

MEMORANDUM

Amended  
Agenda Item No. 11(A)(11)

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

**DATE:** July 15, 2014

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

**SUBJECT:** Resolution declaring surplus vacant County owned land located at 301 NW 17<sup>th</sup> Street, Miami, Florida, and approving terms of and authorizing execution by the County Mayor of a Ground Lease between Miami-Dade County and Rainbow Housing Corporation, Inc., a Florida non-profit corporation for said County owned land to be utilized for affordable housing, with an estimated total fiscal impact of \$99 for a lease term of ninety-nine years

Resolution No. R-681-14

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

RAC/smm



# MEMORANDUM

(Revised)

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

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County Attorney

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**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 \_\_\_\_\_

Amended  
Agenda Item No. 11(A)(11)  
7-15-14

RESOLUTION NO. R-681-14

RESOLUTION DECLARING SURPLUS VACANT COUNTY OWNED LAND LOCATED AT 301 NW 17TH STREET, MIAMI, FLORIDA, AND APPROVING TERMS OF AND AUTHORIZING EXECUTION BY THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE OF A GROUND LEASE BETWEEN MIAMI-DADE COUNTY AND RAINBOW HOUSING CORPORATION, INC., A FLORIDA NON-PROFIT CORPORATION FOR SAID COUNTY OWNED LAND TO BE UTILIZED FOR AFFORDABLE HOUSING, WITH AN ESTIMATED TOTAL FISCAL IMPACT OF \$99 FOR A LEASE TERM OF NINETY-NINE YEARS; WAIVING RESOLUTION R-256-13 AS IT RELATES TO REQUIRING A RENTAL PAYMENT IN LIEU OF PAYING TAXES; WAIVING ADMINISTRATIVE ORDER 8-4 AS IT RELATES TO REVIEW BY THE PLANNING ADVISORY BOARD; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED THEREIN

**WHEREAS**, Rainbow Housing Corporation, Inc. is a Florida Non-Profit corporation organized for the purpose of providing affordable housing; and

**WHEREAS**, Rainbow Housing Corporation, Inc. is desirous of entering into a Ground Lease with Miami-Dade County for a vacant parcel of County-owned land located at 301 NW 17th Street, Miami, FL. (Folio No. 01-3136-065-0070); and

**WHEREAS**, Rainbow Housing Corporation, Inc. proposes to develop the property into an affordable rental community consisting of between 46 units and 55 units, which housing may be dedicated to families headed by or consisting of senior citizens; and

**WHEREAS**, Rainbow Housing Corporation, Inc. intends to obtain the necessary financing, and develop the property within the next three (3) years; and

**WHEREAS**, the Board is satisfied that pursuant to Section 125.38 of the Florida Statutes, that Rainbow Housing Corporation, Inc. does require the use of the property for a use

consistent with its mission and in support of the community interest and welfare purposes for which it is organized, and finds that such lease for that use, would promote community interest and welfare, and that the property is not otherwise needed for County purposes; and

**WHEREAS**, this Board, pursuant to Resolution R-256-13 has set forth a policy requiring leases with not-for-profit corporations to include lease terms requiring a rental payment in lieu of paying taxes in the event that tax exempt status is achieved by the not-for-profit corporation, unless a hardship or other substantial reason exists for foregoing such payment; and

**WHEREAS**, requiring such payment in lieu of taxes would create an economic hardship for Rainbow Housing Corporation, Inc. and would threaten the financial feasibility of this much needed affordable housing development; and

**WHEREAS**, it is in the best interest of the County and its citizens to waive the requirements of Resolution R-256-13 requiring the payment in lieu of taxes, to ensure that the development not only moves forward, but can be sustained in the future,

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

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

**Section 2.** This Board hereby approves the terms of the Ground Lease between Miami-Dade County and Rainbow Housing Corporation, Inc. in substantially the form attached hereto, authorizes the waiver of Resolution R-256-13 and Administrative Order 8-4 as it relates to review by the Planning Advisory Board, authorizes the County Mayor or the County Mayor's designee to enter into the lease in substantially the form attached hereto, incorporated herein by reference, and to take all actions necessary to effectuate the lease and to exercise all rights set forth in the lease pursuant to Section 125.38 of the Florida Statutes.

**Section 3.** The Board authorizes the County Mayor or the County Mayor's designee, if required, to submit a disposition application for the Project, a former public housing site, for approval by United States Department of Housing and Urban Development. The Board authorizes the County Mayor or County Mayor's designee to execute any agreements, releases from declarations, and any other documents on behalf of the County that may be required by United States Department of Housing and Urban Development; and further authorizes the County Mayor or the County Mayor's designee to exercise amendments, modifications, cancellation, and termination clauses.

The Prime Sponsor of the foregoing resolution is Commissioner Audrey M. Edmonson. It was offered by Commissioner **Audrey Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Lynda Bell** and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman	<b>aye</b>
	Lynda Bell, Vice Chair	<b>aye</b>
Bruno A. Barreiro	<b>aye</b>	Esteban L. Bovo, Jr. <b>aye</b>
Jose "Pepe" Diaz	<b>aye</b>	Audrey M. Edmonson <b>aye</b>
Sally A. Heyman	<b>absent</b>	Barbara J. Jordan <b>aye</b>
Jean Monestime	<b>aye</b>	Dennis C. Moss <b>aye</b>
Sen. Javier D. Souto	<b>aye</b>	Xavier L. Suarez <b>absent</b>
Juan C. Zapata	<b>aye</b>	

The Chairperson thereupon declared the resolution duly passed and adopted this 15<sup>th</sup> day of July, 2014. 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.

A handwritten signature in black ink, appearing to read "SSW", with a horizontal line extending to the right.

Shannon Summerset-Williams

**RAINBOW HOUSING CORPORATION  
GROUND LEASE**

RAINBOW HOUSING CORPORATION  
GROUND LEASE

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EXHIBITS AND SCHEDULES:

- Exhibit A     Map of Premises
- Exhibit B     Development Concept / Plans / Sketch of 46 unit Affordable Housing building(s)
- Exhibit C     Landlord's Estoppel Certificate (Sample)
- Exhibit D     Miami-Dade County Procedures Manual for Art in Public Places

Schedule 4.01 - Confirmation of Commencement Date

**GROUND LEASE**

THIS GROUND LEASE (hereinafter "Lease") is entered into and made effective on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter "Landlord"), and Rainbow Housing Corporation, a not-for-profit Florida corporation (hereinafter "Tenant").

**RECITALS**

WHEREAS, the Landlord is the owner of certain real property, consisting of a vacant parcel of land, located at 301 N.W. 17<sup>th</sup> Street, in the City of Miami, Miami-Dade County, Florida; and

WHEREAS, the Tenant is desirous of entering into a ground lease with the Landlord for the use and future development of the vacant parcel of land; and

WHEREAS, the Landlord has determined that it does not have a need to utilize or otherwise occupy the vacant parcel of land; and

WHEREAS, the Landlord, pursuant to Section 125.38, *Florida Statutes*, finds that the Tenant requires the vacant land to benefit the public or community interest purposes, and the vacant land is not otherwise needed for the Landlord's purposes, and that a lease regarding the vacant land to the Tenant would promote public or community interest and welfare; and

WHEREAS, the Landlord is willing, and has agreed to, pursuant to Sections 125.379, and 125.38, of the *Florida Statutes*, to enter into a ground lease with the Tenant for a term of ninety-nine (99) years, so long as the Tenant, at all times, remains a Florida not-for-profit entity, uses the property, makes it available for the production and preservation of

permanent Affordable Housing (as described herein below), and complies with all of the terms and conditions of this Lease in a timely manner, and

WHEREAS, the Board of County Commissioners, by Resolution, R- -14, has determined that it is in the best interest of the Landlord to lease the vacant parcel of land to the Tenant.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do agree as follows:

***WITNESSETH:***

The Landlord, for and in consideration of the restrictions and covenants herein contained, hereby leases to Tenant, and Tenant hereby agrees to lease from Landlord, the vacant parcel of land described below, and does so in accordance with the terms and conditions of this Lease, as described herein.

**ARTICLE 1**  
**INCORPORATION OF RECITALS**

1.01 The parties hereto agree that the foregoing recitals are true and correct, and are incorporated herein by reference.

**ARTICLE 2**  
**DEFINITIONS**

1. The words "Affordable Housing" shall mean housing affordable to natural persons or families whose total annual household incomes does not exceed one hundred twenty (120%) percent of the Area Median Income of Miami-Dade County, as adjusted for household size. In addition, with respect to this Lease, upon initial occupancy, all of the occupants of the rental units shall have a total annual gross household income that does not exceed sixty (60%) percent of the Area Median Income. Also, Affordable Housing shall also mean that monthly rents for the

residents does not exceed thirty (30%) percent of that amount which represents the percentage of the median adjusted gross annual income for the households.

2. The words "Area Median Income" shall mean the income limits that are determined by the United States Department of Housing and Urban Development ("HUD"), which is calculated by household size for each metropolitan area, and parts of some metropolitan areas. HUD estimates the median family income for an area in the current year and adjusts that amount for different family sizes so that family incomes may be expressed as a percentage of the area median income.
3. The words "Development Concept" shall mean and refer to the overall site plan, building elevations, space plans, configuration of improvements and program summary, if any, as articulated for the Project, in draft, which, in its current version as of the Commencement Date is in illustrated "Exhibit B", and which is incorporated herein by reference.
4. The words "Extremely Low-income persons" shall mean one or more natural persons, or a family, where the total annual adjusted gross household income of which does not exceed thirty (30%) percent of the Area Median Income. Also, as described and further defined by Section 420.0004(9), Florida Statutes, the Florida Housing Corporation may adjust the amount annually by rule to provide that in lower income counties, extremely low-income may exceed thirty (30%) percent of the Area Median Income, and that in higher income counties, extremely low-income may be less than thirty (30%) percent of the Area Median Income. The parties hereby acknowledge and agree that at least ten (10%) percent of the units for the Project will be set-aside for Extremely Low-income persons.
5. The words "*Force Majeure*" shall mean when the Tenant and/or the Landlord shall be excused for the period of any delay and shall and shall not be deemed in default with respect to the performance of any of the non-monetary terms, covenants, and conditions of this Lease when prevented from so doing by cause or causes beyond Tenant's or Landlord's control, excluding filing of bankruptcy, but which shall include, without limitation, all labor disputes, governmental regulations or controls, fire or other casualty, acts of God, or any other cause, whether similar or dissimilar to the foregoing, not within the control of Tenant or Landlord. However, in order for the Tenant or Landlord to claim or otherwise take advantage of *force majeure*, such party must first notify the other party in writing of the event, and then secure from the other party a written acknowledgement that the other party recognizes the existence of an event of *force majeure*. Further, the Landlord or Tenant, as applicable, shall only be entitled to an extension of time, equal to the exact same period of the *force majeure* delay to complete its duty to perform under the terms and conditions of this Lease.
6. The word "Improvements" shall mean any and all buildings and/or other structures built on the Premises, and the parking areas (including any structured parking facility), hardscaping, landscaping, amenities, and all related infrastructure,

installations, fixtures, equipment, utilities, site-work, and other improvements existing or to be developed upon the Premises.

