.7(a).

(dd) ***Rent*** means all amounts due from Tenant to Landlord pursuant to Article III of this Lease.

(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) ***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.

(hh) ***Term*** means seventy-five (75) calendar years from the Commencement Date.

(ii) ***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 Premises 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, $1 per year of the Term and any Extensions, with the first such payment being payable on the Commencement Date of this lease, and 100 percent share of the net cash flow from the premises. Said payments of rent shall be made payable to the Board of County Commissioners, c/o Public Housing and Community Development, 701 N.W. 1st Court, 16th 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.

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 sale 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 currently is exempt from any ad valorem taxes. Landlord represents to Tenant that 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 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.

3.6 Contested Obligations. If Tenant shall deem itself aggrieved by any Real Estate Taxes or other charges for which it is responsible hereunder and shall elect to contest the payment thereof, Tenant may make such payment under protest or, if postponement of such payment will not jeopardize Landlord's title to the Land, or subject Landlord to the risk of any criminal liability or civil liability or penalty, Tenant may postpone the same

provided that it shall secure such payment and the interest and penalties thereon and the costs of the contest on the determination or the proceedings or suit in which such contest may be had, by causing to be delivered to Landlord cash or other security satisfactory to Landlord, or a bond of indemnity of a good and solvent surety company, in form and amount satisfactory to Landlord. Either party paying any Real Estate Taxes or other charges shall be entitled to recover, receive and retain for its own benefit all abatements and refunds of such Real Estate Taxes or other charges, unless it has previously been reimbursed by the other party, in which case an equitable distribution will be made. Tenant agrees to save Landlord harmless from all costs and expenses incurred on account of Tenant's participation in such proceedings or as a result of Tenant's failure to Real Estate Taxes and other related charges with respect to the Premises. Landlord, without obligating itself to incur any costs or expenses in connection with such proceedings, shall cooperate with Tenant with respect to such proceedings so far as reasonably necessary. Neither party shall discontinue any abatement proceedings begun by it without first giving the other party written notice of its intent so to do and reasonable opportunity to be substituted in such proceedings. Landlord shall promptly furnish to Tenant a copy of any notice of any Real Estate Taxes received by Landlord.

ARTICLE IV

INDEMNITY, LIENS AND INSURANCE

Indemnification.

4.1 Indemnity for Tenant's Acts. Following the Commencement Date, Tenant shall indemnify and hold harmless 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, partners 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 (a) for any costs, expenses, claims or demands made by any party associated with the Premises relating to acts or occurrences prior to the Commencement Date or (b) for any claims stemming from Landlord's and/or its officers', employees' or agents' sole misconduct or sole negligence, unless such costs, expenses, claims or demands arise from the acts or omissions of the Tenant, its agents, contractors, employees, partners 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:

(c) 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;

(d) 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;

(e) except as may be referenced in the Environmental Assessments and to the best of Landlord's 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

(f) 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 PROCURE THE RELEASE OR DISCHARGE THEREOF WITHIN NINETY (90) DAYS EITHER BY PAYMENT OR IN SUCH OTHER MANNER AS MAY BE PRESCRIBED BY LAW. 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 C. Landlord acknowledges receipt of certificates of insurance satisfying such requirements as of the Commencement Date.

ARTICLE V

USE OF PREMISES; COVENANTS RUNNING WITH THE LAND

5.1 Use; Covenants.

(a) 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 the requirements of the Governing Documents and all other applicable documents to be executed between Landlord and Tenant. 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:

(1) Except as otherwise provided in the Act, the Premises shall be operated under the terms and conditions applicable to public housing, as set forth in the Applicable Public Housing Requirements, during the 40-year period that begins on the date on which the Premises becomes available for occupancy, but only if and as required by Section 9(d)(3)(A) of the Act (or any successor provision);

(2) 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);

(3) 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);

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

(5) Tenant agrees that, with the exception of: (A) any Permitted Leasehold Mortgages; (B) dwelling leases with eligible families for each type of unit; and (C) normal uses associated with the operation of the Public Housing Units, neither the Public Housing Units nor any portion thereof shall be encumbered in any way, nor the assets of the Public Housing Units pledged as collateral for a loan, without the prior written approval of Landlord and HUD. The encumbrances and pledges identified in the ACC Amendment have been approved by Landlord and HUD.

(b) 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.

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

(d) If HUD should release the Premises from any of the Governing Documents, then Tenant shall not be required to comply with such Governing Document.