7. The words "Lending Institution" means any bank or trust company, mortgage bank, savings bank, credit union, national banking association, savings and loan association, building and loan association, insurance company, the Florida Housing Finance Corporation, Fannie Mae, Freddie Mac, or other financial institution or governmental agency authorized to transact business in the State of Florida, and which customarily provides service or otherwise aids in the financing of mortgages on real property located in the State of Florida, or any federal, state, or local governmental authority.
8. The words "Plans and Specifications" shall mean the plans and specifications for all the work in connection with the construction and build-out of the multifamily building for the Project, as illustrated by what is shown in the Development Concept, and shall include any changes, additions or modifications thereof, provided the same are approved as provided for by the Landlord herein.
9. The word "Premises" to mean the vacant parcel of land being leased by the Landlord to the Tenant for the development of the Project. The County-owned property is located at 301 N.W. 17<sup>th</sup> Street, Miami, Florida (Folio No.: 01-3136-065-0070). See map of the Premises, shown in "Exhibit A", and which is incorporated herein by this reference. The Premises is further described in Article 3, of this Lease.
10. The word "Project" shall mean the overall development on the Premises which will consists of a multi-story building, and specifically Affordable Housing with the primary purpose of providing decent, safe, and sanitary residential housing for individuals, families, and/or senior citizens, substantially as it is depicted and described in the plans and Development Concept submitted by the Tenant, consisting of, at minimum, forty-six (46) units of rental housing, and a maximum of fifty-five (55) units of rental housing, together with such related non-housing facilities as determined necessary by the Landlord, and which development includes any and all matters and things that will be required to be done by the Tenant in accordance with the terms and conditions of this Lease.
11. The words "Senior Housing" or "Elderly Housing" shall mean an age-restricted apartment community, which housing is specifically designed for older adults that meet the income limits for the area, and in which at least one (1) resident of each unit must be 55 years of age or older, and so long as at least eighty (80%) percent of the units in the building have tenants that meet these minimum requirements. There must also be a strict adherence to a policy that demonstrates an intent to house persons who are 55 years of age or older (and must register with the Florida Commission on Human Rights). Otherwise, the definition for Senior Housing or Elderly Housing shall mean occupants that are all 62 years of age or older. The

housing must qualify for an exemption under the Fair Housing Act for older persons.

**ARTICLE 3**  
**DESCRIPTION OF PREMISES**

3.01 Landlord hereby leases the Premises to Tenant, and Tenant hereby rents the Premises from Landlord, subject to the terms, covenants, conditions and provisions of this Lease.

3.02 Premises. The vacant parcel of land involved in this matter, which is located in the City of Miami, is described as follows:

Folio Number:	01-3136-065-0070
Property Address:	301 N.W. 17 <sup>th</sup> Street, Miami, Florida
Legal Description:	Townpark Subdivision – 5 PB 91-10 Tract 17.

3.03 The Premises is graphically depicted on the attached map, marked “Exhibit A” and incorporated herein by reference.

3.04 Landlord and Tenant agree that the square footage of the Premises is approximately 60,412 square feet (approximately 1.39 acres). And further that the square footage of the Premises is only an approximation of size, as the Premises has not been duly measured by the Landlord. Moreover, the Tenant, has visited the Premises first-hand, and therefore is fully aware of the size of the Premises, and has determined that the Premises is of sufficient size for its intended purposes.

3.05 Notwithstanding anything to the contrary contained herein, the Premises has been inspected by the Tenant who accepts the Premises in its “as-is” and “where-is” condition, with any and all faults, and who understands and agrees that the Landlord does not offer any implied or expressed warranty as to the condition of the Premises and/or whether it is fit for any particular purpose.

ARTICLE 4  
TERM

4.01 The term of this Lease is for a period of ninety-nine (99) years. This Lease shall become effective ten (10) days after the date of its adoption by the Miami-Dade County Board of County Commissioners, unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by the Miami-Dade County Board of County Commissioners. The date on which this Lease becomes effective, as provided herein, and as first written above in this Lease, is called the "Execution Date". The "Commencement Date" shall be the date that the Tenant retains, completes, and closes on the last of its financing for the Project. The date that the Tenant shall take possession of the Premises, beginning the term of this Lease, shall be on the Commencement Date. The Commencement Date shall be materialized and confirmed in a document named Confirmation of Commencement Date, which shall be executed by the Landlord in the form attached hereto as Schedule 4.01. However, in no event shall the Commencement Date be more than thirty-six (36) months after the Execution Date. If the Commencement Date has not occurred within thirty-six (36) months from the Execution Date, then such failure shall be an automatic event of default, and this Lease shall automatically terminate, and the Tenant shall not be entitled to any type of recovery or reimbursement for any expenditure, or anticipated expenditure. Further, the Landlord and the Tenant hereby acknowledge and agree that this Lease shall terminate on \_\_\_\_\_, 20 \_\_\_\_ (hereinafter the "Expiration Date), which date is ninety-nine (99) years after the Execution Date, so long as Tenant complies with all of the terms and conditions herein, including the requirements to meet certain "milestones" within the first thirty-six (36) months from the Execution Date.

4.02 The Tenant agrees that not only shall this Lease expire on the Expiration Date without the necessity of any notice from either the Landlord or the Tenant to terminate

the same, but also Tenant hereby waives notice to vacate or quit the Premises and agrees that Landlord shall be entitled the benefit of all provisions of law respecting the summary recovery of possession of the Premises from a Tenant holding over to the same extent as if statutory notice had been given. Tenant hereby agrees that if it fails to surrender the Premises at the end of the term, or any renewal thereof, Tenant will be liable to Landlord for any and all damages which Landlord shall suffer by reason thereof, and Tenant will indemnify Landlord against all claims and demands made by any succeeding tenants and/or developers against Landlord founded upon delay by Landlord in delivering possession of the Premises to such succeeding tenant and/or developer.

4.03 If Tenant shall be in possession of the Premises after the Expiration Date, in the absence of any agreement extending the term hereof, the tenancy under this Lease shall become one of month-to-month, terminable by either party on thirty (30) days prior written notice. Such month-to-month tenancy shall be subject to all of the covenants, conditions, provisions, restrictions and obligations of this Lease and shall be subject to rent based upon the terms and conditions found in Section 5.02.

4.04 Limitation of the Term. As stated above in paragraph 4.01, the term of this Lease is for ninety-nine (99) years. However, beginning on the Execution Date, the Tenant shall have thirty-six (36) months to meet and comply with certain "milestones" which have been agreed upon by the parties. The milestones are found in Section 6.02 of this Lease. Should the Tenant fail to timely meet any or all of the milestones within thirty-six (36) months from the Execution Date of this Lease, it shall be an event of default and this Lease shall automatically terminate and become void, and the Tenant shall immediately vacate the Premises. Should the Tenant timely meet and comply with all of the various milestones

described in this Lease (see Section 6.02), then this Lease shall continue uninterrupted for the full term as stated in Section 4.01 of this Lease.

**ARTICLE 5**  
**RENT**

5.01 Tenant covenants and agrees to pay to Landlord as rental for a term of ninety-nine (99) years, commencing upon the Commencement Date, and expiring on the Expiration Date, the amount of One (\$1.00) Dollar per year, and payable upon the Commencement Date of this Lease, plus any and all applicable taxes, including, but not limited to Sales Tax, and thereafter payable on the anniversary of the Commencement Date, to the Board of County Commissioners, c/o Public Housing and Community Development (PHCD), 701 N.W. 1<sup>st</sup> Court, 14<sup>th</sup> Floor, Miami, Florida 33136, or at such other place and to such other person as Landlord may from time to time designate in writing, as set forth herein. The Tenant further agrees to pay any and all such rent without stipulation, restriction, condition, reservation, deduction, or set-off.

5.02 Tenant also agrees that should it be in possession of the Premises after the Expiration Date, or any renewal or extension thereof, that it shall, in addition to being liable to the Landlord for any and all damages as a result of such holdover, be obligated to pay the then market rent, meaning that rental rate that the Landlord could normally obtain if the Landlord elected to rent the Premises to a third party, which assessment contemplates an arms' length transaction (hereinafter "Market Rent"). Market Rent shall be determined by an independent appraiser selected by the Landlord, who appraises the Premises in its then current condition (no reduction shall be given for any improvements made by the Tenant to the Premises).

5.03 The Tenant hereby acknowledges and agrees that if at any time during the

term of this Lease, or any renewal or extension thereof, a tax, charge, levy, imposition, or excise is placed, or otherwise imposed, on the Premises, and/or the Tenant's leasehold interest in the Premises, then the Tenant shall be solely responsible for the payment and satisfaction of any such tax, charge, levy, imposition, or excise.

**ARTICLE 6**  
**PERMITTED USE OF PREMISES**

6.01 Tenant shall only perform work or make improvements on or to the Premises that are consistent with the future construction of an Affordable Housing apartment building, consisting of no less than forty-six (46) rental units of housing, and a maximum of fifty-five (55) rental housing units, which building may also be restricted to Senior Housing ("Permitted Use"). The Affordable Housing apartment building shall be strictly limited to residents meeting the requirements for Affordable Housing. And with respect to this Lease, all of the occupants of the rental units shall have a total annual gross household income that does not exceed sixty (60%) percent of the Area Median Income (AMI), and that each unit of housing is rented to the occupant(s), and the occupant(s) is not paying more than thirty (30%) percent of his/her (their) monthly gross household income as rent. The Tenant further agrees that for occupants, their household annual income at the time of initial occupancy may not exceed sixty (60%) percent of the AMI, adjusted for family size, but while occupying the unit, the occupant's household annual income may increase to an amount not to exceed one hundred twenty (120%) percent of the AMI, adjusted for family size. The Tenant agrees that at least ten (10%) percent of the units for the Project shall be allocated to Extremely Low-income persons or Extremely Low-income households. However, the parties hereby further agree that should the definition for Affordable Housing, and/or "Extremely Low-income person" or "Extremely Low-income household", as defined by the *Florida Statutes* (see Section 420.0004(3)) for Affordable Housing, change in the

future, then that definition shall be applicable to this Lease, and the Tenant shall be permitted to adjust its tenant mixture in accordance with the then current definition of Affordable Housing and/or "Extremely Low-income person" or "Extremely Low-income household". The parties agree that percentage of units set-aside for Extremely Low-income persons or households in the Project may be modified administratively by the County Mayor, or the County Mayor's designee, at any time during the term of this Lease, so long as the determination is based upon the Tenant's ability to secure and/or maintain financing for the Project. The Tenant's proposed Development Concept, complete with a site plan, with elevations, and a description of the Affordable Housing apartment building is attached hereto, marked as "Exhibit B" and incorporated herein by reference. The Tenant further agrees that the two-bedroom units in the Project shall consist of at least eight hundred (800) square feet of space. One-bedroom units shall consist of at least six hundred (600) square feet of space.

6.02 During the term of this Lease, the Tenant agrees that it shall perform the following "milestones", within the prescribed time periods, beginning upon the Execution Date, and strictly for the thirty-six (36) month period following the anniversary of the Execution Date, the Tenant shall perform the below listed milestones. Further, the Tenant shall deliver a notice to the Landlord indicating the date that it plans to commence performing the milestones, and deliver a second notice to the Landlord on the date that it has commenced performing the milestones.

A.) Within twenty-four (24) months of the Execution Date, the Tenant, at its sole cost and expense, shall provide the Landlord with all of the following:

1.) A copy of an environmental study of the Premises, performed by an environmental engineering firm, licensed to perform such work in the State of Florida; and

A letter from Tenant's attorney, or from the City of Miami, stating that the property is properly zoned for the proposed development project (the Landlord, solely in its

capacity and limited role as a landlord, at Tenant's sole cost and expense, is willing to participate in any necessary zoning modification or variance during the period commencing on the Execution Date and ending thirty-six (36) months thereafter).

B.) Within thirty-four (34) months of the Execution Date, the Tenant, at its sole cost and expense, shall provide the Landlord with all of the following:

- 1.) A copy of an estimated budget for the entire construction of the development Project, including any and all Improvements, as reviewed and approved by an architect licensed to perform such work in the State of Florida; and
- 2.) A copy of the final soil boring test for compaction capabilities and soil condition; and
- 5.) A copy of the structural, mechanical and electrical drawings; and
- 6.) A copy of an executed development agreement, or joint venture partnership agreement, between the Tenant and the developer for the Project, along with satisfactory evidence that all such entities are in good standing; and
- 7.) A copy of preliminary, fifty (50%) percent, construction drawings, including elevations, which shall have been prepared by an architect licensed to perform such work in the State of Florida.

C.) Within thirty-six (36) months of the Execution Date, the Tenant, at its sole cost and expense, shall provide the Landlord with all of the following:

- 1.) A copy of the final budget for the entire construction of the development Project, as reviewed and approved by an architect licensed to perform such work in the State of Florida; and
- 2.) A copy of the fully executed contract for the General Contractor; and
- 3.) A copy of any and all subleases and assignments; and
- 4.) Evidence that the Tenant has commenced construction of the Project, as described in Section 9.1 below; and
- 5.) A copy of the completed architectural drawings, along with completed building department (City of Miami building department) applications and any permits that have been received; and

6.) A copy of all environmental reports (Phase I and any Phase II Assessments) and any and all permits from the Landlord's Regulatory and Economic Resources (RER) department, if applicable.

6.03 Tenant agrees that it shall not begin actual construction of the Project during the term of this Lease without receiving the Landlord's prior written permission, which shall be based on the Tenant having timely completed the requirements listed above in Section 6.02, and having secured a building permit from the City of Miami (the Tenant is required to deliver a copy of such permit to the Landlord). The Tenant will also provide the Landlord with a letter certifying that it has timely completed all of the needed requirements to meet the terms and conditions of the milestones, and inform the Landlord of the date that it anticipates to break ground for the Project.

6.04 Tenant acknowledges and agrees that it will timely comply with all of the requirements in 6.02, and that failure to do so shall be an event of default.

6.05 Tenant agrees that it shall commence construction of the Project within thirty-six (36) months of the Execution Date, and complete construction of the Affordable Housing apartment building within eighteen (18) months from the date that Tenant commenced construction of the Project, with the apartment building, and any and all improvements, being completed no later than December 31, 2019. Completion of construction shall be evidenced by a temporary certificate of occupancy, subject to delay due to *force majeure*. The foregoing being said, in accordance with Section 9.01 below, the Tenant, with the prior written approval by the Landlord, specifically, the County Mayor, or the County Mayor's designee, may extend the time period to complete the construction of the Project up to an addition eighteen (18) month period, with the final completion date being December 31, 2021.

6.06 Tenant agrees that upon completion of construction of an Affordable Housing apartment building, the Tenant will continuously use the Premises for the Permitted Use and for no other purpose whatsoever.

6.07 Tenant agrees that no changes in the Permitted Use of the Premises is authorized without the expressed prior written permission of the Landlord. Further, as noted above, Tenant hereby expressly agrees that should the Tenant fail to timely comply with the requirements in Section 6.02 it shall be an event of default, and this Lease shall immediately and automatically terminate upon notice by the Landlord and thereafter this Lease shall become null and void, and any and all improvements on or to the Premises shall become the sole property of the Landlord, without cost or expense to the Landlord.

**ARTICLE 7**  
**CONDITION OF PREMISES**

7.01 Landlord and Tenant agree that the Tenant shall be solely responsible for obtaining, securing and/or maintaining any and all permits and licenses, including, but not limited to, construction or building permit(s) and/or license(s). Tenant agrees to be solely responsible for the cost to obtain all required permit(s) and/or license(s).

7.02 Tenant agrees that it is solely responsible for securing any necessary land use approvals, zoning regulations, restrictions, rules, laws and ordinances that may be necessary in order for the Tenant to construct the Affordable Housing apartment building, and/or to operate any Senior Housing component of the Project (with or without a management company).

7.03 Tenant is aware of any and all easements or other encumbrances on or

about the Premises and shall determine if any such easements or other encumbrances will or will not interfere with the Tenant's planned use of the Premises as an Affordable Housing apartment building. Tenant agrees that if any easements and/or other encumbrances exists on the Premises that it shall be the Tenant's responsibility to cause the removal of such easements and other encumbrances, or to design the building in such a manner as to not disturb or interfere with the easements and/or other encumbrances.

7.04 The parties hereby expressly acknowledge and agree that Tenant shall not occupy or otherwise utilize any portion of the Premises prior to obtaining all necessary permits and/or licenses for the occupancy or operation of an Affordable Housing apartment building. And, if any necessary permit or license expires, is revoked, or withdrawn, for any reason whatsoever, Tenant shall refrain from such use, occupancy and/or operation until the Tenant has re-secured, and has in hand, the appropriate permit(s) and/or license(s) which authorize and warrant the use, occupancy and/or operation of the Premises as contemplated under this Lease. Further, Tenant is fully responsible for complying with, at its sole cost and expense, any and all building, fire, health, safety, or other codes.

7.05 Tenant acknowledges and agrees that the Premises currently consists of a vacant parcel of land, and hereby accepts full responsibility to undertake any and all environmental assessments on or about the Premises, and if necessary, clean-up (as determined by any and all federal, state and local laws and regulations) the Premises, at Tenant's sole cost and expense, to a level or amount that will allow for the development of the Premises, including the construction of any and all structure(s) or improvements that will comprise the Affordable Housing apartment building. Further, throughout the term of this Lease, the Tenant shall also be solely responsible for any and all repair and maintenance to the Premises and all Improvements, including, but not limited to, complying with the Americans with Disabilities Act (and/or any related law, rule, or regulation), addressing any

groundwater or soil conditions, structural and/or foundation problems, and air and/or noise quality.

**ARTICLE 8**  
**TAXES AND UTILITIES**

8.01 Tenant understands and agrees that as a result of the Landlord's ownership of the Premises, the Premises currently does not incur any *ad valorem* taxes. However during the term of this Lease, consistent with Sections 5.01 and 5.03 above, the Tenant shall be solely responsible for any tax, charge, capital levy, imposition, or excise that is assessed or otherwise imposed on the Premises, the leasehold interest, and/or the rent. The Tenant shall be responsible for and shall pay, before delinquency, all municipal, county, or state taxes assessed against any occupancy interest or personal property, of any kind or nature, owned by or placed in, upon, or about the Premises. Further, the Tenant hereby covenants and agrees to pay, without notice or demand and without set-off, abatement, suspension or deduction, any and all taxes, payments in lieu of taxes, betterment assessments, water, electric, sewer, telephone and other utility charges for the Premises and/or any structures and/or improvements thereon. Tenant further covenants and agrees to pay without notice or demand and without set-off, abatement, suspension or deduction, all other costs, general and special, ordinary and extraordinary, foreseen and unforeseen, which are due and payable during the term of this Lease, at any time imposed or levied against the Premises and/or any structures and/or improvements thereon. All such payments shall be made no less than five (5) calendar days prior to the last date on which the same may become delinquent and be paid without penalty.

8.02 Tenant will furnish to Landlord, once per year, concurrently with evidence of its not-for-profit status, proof of payment of all items referred to in paragraph 8.01, which are payable by Tenant, including, but not limited to the payment of any taxes or payments in

lieu thereof.