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 Governing Documents and all other applicable documents to be executed between Landlord and Tenant. 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 the Governing Documents and the Permitted Leasehold Mortgage Documents, 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 Plans and Specifications unless authorized in accordance with Governing Documents and all other applicable documents to be executed between Landlord and Tenant or otherwise approved by Landlord in writing and in advance. Landlord's execution of this Lease constitutes a certification to HUD under 24 CFR § 941.402 that prior to making any such amendments, modifications or alterations of the Plans and Specifications such amendments, modifications or alterations shall be in accordance with its design and construction standards under 24 CFR § 941.203.

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 and Applicable Public Housing Requirements.

(b) Except as may otherwise be approved or deemed approved in accordance with Governing Documents and all other applicable documents to be executed between Landlord and Tenant. 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 and, if required by Applicable Public Housing Requirements at that time, HUD's written consent thereto, which consent shall not unreasonably be withheld so long as, in Landlord's reasonable judgment and HUD's reasonable judgment (if HUD's consent is required by Applicable Public Housing Requirements) such alteration, improvement, addition or demolition will not violate Applicable Public Housing Requirements or this Lease or impair the value of the Property. HUD's right under the preceding sentence shall be extinguished upon the release of the Declaration of Restrictive Covenants in favor of HUD encumbering the Premises.

5.4 Compliance with Law.

(a) Tenant shall, at its expense, perform all its activities on the Premises in compliance, and shall require all occupants of any portion thereof to comply, with all applicable laws, 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 4.2, Tenant agrees to fulfill the responsibilities set forth below with respect to environmental matters:

(c) 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.

(d) 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. Subject to the rights of Permitted Leasehold Mortgagee set forth herein, 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.

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 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 and HUD's express written consent thereto.

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 (as determined by Tenant in its sole and absolute discretion), Tenant may cancel this Lease, 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 (as determined by Tenant in its sole and absolute discretion), 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, so long as any applicable Permitted Leasehold Mortgagee with the right to control the disbursement of such proceeds has released such proceeds to Tenant for such restoration or repair. 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 (as determined by Tenant in its sole and absolute discretion) 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 so long as any applicable Leasehold Mortgagee with the right to control the disbursement of such proceeds has released such proceeds to Tenant for such restoration or repair. 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 without the prior written consent of the Permitted Leasehold Mortgagee 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, 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 Property 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 and 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 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 resolve 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.

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.

6.4 Conflict with ACC.

In the event of a conflict between any of the provisions of this Article VI and the provisions of the ACC, as amended by the ACC Amendment, the ACC and the ACC Amendment shall govern.

ARTICLE VII

CONDITION OF PREMISES

7.1 Condition.

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

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 (referenced on Exhibit B). 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 liened 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 for the Term and any Extensions. 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.

7.4 Notwithstanding Section 7.3 above, Landlord, HUD, and their respective 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.

(i) the elapsement of thirty (30) calendar days (or such longer period if the default is not capable of being cured in such 30 day period) after 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. Notwithstanding the 30-day period to cure, Tenant shall assess the condition that poses a threat to the health or safety of the public or patrons and determine if immediate action shall be taken by Tenant to cure the health and safety issue. Tenant shall maintain an accurate record of, and promptly report to the Landlord, all accidents or incidents resulting in the exposure of persons to toxic substances, hazardous materials or hazardous operations; the injury or death of any person; or damage to property incidental to work performed under the Agreement and all violations for which the Tenant has been cited by any federal, State or local regulatory/enforcement agency. The report shall include a copy of the notice of violation and the findings of any inquiry or inspection, and an analysis addressing the impact these violations may have on the work remaining to be performed. The report shall also state the required action(s), if any, to be taken to correct any violation(s) noted by the federal, State or local regulatory/enforcement agency and the time frame allowed by the agency to accomplish the necessary corrective action.

(j) Notwithstanding anything to the contrary in this Lease, an Event of Default shall not have occurred and Tenant shall not be deemed in default under this Lease if the Event of Default or Tenant's default is a proximate result of the failure by Landlord to pay to Tenant the full operating subsidies committed pursuant to the Regulatory and Operating Agreement between the parties, or to meet its other obligations under the Regulatory and Operating Agreement.

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 Landlord Rights Upon Termination.

Upon termination of this Lease, Landlord may:

(a) retain, at the time of such termination, any Rent or other impositions paid hereunder, without any deduction, offset or recoupment whatsoever; and

(b) enforce its rights under any bond outstanding at the time of such termination; and

(c) 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.

8.4 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 5.1:

(a) Upon a determination by Landlord that Tenant has materially breached or defaulted on any of the obligations under Section 5.1 (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.

(b) 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.

(c) 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.

8.5 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.

8.6 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.

8.7 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 encumbrances set forth on Exhibit B hereto (the "***Permitted Encumbrances***") and the leasehold mortgages securing the loans described on Exhibit B attached hereto (each a "***Permitted Leasehold Mortgage***"). 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:

(i) 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

(ii) Upon the execution and delivery of the new lease at the time payment is made in (i) 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.