8.03 If Tenant shall elect to contest the payment of any taxes, Tenant may make such payment under protest, or if postponement of such payment will not jeopardize the Landlord's title or interest in or to the Premises, or subject Landlord to the risk of any civil liability or penalty as determined in the sole and absolute discretion of the Landlord, Tenant may postpone the same to contest the amount of such taxes, but only if such postponement is done in accordance with the then-applicable laws, rules and regulations. If Landlord then so requires, Tenant shall secure the full amount of the taxes levied and the interest and penalties thereon and the costs of the proceedings or suit on the determination of whether the amount of the taxes is appropriate, by causing to be delivered to the Landlord in the form of a bond or other security, in the form satisfactory to Landlord, which amount Landlord shall hold in its general account during the pendency of the proceedings. Landlord shall return any amounts remaining, without interest, within thirty (30) days of the conclusion of the proceedings, that Landlord did not use to pay the taxes, interest or penalty. Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all costs and expenses incurred on account of Tenant's protest and participation in such proceedings and/or as a result of Tenant's failure to timely pay taxes and other related charges with respect to the Premises and/or any structures and/or improvements thereon. Tenant shall promptly furnish the Landlord with a copy of any notice of all events and actions as they relate to the proceedings and/or suits.

**ARTICLE 9**  
**CONSTRUCTION OF STRUCTURES AND IMPROVEMENTS**

9.01 Tenant, at its sole cost and expense, shall, at a minimum, perform any and/or all of the pre-construction work necessary to construct the Project. The construction of the Project shall incorporate sustainable development building measures (green building practices) into the planning, design, construction, renovation and maintenance of the

building and any and all improvements, all in accordance with the Landlord's Sustainable Buildings Program, as further described below in Section 9.02. The construction of the Project shall commence no later than thirty-six (36) months from the Execution Date. Commencement of the Project is hereby agreed upon and determined to be the cumulative of: 1.) issuance of the building permit(s) for an Affordable Housing apartment building; 2.) the commitment for funding for the entire construction project; 3.) a general contractor that is retained and ready to begin construction; 4.) filing of a notice of commencement under Section 713.13, *Florida Statutes*; and 5.) the visible start of work (i.e. actual construction of the Project), including the installation of on-site utilities, excavation, soil stabilization work, and/or the construction of the actual building (note, simply pouring of the foundation will not serve as commencing construction). Further, the Tenant specifically agrees that construction of the Project will occur over an eighteen (18) month period, with the building being completed by December 31, 2019, as evidenced by a temporary certificate of occupancy, subject to delay due to *force majeure*. However, the Tenant, with the prior written approval by the Landlord, specifically, the County Mayor, or the County Mayor's designee, which may be granted or denied in the Landlord's sole and absolute discretion, may extend the time period to complete the construction of the Project up to an additional eighteen (18) month period, with the final completion date being December 31, 2021. Failure to timely construct a structure(s) and/or improvements to the Premises, which can sufficiently serve as an Affordable Housing apartment building, as reasonably determined by the Landlord, all in accordance with the terms and conditions of this Lease, shall result in the termination of this Lease, and the Premises reverting to the Landlord, along with any and all structure(s), building(s), and/or improvements thereto.

9.02 The Tenant acknowledges and agrees that it is required to comply with the Landlord's rules, regulations, and ordinances pertaining to constructing a sustainable (or "green") building(s) on the Premises that conserves the community's natural resources,

saves taxpayer dollars, reduces operating expenses, and creates a healthier built environment for employees, tenants, and visitors on and about the Premises. As a direct result of the Tenant's commitment to construct a sustainable building(s), the Tenant further agrees to the following:

A.) The Tenant is required, at its sole cost and expense, to construct the Affordable Housing apartment building, to at least a Silver certification rating from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED), and the construction of the building(s) is also in compliance with any and all of the "green building standards" required by the Landlord for new construction projects, in addition to any and all Florida building code restrictions and/or requirements. The Tenant acknowledges and agrees that the LEED Silver certification or designation means that the Affordable Housing apartment building shall be constructed to meet certain specifications as outlined by the U.S. Green Building Council, which will include various "green" or environmentally responsible features including, but not limited to, the preparation of the Premises, as well as the design and construction of the building and/or other improvements; and all shall be reviewed, examined, approved, and certified by a neutral and independent third-party who is certified or approved by the U.S. Green Building Council, and who also regularly certifies such structures as meeting certain LEED standards and/or requirements. The Tenant agrees to regularly provide the Landlord with copies of any and all records and/or reports (including but not limited to any approvals, rejections and/or comments) from the neutral and independent third-party reviewing the construction of the Affordable Housing apartment building, to establish that the Tenant is in fact proceeding with the construction in a manner to ensure that the LEED Silver designation can be secured from the U.S. Green Building Council. The Tenant also hereby acknowledges and agrees that it must incorporate high performance building concepts and technologies in order to enhance the overall design and

construction of the residential building(s), while simultaneously making any and all other improvements and the remaining public spaces environmentally responsible.

B.) The Tenant hereby acknowledges and agrees that the LEED Silver certification or designation is a description or label designed to establish the level of energy efficiency and sustainability for the Affordable Housing apartment building along with any and all other improvements that will be constructed on the Premises, and such energy efficiency should substantially improve the "normal" or "regular" energy efficiency and indoor air quality for the entire Affordable Housing apartment building, including, but not limited to, each individual residential unit. Beyond these environmentally responsible steps, the Tenant specifically agrees to consider additional areas or means to improve and/or protect the environment with regard to the construction project, and inform the Landlord of any and all such additional methods or ways that the Tenant will utilize "green building standards" in the design and construction of the Affordable Housing apartment building, in an effort to achieve the important goals of creating a healthy place to live and work as well as an environmentally responsible development in the community.

C.) Substitution of Standard: The Landlord has determined that with regard to the Project, the Tenant shall be permitted to utilize either: 1.) the ICC 700 National Green Building Standard®; or 2.) the Florida Green Building Coalition. Further, in utilizing either of the foregoing green building standards, the Tenant is required to comply with the requirements to reach the Silver certification or designation level for the selected standard, and to regularly provide the Landlord with copies of any and all records and/or reports (including but not limited to any approvals, rejections and/or comments) from the neutral and independent third-party reviewing the construction of the Affordable Housing apartment building, to establish that the Tenant is in fact proceeding with the construction in a manner to ensure that the appropriate designation can be secured from the selected green building

standard. The Tenant also hereby acknowledges and agrees that it must incorporate high performance building concepts and technologies in order to enhance the overall design and construction of the residential building(s), while simultaneously making any and all other improvements and the remaining public spaces environmentally responsible in order to comply with the above mentioned requirement.

9.03 Tenant understands and agrees that it is solely responsible to procure any and all construction and related services in strict compliance with any and all local laws, rules and/or requirements.

9.04 Prior to the Commencement of Construction, the Tenant must deliver all plans, specifications and scheduling for any construction, fencing, landscaping and/or other improvements, which will all be commenced and completed at Tenant's sole cost and expense, to the Landlord, and specifically to the Director of the Internal Services Department, and the Director of the Public Housing and Community Development for written approval at least one hundred twenty (120) days before the commencement of any work.

9.05 Upon the Landlord's initial receipt of each of the plans and specifications, as described above in Section 9.04, the Landlord shall review the same, reasonably and in good faith, and shall, within thirty (30) calendar days after receipt thereof, advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of disapproval, Tenant shall, within thirty (30) calendar days after the date Tenant receives such disapproval, make those changes necessary to meet the Landlord's stated grounds for disapproval. Upon the Landlord's receipt of the revised plans and specifications showing the changes requested by the Landlord, the Landlord shall review the same, reasonably and in good

faith, and shall, within fifteen (15) calendar days after receipt thereof, advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval.

(a) As an alternative to revising the plans and specifications upon receipt of the Landlord's disapproval of the initial submission, the Tenant may request reconsideration of such comments, by first describing in detail why it reasonably believes that the plans and specifications should not be changed or modified, in which case, within thirty (30) calendar days of such request for reconsideration, the Landlord shall again advise Tenant in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. If the Landlord continues to disapprove after reconsideration, Tenant shall resubmit revised plans and specifications to the Landlord within thirty (30) calendar days after the date Tenant receives such disapproval. Any resubmission shall be subject to review and approval by the Landlord, in accordance with the procedure hereinabove provided for an original submission, until the same shall receive final approval by the Landlord. The Landlord and the Tenant shall in good faith attempt to resolve any disputes concerning the plans and specifications in an expeditious manner. If the Landlord shall have approved any aspect of the plans and specifications in an earlier plan submission, and no portion of the revised plans and specifications has affected the earlier-approved aspect, absent extenuating circumstances, the Landlord shall not have the right to disapprove that which it approved earlier, unless it is determined by the Landlord that such plans and specifications fails to comply with applicable Law(s) and Ordinance(s).

(b) Following completion of the plans and specifications approval process, as described herein above, the Landlord's approved plans and specifications for the Project shall be the construction plans for the Project. The Landlord's approval shall be in writing and each party shall have a set of construction plans signed by all parties as approved. In the event any

material change occurs after approval of the construction plans for the Project, then Tenant must resubmit the changed portion of the construction plans to the Landlord for the Landlord's reasonable approval (irrespective of whether the change is required by another Miami-Dade County department as part of the permitting process).

9.06 Tenant shall cause any and all construction to be performed competently and in a good and workmanlike manner by duly qualified and licensed persons and/or entities, using first grade materials, and with as little interference as practicable to the affairs of nearby residences and/or businesses.

9.07 Tenant shall promptly pay all persons or entities furnishing labor and material with respect to any work performed by Tenant 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 Tenant stating that all bills have been paid with regard to such work and that there are no outstanding obligations owed with respect to any such work performed on the Premises. The Tenant, as described below in Section 9.13, is further required to secure a payment and a separate performance bond, in accordance with Section 255.05, *Florida Statutes*, to guarantee the timely payment of any and all laborers and materialmen, as well as the timely and proper construction of the project. Such payment and performance bond will be delivered to Landlord prior to commencement of construction. The amount of such bonds shall be equal to the construction costs of the improvements.

9.08 Tenant acknowledges and agrees that the Landlord, in its capacity as Landlord under this Lease, currently has no obligation and in the future shall have no obligation, financial, regulatory or otherwise, for any activities necessary or otherwise related to the pre-construction and/or construction of any structure(s) and/or improvements

on or about the Premises during the term of this Lease.

9.09 If Tenant's construction activities or other actions relative to the Premises result in the introduction of hazardous materials or contamination of the soil and/or groundwater, then the Tenant agrees to: (1) immediately notify the Landlord of any contamination, claim of contamination or damage; (2) after consultation and with the approval of the Landlord, to clean up the contamination in full compliance with all applicable statutes, regulations and standards, at the Tenant's sole cost and expense; and (3) to indemnify, defend and hold the Landlord harmless from and against any claim, suits, causes of action, liability, obligations, costs and/or fees, including any and all attorneys' fees arising from or connected with such contamination, claim of contamination or damage.

9.10 All leasehold improvements, including, but not limited to anything erected or installed on or about the Premises at any time, whether by or on behalf of the Tenant or by or on behalf of Landlord, shall not be removed from the Premises at any time, unless removal is consented to in advance, in writing, by Landlord; and at the expiration of this Lease (either on the Expiration Date or upon such earlier termination or cancellation as provided for in this Lease), all such leasehold improvements shall be deemed to be part of the Premises, and shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in the Landlord without payment of any kind or nature to Tenant.

9.11 Subject to the provisions of Section 9.12 of this Lease, Tenant's introduction of any supplies and/or equipment to the Premises, which personal property can be removed without damage to the Premises, shall remain the Tenant's property and may be removed from the Premises upon the expiration of this Lease.

9.12 Tenant agrees that in an effort to protect the Landlord in the event Tenant

defaults hereunder, Tenant hereby grants to Landlord a security interest in all of the Tenant's personal property, including, but not limited to, all goods, equipment, and supplies belonging to the Tenant which are placed on or about the Premises during the term. Said security interest shall secure all amounts to be paid by Tenant to Landlord hereunder, including, but not limited to, the cost for maintenance and repairs to the Premises, and attorneys' fees, expert witness fees and court costs.

9.13 Prior to commencing any construction and/or repairs to the Premises, or any structure or improvements on or about the Premises, Tenant shall obtain and deliver to the Landlord, at its sole cost and expense, both a payment bond and performance bond, or such other alternate form of security, any or all of which meets the requirements of Section 255.05, *Florida Statutes*, as set forth below, not less than ten (10) days prior to the anticipated commencement date of the construction and/or repairs. Said payment and performance bonds shall be in favor of the Landlord, the form of such bonds shall be as provided by Section 255.05, *Florida Statutes*, and each shall be in the amount of the entire cost of the construction, or in instances of repair, the total cost associated with the repair project regardless of the source of funding. The payment and performance bonds shall name Landlord as an obligee on the multiple obligee rider attached to the payment and performance bond, and shall be issued by a surety insurer authorized to do business in the State of Florida. The bonds shall be subject to review and approval by Miami-Dade County, Internal Services Department, Risk Management Division, as well as to the Public Housing and Community Development. The Tenant shall be responsible for recording the bonds in the public records of Miami-Dade County and providing notice to subcontractors and suppliers, as required by Section 255.05 of the *Florida Statutes*. Said payment and performance bonds shall be maintained in full force and effect for the duration of any construction and/or repair project. However, the foregoing requirement of securing a payment and performance bonds shall not be required when such contract for any repair

work is estimated, in accordance with generally accepted cost-accounting principles, to have a cost of less than \$25,000.

**ARTICLE 10**  
**MAINTENANCE AND REPAIR**

10.01 Tenant agrees to maintain and keep in good repair, condition, and appearance, during the term of this Lease, or any extension or renewal thereof, at its sole cost and expense, the Premises, and any and all infrastructure (utility lines, pipes, wiring) leading to or from the Premises, as well as any and all vegetation, including, but not limited to, all grass, hedges, trees, and plants which are, now or in the future, on or about the Premises.

10.02 Tenant, at its expense, shall maintain and keep the Premises, including, but not limited to, all current and future parking areas, pathways, and/or walkways adjacent to or leading to or from any structure or improvement which may be constructed on the Premises, and any and all sidewalks surrounding the Premises, free from debris.

10.03 With regard to the general maintenance and occupancy of the Premises, Tenant will, at its expense: (a) maintain the Premises in a clean, orderly and safe condition and free of rodents, vermin and other pests; (b) keep any garbage, trash, rubbish and/or other refuse in safe containers that do not encourage the existence of vermin; (c) cause to have such garbage, trash, rubbish and refuse removed on a daily, weekly, or as needed basis to ensure cleanliness; (d) comply with all laws, ordinances, rules and regulations of governmental authorities regarding the removal of garbage, trash, rubbish and refuse from the Premises; (e) keep all pre-construction, and construction activities, and/or mechanical equipment apparatus free of vibration and noise which may be transmitted beyond the Premises and/or which could disturb adjacent landowners or occupiers; (f) prevent any

objectionable odors emanating from or being dispelled from the Premises; (g) comply with and observe all rules and regulations established by the Landlord from time to time which relates to the Tenant's occupancy on the Premises; and (h) conduct its operation in all respects in a dignified manner in accordance with the high standards of other similar not-for-profit organizations. Further, should the Tenant fail to properly maintain the Premises, the Landlord may elect to clean, remove any trash or rubbish, or otherwise maintain the Premises. Should the Landlord elect to clean, remove any trash or rubbish or otherwise maintain the Premises, the Landlord shall invoice the Tenant the amount of the cost associated with such maintenance, which cost shall be deemed as rent under this Lease.

10.04 Any damage or injury sustained by any person due to the work of the Tenant or any of its agents or contractors, or due to the maintenance of any mechanical equipment, and/or because of the operation or existence of any mechanical, electrical, plumbing or other equipment or the installation of such, shall be the sole responsibility of Tenant, and Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, actions, causes of action, damages and liability in connection therewith, including, but not limited to reasonable attorneys' fees, other professional fees, and any other cost which Landlord may incur.

**ARTICLE 11**  
**DESTRUCTION OF STRUCTURES AND IMPROVEMENTS**

11.01 Tenant shall be responsible for and shall repair any and all damage caused to the Premises and/or any structure(s) and/or improvements on or about the Premises, regardless of the source or cause of such damage. After the fiftieth (50<sup>th</sup>) year from the Effective Date of this Lease, the Tenant shall immediately notify the Landlord, in writing, upon discovering any damage to the Premises and/or any structure or improvement on or about the Premises. Tenant is responsible for maintaining, replacing and/or repairing any damaged real property, personal property, improvement and/or structure.

11.02 In the event the Premises should be completely destroyed or so damaged by fire, windstorm, or other casualty to the extent that the entire Premises is rendered unfit for the intended purpose of Tenant, the Tenant may cancel this Lease but only after entering into an agreement with the Landlord regarding the cost to immediately repair any damage and/or remove any trash and/or debris, and resettling any and all residents/occupants in the building(s). Tenant hereby agrees that prior to cancelling this Lease, the Tenant shall be solely responsible for permanently relocating any and all residents/occupants from any and all buildings on the Premises. If the Premises is partially damaged, but the Premises is not rendered completely unusable for the purposes of this Lease, the same shall be immediately repaired by Tenant from proceeds of the insurance coverage and/or at its own cost and expense. If the damage to the Premises shall be so extensive as to render it unusable for the purposes intended, but capable of being repaired within one hundred eighty (180) days, the damage shall be repaired with due diligence by Tenant from the proceeds of the insurance coverage policy and/or at its own cost and expense, including the costs associated with temporarily relocating any and all residents/occupants of the building(s). In the event that Premises and/or a nearby structure(s) or improvement(s) is damaged or destroyed due to Tenant's negligence, or the negligence of Tenant's employee(s), vendor(s), agent(s), and/or contractor(s), the Tenant shall be solely liable and responsible to repair and/or compensate the Landlord and/or the owner for such damage or loss, and for any cost or expenses associated with relocating, both temporarily and permanently, any and all residents/occupants of the building(s).

**ARTICLE 12**  
**ASSIGNMENT AND SUBLEASE**

12.01 Without the written consent of Landlord first obtained in each case, through its Board of County Commissioners, Tenant shall not assign, sublet, transfer,

mortgage, pledge, or dispose of this Lease or the term hereof, which consent may be withheld in Landlord's absolute discretion (except for Tenant's rights to sublease, or mortgage the Premises consistent with Article 30 herein). This prohibition includes, but is not limited to: (a) any subletting or assignment which would occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate or proprietary structure; and (b) an assignment of subletting to or by a receiver or trustee in any federal or state action, bankruptcy, insolvency, or other proceedings. Except as otherwise provided in Article 30 below, in no event shall Tenant be permitted to assign or sublet the Premises to any entity, for any purpose whatsoever, that fails to meet the requirements of Sections 125.379, and 125.38, *Florida Statutes*.

**ARTICLE 13**  
**NO LIABILITY FOR PERSONAL PROPERTY**

13.01 All personal property placed on or moved in the Premises shall be at the sole risk of Tenant or the owner thereof. Landlord shall not be liable to Tenant or any owner of such personal property for any damage to said personal property unless solely caused by or due to the gross negligence of Landlord, Landlord's agents or employees, subject to all limitations of *Florida Statutes*, Section 768.28.

**ARTICLE 14**  
**LANDLORD NOT RESPONSIBLE FOR ACTS OF OTHERS**

14.01 Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons coming onto the Premises, including but not limited to invitees, trespassers, and/or licensees for any loss or damage resulting to Tenant, or those claiming by, through or under Tenant, for themselves and/or their personal property, from any actions or activity by such person(s), including, but not limited to, such actions or activity which is the direct or indirect cause of any lack of security, insufficient safety

measures, failure to provide adequate or sufficient warnings, precautions, and/or inadequate protection to the Premises, the Tenant, or anyone claiming by, through or under the Tenant. To the maximum extent permitted by law, the Tenant agrees to use and occupy the Premises at Tenant's own risk. Tenant shall secure, maintain and utilize security personnel, at its sole cost and expense, as it deems necessary, subject to approval by the Landlord, to protect the Tenant, its guests, licensees, any and all occupants, and/or the Premises.