(iii) 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, any 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.

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 HUD's Rights on Event of Default.

(a) Tenant shall give HUD a copy of all notices of default or other notices that Tenant may give to or serve in writing upon Landlord pursuant to the terms of this Lease. No notice by Tenant to Landlord under this Lease shall be effective unless a copy of such notice has been provided to HUD.

(b) HUD, at its option, may pay any amount or do any act or thing required of Landlord by the terms of this Lease. All payments made and all acts performed by HUD shall be as if they had been performed by Landlord.

(c) Upon the occurrence of an Event of Default that also constitutes a substantial default under the ACC, HUD may: (1) require Landlord to convey to HUD its fee simple interest in the Premises, and ensure Tenant's conveyance to HUD of its leasehold interest in the Premises, if, in HUD's determination (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) require Tenant to deliver possession and control of the Premises to HUD; or (3) exercise any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under the ACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

(d) If HUD acquires title to, or possession of, the Premises, HUD shall reconvey, or redeliver possession of, the Premises to Landlord and Tenant in accordance with their respective interests in the Premises: (i) upon a determination by HUD that the substantial default under the ACC has been cured and that the Premises will thereafter be operated in accordance with the terms of the ACC; or (ii) after the termination of HUD's obligation to make annual contributions available, unless there are any obligations or covenants of Landlord to HUD that are then in default.

(e) During the Term of this Lease, and so long as Tenant shall not be in default of its obligations hereunder, HUD agrees that in the event of a substantial default by Landlord under the ACC, HUD shall exercise any remedies or sanctions authorized under the ACC, including taking possession of Landlord's interest in the Premises, in such a manner as not to disturb Tenant's rights under this Lease or any other agreement between Landlord and Tenant.

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:

(a) 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

(b) The Landlord shall not by virtue of this Lease be obligated to grant the Tenant any approvals of applications for tax emption, 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:

(a) 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;

(b) To execute documents or give approvals, regardless of the purpose required for such execution or approvals;

(c) To apply for or assist the Tenant in applying for any county, city or third party permit or needed approval; or

(d) 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

MISCELLANEOUS

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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.

10.6 Decision Standards.

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

10.7 Bind and Inure.

Unless repugnant to the context, the words ***Landlord*** and ***Tenant*** shall be construed to mean the original parties, their respective successors and assigns and those claiming through or under them respectively. The agreements and conditions in this Lease contained on the part of Tenant to be performed and observed shall be binding upon Tenant and its successors and assigns and shall inure to the benefit of Landlord and its successors and assigns, and the agreements and conditions in this Lease contained on the part of Landlord to be performed and observed shall be. binding upon Landlord and its successors and assigns and shall inure to the benefit of Tenant and its successors and assigns. No holder of a mortgage of the leasehold interest hereunder shall be deemed to be the holder of said leasehold estate until such holder shall have acquired indefeasible title to said leasehold estate.

10.8 Estoppel Certificate.

Each party agrees from time to time, upon no less than fifteen (15) days' prior notice from the other to execute, acknowledge and deliver to the other, as the case may be, or to any Permitted Leasehold Mortgagee, a statement certifying that (i) this Lease is unmodified and in full force and effect (or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which the Rent has been paid, and that no additional rent or other payments are due under this Lease (or if additional rent or other payments are due, the nature and amount of the same), and (iii) whether there exists any uncured default by the other party, or any defense, offset, or counterclaim against the other party, and, if so, the nature of such default, defense, offset or counterclaim.

10.9 Recordation.

Simultaneously with the delivery of the Lease the parties have delivered a memorandum, notice or short-form of this Lease or this Lease which Tenant shall record in the appropriate office of the Public Records of Miami-Dade County. If this Lease is terminated before the Term expires, the parties shall execute, deliver and record an instrument acknowledging such fact and the date of termination of this Lease.

10.10 Notice.

Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease shall be in writing, may be delivered on behalf of a party by such party's counsel, and shall be deemed given when received, if (i) delivered by hand, (ii) sent by registered or certified mail, return receipt requested, or (iii) sent by recognized overnight delivery service such as Federal Express, addressed as follows:

If to the Landlord:	Miami-Dade County c/o Miami-Dade Public Housing and Community Development 701 N.W. 1st Court, 16th Floor Miami, Florida 33136 Attn: Executive Director
and a copy to:	Miami-Dade County Attorney's Office 111 N.W. 1st Street, Suite 2810 Miami, Florida 33128 Attn: Terrence A. Smith, Esq. Assistant County Attorney
If to Tenant:	Green Turnkey Plaza, Ltd. c/o Carlisle Development Group, LLC 2950 SW 27th Avenue, Suite 200 Miami, FL 33133 Attn: Ken Naylor
And a copy to:	Klein Hornig LLP 1275 K St. NW Suite 1200 Washington, DC 20005 Attn: Chris Hornig
If to HUD:	United States Department of Housing and Urban Development 451 Seventh Street, SW Washington, D.C. 20410 Attn: Assistant Secretary of Public and Indian Housing
If to Investor Partner:	Bank of America Community Development Banking MA1-225-02-02 225 Franklin Street Boston, MA 02110 Attention: Asset Management - Washington Square

With a copy to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: James E. McDermott, Esq.