**ARTICLE 15**  
**LANDLORD'S RIGHT OF ENTRY**

15.01 Landlord or any of its agents shall have the right to enter the Premises during all reasonable working hours, upon the giving of twenty-four (24) hours' prior written notice to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof. Said right of entry shall likewise exist for the routine purpose of ensuring that the Premises is safe. The Landlord's right to enter the Premises to make repairs, additions, and/or alterations, shall exist only after the Landlord has provided the Tenant with thirty (30) days advance notice of any such desire to enter the Premises to make such repairs, additions, and/or alterations, except that the Landlord, without prior notice to the Tenant, shall always be permitted to enter the Premises and make it safe in the event of an emergency, as solely determined by the Landlord.

15.02 Upon completion of the Affordable Housing apartment building, the parties hereby acknowledge and agree that the Landlord, specifically including (but not limited to) any duly authorized employee of the Public Housing and Community Development, and/or any employee from the Miami-Dade County Department of Audit and Management Services, or either of the departments' duly authorized agents, shall have the right and privilege to enter the Premises, at any time during the normal working hours (9:00

am – 5:00 pm), to inspect the books and records of the Tenant regarding the rental of any residential unit(s), and to otherwise inspect the use of the Premises, and any improvements thereon, to determine whether or not the restrictions regarding the Affordable Housing, and/or the Senior Housing requirements are being fully complied with by the Tenant, and/or its successors or assigns. The Landlord shall have the right to review any and all tenant leases, rent rolls, as well as interview any and all residents/occupants to determine if the Tenant is complying with all of the Affordable Housing and/or Senior Housing requirements. Further, the Tenant shall incorporate in all of its residential lease agreements with tenants that the Landlord shall have the right to review and inspect leases, resident applications, rent rolls and similar information and documentation.

15.03 If, when the Landlord, specifically including (but not limited to) any duly authorized employee of the Public Housing and Community Development, and/or any employee from the Miami-Dade County Department of Audit and Management Services, or either of the departments' duly authorized agents, attempts to inspect the books and records of the Tenant regarding the rental of any residential unit(s), and/or to otherwise inspect the use of the Premises, and any improvements thereon, to determine whether or not the restrictions regarding the Affordable Housing, and/or the Senior Housing requirements are being fully complied with by the Tenant, and/or its successors or assigns, determines that the necessary or requisite books and records are not on the Premises, then the Tenant shall have forty-eight (48) hours to bring any and all such books and records to the Premises for such inspection. Any failure by the Tenant to timely bring the books and records to the Premises shall be an event of default under this Lease.

**ARTICLE 16**  
**PEACEFUL POSSESSION**

16.01 Subject to the terms, conditions, and covenants of this Lease, Landlord

covenants and agrees that Tenant shall and may peaceably have, hold, and enjoy the Premises without hindrance or molestation by Landlord.

**ARTICLE 17**  
**SURRENDER OF PREMISES**

17.01 Tenant agrees to surrender to Landlord, upon the Expiration Date, or any extension or renewal thereof, or any early termination, or cancellation of this Lease, the Premises in as good condition as the Premises was at the beginning of the term of this Lease, ordinary wear and tear excepted. In addition, upon the Expiration Date, or any extension thereof, or upon any early termination or cancellation of this Lease, any structures and/or improvements constructed on the Premises shall remain on the Premises, and shall become the sole property of the Landlord, without any payment or obligation to Tenant.

**ARTICLE 18**  
**INDEMNIFICATION AND HOLD HARMLESS**

18.01 Tenant shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable 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 reasonable attorneys' fees which may issue thereon. Tenant expressly understands and agrees that any insurance protection required by this Lease, or otherwise provided or secured 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.

**ARTICLE 19**  
**LIABILITY FOR DAMAGE OR INJURY**

19.01 Landlord shall not be liable for any damage or injury which may be sustained by any party or person on the Premises other than the damage or injury caused solely by the gross negligence of Landlord, its officers, employees, or agents, subject to the limitations of *Florida Statutes*, Section 768.28.

**ARTICLE 20**  
**SUCCESSORS IN INTEREST**

20.01 It is hereby acknowledged and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease shall extend to and be binding upon the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

**ARTICLE 21**  
**TERMINATION**

21.01 **TERMINATION BY LANDLORD:** The occurrence of any of the following shall cause this Lease to be terminated by the Landlord upon the terms and conditions also set forth below:

- A. Automatic Termination:
- 1) Institution of proceedings in voluntary bankruptcy by the Tenant.
  - 2) Institution of proceedings in involuntary bankruptcy against the Tenant if such proceedings continue for a period of ninety (90) days or more.
  - 3) Assignment of Lease by Tenant for the benefit of creditors.
  - 4) Failure of Tenant to maintain its not-for-profit tax status.

- 5) Failure to timely meet any of the requirements of Section 6.02.
- 6) Tenant vacates or abandons the Premises, or otherwise ceases or discontinues its operations on the Premises, consistent with Section 29.03 below.

B. Termination after ten (10) calendar days' written notice by the Landlord to Tenant for doing any of the following:

- 1) Non-payment of any sum or sums due hereunder after the due date for such payments; provided, however, that such termination shall not be effective if Tenant makes the required payment(s) during the thirty (30) calendar day period following mailing of the written notice.
- 2) Notice of any condition posing a threat to health or safety of the public or residents/occupants and not remedied within the ten (10) day period from date of written notice.

C. Termination after thirty (30) calendar days' written notice to Tenant for the reason(s) as set forth below:

- 1.) Default arising from the Tenant's failure to keep, observe and/or perform any of the terms contained in this Lease, excepting the non-payment of rent and other matters listed in A and B above, and should such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant setting forth with reasonable specificity the nature of the alleged breach, with copies thereof to each Leasehold Mortgagee, Sublessee, and Subleasehold Mortgagee who shall have notified Landlord of its name, address and interest prior to such notice; or in the case of such default or contingency which cannot with due diligence and in good faith be cured within thirty (30) days, Tenant fails within said thirty (30) day period to

proceed promptly and with due diligence and in good faith to pursue curing said default. Should Landlord fail to notify the Leasehold Mortgagee, Sublessee, and Subleasehold Mortgagee in accordance with the terms of this paragraph, it shall not prevent Landlord from taking any action against Tenant, but the rights of any Leasehold Mortgagee, Sublessee, and Subleasehold Mortgagee hereunder shall remain unaffected until it receives notice in accordance with this paragraph.

- D. The Tenant agrees that under no circumstances shall the Tenant be entitled to any termination or cancellation fee or any similar economic incentive or payment with regard to this Lease should this Lease be terminated or cancelled, unless specifically set forth in this Lease.

21.02 **TERMINATION BY TENANT:** The Tenant, shall have the right to cancel this Lease at any time by giving the Landlord at least ten (10) days prior written notice after it has received notification that it will not receive the requisite funding to construct the Project. Should Tenant elect to terminate this Lease, Tenant shall remain fully responsible for any and all costs, fees, expenses, and/or invoices incurred during the time of its occupancy on, or leasehold interest in, the Premises.

## **ARTICLE 22** **NOTICES**

22.01 Notices provided herein in this paragraph shall include all notices required in this Lease or required by law. Any notice or other communication given or made pursuant to this Lease shall be in writing and shall be deemed given if: (i) delivered personally or by courier; (ii) sent by certified mail, return receipt requested, with all postage pre-paid; or (iii) sent by a nationally recognized overnight delivery service (such as FedEx or DHL) and addressed to a party at its respective address as set forth below (or at such

other address as shall be specified, in writing, by a party, from time to time):

If to Landlord: MIAMI-DADE COUNTY  
Internal Services Department  
111 N.W. 1<sup>st</sup> Street, Suite 2460  
Miami, Florida 33128-1907  
Attention: Director

and: MIAMI-DADE COUNTY  
Public Housing and Community Development  
701 N.W. 1<sup>st</sup> Court, Suite 1400  
Miami, Florida 33136  
Attention: Director

with a copy to: County Attorney's Office  
Miami-Dade County  
111 N.W. 1<sup>st</sup> Street, 28<sup>th</sup> Floor  
Miami, Florida 33128  
Attention: County Attorney

If to Tenant: Rainbow Housing Corporation  
2043 N.W. 4<sup>th</sup> Court  
Miami, Florida 33127  
Attention: Father Barry

with a copy to: Liebler, Gonzalez & Portuondo  
Courthouse Tower  
44 West Flagler Street, 25<sup>th</sup> Floor  
Miami, Florida 33130  
Attention: Bernardo A. Portuondo

and: Housing Trust Group  
3225 Aviation Avenue, Suite 602  
Coconut Grove, FL 33133  
Attention: Matthew Rieger

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, or delivery to overnight courier or express delivery service, and shall be deemed to have been received upon receipt or refusal thereof. For the sake of

convenience and rapidity of transmission, copies of notices may be sent by electronic or facsimile transmission, but such transmissions alone, or together, shall not be deemed to satisfy the notice requirements of this Lease absent a written acknowledgement by the other party of actual receipt or the giving of notice by one of the other means as stated above.

**ARTICLE 23**  
**INSURANCE**

23.01 Prior to occupancy, Tenant shall furnish to the Real Estate Development Division of Miami-Dade County, c/o Internal Services Department, 111 N.W. First Street, Suite 2460, Miami, Florida 33128-1907, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance as required by Chapter 440, *Florida Statutes*.
  
- B. Commercial General Liability Insurance on a comprehensive basis, including Explosion, Collapse and Underground Liability coverage, in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. 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.

**DESIGN STAGE**

In addition to the insurance required in (A) – (C) above, a certificate of insurance must be provided as follows:

D. Professional Liability Insurance in the name of the Tenant or the licensed design professional employed by the Tenant in an amount not less than \$500,000 per claim.

### CONSTRUCTION PHASE

In addition to the insurance required in (A) – (D) above, the Tenant shall provide or cause its General Contractor to provide original policies indicating the following types of insurance coverage prior to any construction:

E. Completed Value Builders' Risk Insurance on an "All Risk" basis in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A.

F. Flood Insurance shall be provided for those properties found to be within a flood hazard zone, in an amount not less than the full replacement values of the completed structure(s) or the maximum amount of coverage available through the National Flood Insurance Program (NFIP), whichever is greater. The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A. This policy will be provided at such time that the building's walls and roof exist.

### OPERATION/MANAGEMENT PHASE

After the Construction Phase is completed and occupancy begins, the following insurance must be kept in force throughout the duration of the Lease:

1. Commercial General Liability in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. Miami-Dade County must be shown as an additional insured with respect to this coverage.

2. Property Insurance Coverage on an "All Risk" basis in an amount not less than one hundred (100%) percent of the replacement cost of the property. The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A.

3. Flood Insurance coverage for those properties found to be within a flood hazard zone for the full replacement values of the structure(s) or the maximum amount of coverage available through the National Flood Insurance Program (NFIP). The policy will show Miami-Dade County as a Loss Payee A.T.I.M.A.

23.02 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.

#### **ARTICLE 24** **PERMITS, REGULATIONS & SPECIAL ASSESSMENTS**

24.01 Tenant covenants and agrees that during the term of this Lease, Tenant will, at its sole cost and expense, obtain any and all necessary governmental permits, licenses and approvals, and that all uses of the Premises will be in complete conformance with all applicable laws, ordinances, codes, rules, regulations, including all applicable zoning regulations.

24.02 Any and all charges, taxes, or assessments levied against the Premises shall be paid by Tenant, and failure to do so will constitute a breach of this Lease.

24.03 County as Sovereign

It is expressly understood and agreed that notwithstanding any other 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 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 and/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 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.

24.04. No Liability for Exercise of Police Power

Notwithstanding and prevailing over any contrary provision in this Lease of any other document relating to this matter, including any Landlord covenant or obligation that may be contained in this Lease, or any implied or perceived duty or obligation of the Landlord 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 Regulatory and Economic Resources (RER) department 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 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 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 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 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 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 25**  
**OWNERSHIP OF ABANDONED PERSONAL PROPERTY**

25.01 At the expiration or early termination of this Lease, Tenant shall peaceably leave, quit and surrender the Premises. Upon expiration or termination of this Lease, the Tenant, with the Landlord's permission, shall promptly remove its personal property and the personal property of its employees, agents, and contractors. Should Tenant fail to remove its personal property, and/or the personal property of others within thirty (30) days, the Tenant agrees that said personal property shall be deemed abandoned and the Landlord may dispose of the personal property in the manner it elects, without any compensation, remuneration or reimbursement to the Tenant or any other owner or person with an interest in such personal property.

**ARTICLE 26**  
**EMINENT DOMAIN**

26.01 The word "Taking" in this Lease shall mean 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, quasi-public, or private use or purpose. A Taking may be total or partial, permanent or temporary.

26.02 Upon receipt by either the Landlord or the 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.

26.03 The full amount of any award whether *pro tanto* or final for any Taking (the "Award"), shall, notwithstanding any allocation made by the awarding authority, be paid and allocated as set forth below, provided that there shall first be deducted from the Award the following, in the order stated: (i) all reasonable fees and expenses of collection, including reasonable attorneys' fees and experts' fees, which shall be paid to the party which has paid such fees and expenses and/or undertaken such work, (ii) any unpaid fees or expense due to the Landlord, or due to a third-party, which Landlord will be ultimately responsible for, and (iii) any outstanding amounts which represent unpaid loans used for the construction of any structures and/or improvements on the Premises. With respect to the balance of such Award, Landlord and Tenant shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, with consideration given to the fact that the Landlord's interest in the Premises is not limited to the land encumbered by this Lease, but also the reversionary interest in the Premises upon expiration of the term and the structure(s) and improvements thereon.

26.04 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 any and all obligations of Tenant under this Lease have been fully and completely complied with by Tenant as of the date of said Total Taking, otherwise Tenant hereby agrees that an appropriate amount of its portion of the Award shall be paid to Landlord, and such payment shall be allocated to complete any unfinished work by Tenant or fulfill any unfulfilled obligations.

26.05 If, in the event of a partial Taking of less than the entire Premises, the remaining portion of the Premises not so taken cannot be adequately restored, repaired or

reconstructed so as to constitute a complete architectural unit of substantially the same usefulness, design, construction, and commercial feasibility, as immediately before such Taking, then Tenant shall have the right, to be exercised by written notice to Landlord within one hundred twenty (120) days after the date of Taking, to terminate this Lease on a date to be specified in said notice, which date shall not be earlier than the date of such Taking, in which case Tenant shall pay and shall satisfy all Rents and other payments due and accrued hereunder up to the date of such termination and shall perform all of the obligations of Tenant hereunder to such date, and thereupon this Lease and the term herein demised shall cease and terminate. Upon such termination the Tenant's interest under this Lease in the remainder of the leasehold interest not taken shall be sold in accordance with applicable Law, and the proceeds of the sale shall be combined with the award given for the partial Taking with the entire amount then being distributed as if a total Taking had occurred. Landlord shall have the first option to purchase Tenant's remaining leasehold interest under this Lease, at its fair market value for a period of one hundred eighty (180) days after the determination of fair market value, which value shall be determined by a mutually acceptable appraiser (or if no one appraiser is agreed upon by the parties, by an appraiser, chosen by two appraisers, one of which will be appointed by each party, within one hundred and fifty (150) days from the date the Lease was terminated). The fair market value specified in the preceding sentence shall be limited to the fair market value of the buildings and improvements, which fair market value shall include the value of Tenant's interest in the unexpired term of the leasehold estate created pursuant to this Lease, and in no event shall such value include any fee simple interest in the Land. All appraisal costs shall be split equally between the Landlord and Tenant. If Landlord fails to purchase, the remainder of

the leasehold interest may be sold to a purchaser consistent with the terms and conditions of this Lease.

**ARTICLE 27**  
**Intentionally Deleted**

**ARTICLE 28**  
**WAIVER**

28.01 If, under the provisions hereof, Landlord or Tenant shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a waiver of any covenant herein contained nor of any of Landlord's or Tenant's rights hereunder, unless expressly stated in such settlement agreement. No waiver by Landlord or Tenant of any provision hereof shall be deemed to have been made unless expressed in writing and signed by both parties. No waiver by Landlord or Tenant of any breach of covenant, condition, or agreement herein contained shall operate as a waiver of such covenant, condition, or agreement itself, or of any subsequent breach thereof. No payment by Tenant or receipt by Landlord of lesser amount than the monthly installments of rent (or additional rent if such obligations are stipulated herein) shall be deemed to be other than on account of the earliest amount of rent due and owing to the Landlord; and likewise neither shall any endorsement or statement on any check or letter accompanying a check for payment of rent or any other amounts owed to Landlord be deemed an accord and satisfaction, and the Landlord may accept such check or payment without prejudice to or waiver of Landlord's right to recover the balance of such rent or other amount owed, or to pursue any other remedy provided in this Lease or at law. Further, any endorsement or statement on any check or letter accompanying a check for payment of rent or any other

amounts owed to Landlord may not be deemed to limit or restrict the Landlord in any manner whatsoever, and such endorsement or statement shall have no effect whatsoever, and shall be deemed to have never been written at all. No reentry by Landlord and no acceptance by Landlord of keys from Tenant shall be considered an acceptance of a surrender of this Lease.

**ARTICLE 29**  
**DEFAULT OF TENANT AND REMEDIES**

29.01 Consistent with and in addition to Article 21, Termination, above, if Tenant shall fail comply with the terms and/or condition of this Lease, and if such violation or failure continues for a period of ninety (90) calendar days after written notice thereof to Tenant by Landlord, then Landlord may proceed with any remedy available at law or in equity in the State of Florida, or by such other proceedings, including reentry and possession, as may be applicable.

29.02 Should Tenant elect or fail to perform or observe any covenant or condition of this Lease (other than a default involving the payment of rent, or a condition posing a threat to the health and safety of the public or residents/occupants), which default has not been cured within thirty (30) calendar days after the giving of notice by Landlord, unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no event of default shall occur so long as Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same, and/or such remedy for any such default is not otherwise addressed in this Lease, then the Landlord shall be permitted to terminate this Lease, and immediately take possession of the Premises.

29.03 Should Tenant vacate or abandon the Premises at any time during the term of this Lease, or otherwise ceases or discontinues its operations, for a period of thirty (30) days or more, the Landlord shall be permitted to immediately re-take possession of the Premises. It shall be the Landlord's determination as to whether or not the Tenant has either vacated or abandoned the Premises.

29.04 Upon any default, and after the expiration of any cure period, Landlord may, in accordance with any lawful process, enter the Premises and take possession of any and all goods, inventory, equipment, fixtures and all other personal property of Tenant situated in the Premises without liability for trespass or conversion, and may sell or otherwise dispose of any and all such property after thirty (30) calendar days notice to Tenant, which notice shall constitute reasonable and sufficient notice (so long as such property is valued by the Landlord at more than Five Thousand (\$5,000.00) Dollars, otherwise, such property shall be considered abandoned by the Tenant, and Landlord shall have no obligation to either store, maintain, sell or otherwise dispose of the property). The proceeds of any such sale or disposition shall be applied first to the payment of all costs and expenses of conducting the sale and/or caring for and/or storing said property, including reasonable attorneys' fees; second, toward the payment of any indebtedness, including (without limitation) indebtedness for rent, which may be due or become due to Landlord; and third, to pay Tenant, on demand in writing, any surplus remaining after all indebtedness of Tenant to Landlord has been fully paid, so long as Tenant in fact makes such demand within sixty (60) calendar days of any such sale or disposition of property.

29.05 Upon any default, Landlord may perform, on behalf of and at the expense of the Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord shall have given Tenant notice of, the cost of which performance by Landlord, together with interest thereon, at the highest legal rate of interest as permitted by

the State of Florida, and shall be immediately payable by Tenant to Landlord.

29.06 Notwithstanding the provisions of clause 29.05 above, and regardless of whether an event of default shall have occurred, Landlord may exercise the remedy described in clause 29.05 without any notice to Tenant if Landlord, in its good faith judgment, believes it would be injured by failure to take rapid action or if the unperformed obligation by Tenant constitutes an emergency.

29.07 If this Lease is terminated or cancelled by Landlord, Tenant nevertheless shall remain liable for any and all rent and damages which may be due, become due or be sustained by Landlord, along with any and all reasonable costs, fees and expenses including, but not limited to, attorneys' fees, costs and expenses incurred by Landlord in pursuit of its remedies hereunder, or in renting the Premises or a portion thereof to others.