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

10.11 Entire Agreement.

This instrument contains all the agreements made between the parties hereto with respect to the subject matter hereof 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 and approved by HUD.

10.12 Amendment.

This Lease may be amended by mutual agreement of Landlord and Tenant, subject to the prior written approval of HUD, as applicable, and 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 in accordance with Applicable Public Housing Requirements, to the extent applicable. 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 the Tenant's Investor Partner. 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.

10.13 Governing Law, Forum, and Jurisdiction.

This Lease shall be governed and construed in accordance with the laws of the State of Florida.

10.14 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. Nothing contained in the ACC or the ACC Amendment between HUD and Landlord, or in any agreement or contract between the parties hereto, nor any act of HUD, Landlord or Tenant will be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture or any association or relationship involving HUD.

10.15 Access.

Tenant agrees to grant a right of access to the Landlord, HUD, the Comptroller General of the United States, or any of their 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.

10.16 Conflicts.

In the event of a conflict between any requirement contained in this Lease (or between any requirement contained in any document referred to in this Lease, including any mortgage), and the Applicable Public Housing Requirements, the Applicable Public Housing Requirements shall in all instances be controlling.

10.17 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.

10.18 Radon Gas Disclosure.

Pursuant to Florida Statutes Section 404.056(5), Landlord makes, and Tenant hereby acknowledges, the following notification: "Radon is a naturally occurring radioactive gas that, when it has accumulated in buildings 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." Landlord has not tested for radon gas at the Premises and therefore, makes no representation regarding the presence or absence of such gas.

10.19 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, at the address for HUD set forth in Section 10.10 hereof.

10.20 Intention of the Parties.

It is the intention of Landlord and Tenant that, pursuant to the terms of the Lease, the full burdens and benefits associated with ownership of the Premises, except those pertaining to

ownership of the Land solely for state law purposes, shall pass to Tenant during the Term of the Lease.

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

DEFAULT; REMEDIES

12.1 Defaults.

Notwithstanding anything to the contrary contained in the Lease, at any time that Landlord or any affiliate of Landlord is a member of Tenant or owns a controlling interest in a member of Tenant, an Event of Default or a Regulatory Default shall not have occurred if the action or inaction that otherwise would constitute an Event of Default or a Regulatory Default was caused by the actions or inactions of Landlord or its affiliate in its capacity as a direct or indirect member of Tenant.

12.2 Remedies.

(a) 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.

(b) 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 Partner of Tenant simultaneously with the giving of notice to Tenant as required under the provisions of Article VIII of the Lease. The Investor Partner 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 Partner 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.

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

(d) 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 (i) at any time that Landlord or its affiliate is a member of Tenant or owns a controlling interest in a member of Tenant or (ii), if Landlord or its affiliate is not a member of Tenant and does not own a controlling interest in a member of Tenant, without first giving to the Investor Partner reasonable time, not to exceed 60 days, to replace Tenant's managing member and/or admit an additional managing member and cause the new managing member 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 Partner of the substitution or admission of a new managing member of Tenant within 30 days following Landlord's notice to Tenant and the Investor Partner of the Event of Default or other breach or default, and Tenant, following such substitution or admission of the managing member, shall thereupon proceed with due diligence to cure such Event of Default or other breach or default.

(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:

_____
Witness
Print Name:_____

_____
Witness
Print Name:_____

MIAMI-DADE COUNTY

By:_____

Name: Russell Benford, Deputy Mayor

Date:_____

HARVEY RUVIN, Clerk

Attest:_____
Deputy Clerk

Approved as to form and legal sufficiency:_____
Terrence A. Smith
Assistant County Attorney

TENANT:

Witness
Print Name:
Robert Dermiduke
Witness

GREEN TURNKEY PLAZA, LTD.

By: CDG Green Turnkey Plaza, LLC, its general partner

By:_____
Matthew Greer, Manager

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

Permitted Encumbrances

1. HUD Declaration of Restrictive Covenants
2. [Any other encumbrance identified on final title insurance commitment and accepted by Tenant]

EXHIBIT C

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 1st 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.