29.08 In addition to any and all other remedies in law or in equity that Landlord may have against Tenant, Landlord shall be entitled to all actual damages, costs and expenses arising from Tenant committing an event of default hereunder and to recover all such damages, costs and expenses, including reasonable attorneys' fees at both trial and appellate levels.

29.09 All rights and remedies of Landlord under this Lease shall be cumulative and shall not be exclusive of any other rights and remedies provided to Landlord under applicable law.

29.10 The provisions of this Article 29 shall survive any termination of this Lease.

**ARTICLE 30**  
**RIGHT TO MORTGAGE AND SUBLEASE LEASEHOLD INTEREST**

30.01 Right to Mortgage Leasehold. Notwithstanding Article 12, pertaining to Assignments and Subleases, to the contrary, the Tenant, or its sublessees, licensees or assigns (hereinafter "Sublessees"), shall have the right from time to time, and without prior consent of Landlord, to mortgage and otherwise encumber their rights regarding the Premises, and particularly their leasehold interest, under this Lease, and/or a sublease thereof, in whole or in part, by a mortgage, or similar financial instrument given by a lender as a security interest in the leasehold interest of this Lease (hereinafter "Leasehold Mortgage") or by a lender for a sub-leasehold mortgage ("Subleasehold Mortgage"), provided such lender is a recognized Lending Institution. Except as otherwise reasonably approved by the Landlord, through the County Mayor or the Mayor's designee, such mortgages or encumbrances shall be expressly subject to the terms, covenants and conditions of this Lease, and at all times shall be inferior and subject to the prior right, title and interest of Landlord herein as security for the performance of the terms and conditions of this Lease. Tenant and any Sublessee shall provide Landlord with a copy of all such mortgages. The granting of a mortgage against all or part of the leasehold estate in the Premises shall not operate to make the lender thereunder liable for performance of any of the covenants or obligations of Tenant or Sublessee under this Lease or a sublease, except in the case of a lender which owns or is in possession or control of all or a portion of the Premises, and then only for the applicable portion of the Premises, and its period of ownership or possession, or as otherwise provided under applicable law, but Landlord shall always have the right to enforce the Lease obligations against such portion of the Premises,

including such obligations accruing prior to such period of ownership or possession, subject to the terms hereof. The amount of any mortgage may be increased for the construction of the Affordable Housing building on the Premises, whether by an additional mortgage and/or agreement consolidating the liens of such mortgage, or by amendment of the existing mortgage, and may be permanent or temporary, replaced, extended, increased, refinanced, consolidated or renewed without the consent of Landlord. Such mortgage(s) may contain a provision for an assignment of any rents, revenues, monies or other payments due to Tenant or Sublessee as a landlord (but not from Tenant or Sublessee to Landlord), from Tenant or a lender, and a provision therein that the lender in any action to foreclose the same shall be entitled to the appointment of a receiver. Further, Tenant agrees that it shall not encumber, mortgage, or lien any portion of the Premises that is not immediately necessary for which construction is about to occur, as evidenced by any and all necessary building permits, approved site plan and construction financing. Notwithstanding the foregoing, Tenant may encumber, mortgage and/or lien any portion of the Premises in which it has already commenced construction for the construction of the Affordable Housing apartment building. This Section shall survive the expiration and/or early termination of this Lease.

30.02 Notice to Landlord of Mortgage. A notice of each Leasehold Mortgage and Subleasehold Mortgage shall be delivered to the Landlord specifying the name and address of such holder and/or lender of a Leasehold Mortgage (hereinafter "Leasehold Mortgagee") and of such holder and/or lender of a Subleasehold Mortgage (hereinafter "Subleasehold Mortgagee") to which notices shall be sent. Landlord shall be furnished a copy of each such recorded mortgage within thirty (30) days of such mortgage being

recorded. For the benefit of any such Leasehold or Subleasehold Mortgagee who shall have become entitled to notice as hereinafter provided in this Article 30, Landlord agrees, subject to all the terms of this Lease, not to accept a voluntary surrender, termination or modification of this Lease at any time while such Leasehold or Subleasehold Mortgage(s) shall remain a lien on Tenant's or Sublessee's leasehold estate. Any such Leasehold or Subleasehold Mortgagee(s) will not be bound by any modification of this Lease with respect to the portion of the Premises subject to such Leasehold Mortgage(s) or Subleasehold Mortgage(s), unless such modification is made with the prior written consent of such Leasehold or Subleasehold Mortgagee, and no sale or transfer of Landlord's fee simple interest in the Premises or any portion thereof to Tenant shall terminate this Lease by merger or otherwise so long as the lien of the Leasehold or Subleasehold Mortgage remains undischarged.

30.03 Notices to Leasehold and Subleasehold Mortgagee(s) and Sublessee(s).

No notice of default under Article 21, or notice of failure to cure a default under Article 29, shall be deemed to have been given by Landlord to Tenant unless and until a copy has been given to each Leasehold Mortgagee, Subleasehold Mortgagee and Sublessee who shall have properly notified Landlord pursuant to Article 30.02, of its name, address and its interest in the Premises. Landlord agrees to accept performance and compliance by any such Leasehold Mortgagee, Subleasehold Mortgagee or Sublessee of and with any of the terms of this Lease with the same force and effect as though kept, observed or performed by Tenant, provided such act or performance is timely under the appropriate provisions of this Lease. Nothing contained herein shall be construed as imposing any obligation upon any such

Leasehold Mortgagee, Subleasehold Mortgagee or Sublessee to so perform or comply on behalf of Tenant.

30.04 Right to Cure Default of Tenant.

30.04.1 In addition to any rights the Leasehold or Subleasehold Mortgagee or Sublessee may have by virtue of Article 30 herein, if, within ninety (90) days after the mailing of any notice of termination or such later date as is thirty (30) days following the expiration of the cure period, if any, afforded Tenant (hereinafter the "Mortgagee Cure Period"), such Leasehold Mortgagee, or Sublessee, or Subleasehold Mortgagee shall pay, or arrange to the satisfaction of Landlord for the payment of, a sum of money equal to any and all rents or other payments due and payable by Tenant hereunder with respect to the portion of the Premises to which such Leasehold or Subleasehold Mortgagee or Sublessee claims an interest as of the date of the giving of notice of termination, in addition to their pro rata share of any and all expenses, costs and fees, including reasonable attorneys' fees, incurred by Landlord in preparation for terminating this Lease and in acquiring possession of the Premises, then, upon the written request of such Leasehold Mortgagee, Sublessee or Subleasehold Mortgagee made any time prior to the expiration of the Mortgagee Cure Period, Landlord and the party making such request (or its nominee) shall mutually execute prior to the end of such Mortgagee Cure Period a new lease of the Premises (or such portion thereof as they have an interest in or mortgage on) for the remainder of the term of this Lease and on the same terms and conditions, and with the same priority over any encumbrances created at any time by Landlord, its successors and assigns which Tenant has or had by virtue of this Lease; provided, however,

that in addition to the above payments such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee shall have paid to Landlord a sum of money equal to the rents and other payments for such portion of the Premises accruing from the date of such termination to the date of the commencement of the term of such new lease, together with their pro rata share of all expenses, including reasonable attorneys' fees, incident to the preparation, printing, execution, delivery and recording of such new lease. Such priority shall exist by virtue of the notice created by this Lease to any transferee of Landlord or person receiving an encumbrance from Landlord, and the priority shall be self operative and shall not require any future act by Landlord. Such new lease(s) shall contain the same clauses subject to which this Lease is made, and shall be at the rents and other payments for such portion of the Premises due Landlord and upon the terms as are herein contained. Tenant(s) under any such new lease(s) shall have the same right, title and interest in and to and all obligations accruing thereafter under this Lease with respect to the applicable portion of the Premises as Tenant has under this Lease.

30.04.2 If, within the Mortgagee Cure Period, more than one (1) request for a new lease shall have been received by Landlord for the same portion of the Premises, priority shall be given (regardless of the order in which such requests shall be made or received) to the Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee making such a request in order of their priority of interest in said portion of the Premises. It shall be a condition of the effectiveness of any request for a new lease that a copy of such request is sent (with receipt for delivery) by the Sublessee or Subleasehold Mortgagee, as the case may be, to the Leasehold Mortgagee.

30.04.3 Simultaneously with the making of such new lease(s), the party obtaining such new lease and all other parties junior in priority of interest in the Premises shall execute, acknowledge and deliver such new instruments, including new mortgages and a new sublease, as the case may be, and shall make such payments and adjustments among themselves, as shall be necessary and proper for the purpose of restoring to each of such parties as nearly as reasonably possible, the respective interest and status with respect to the Premises which was possessed by the respective parties prior to the termination of this Lease as aforesaid.

30.04.4 Nothing herein contained shall be deemed to impose any obligation on the part of Landlord to deliver physical possession of the Premises to such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee or to their respective nominee until the new lease(s) has been executed by all pertinent parties. Landlord agrees, however, that Landlord will, at the cost and expense of such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee or respective nominee, cooperate in the prosecution of judicial proceedings to evict the then defaulting Tenant or any other occupants of the Premises.

30.04.5 If such Leasehold Mortgagee, Sublessee, or Subleasehold Mortgagee or respective nominee shall acquire a new lease pursuant to this Article 30, and if, upon the termination of this Lease, Tenant, but for such termination, would have been entitled to receive any amount pursuant to the provisions of this Lease, then Landlord agrees that the same shall be paid to the new tenant, in the same manner and to the same extent as it would have been paid or applied the same to or for the benefit of Tenant as if this Lease had not terminated; subject however to Landlord's right to offset any damages accrued as a result of said termination.

30.04.6 Upon the execution and delivery of a new lease(s) pursuant to this Article 30, all Subleases which theretofore may have been assigned to Landlord or have reverted to Landlord upon termination of this Lease shall be assigned and transferred, without recourse against Landlord, by Landlord to the tenant under any such new lease(s). Between the date of termination of this Lease and the date of execution and delivery of the new lease(s), if the Leasehold Mortgagee, Subleasehold Mortgagee, or Sublessee shall have requested such new lease(s) as provided for in this Article 30, Landlord will not cancel any or sublease or accept any cancellation, termination or surrender thereof (unless such termination shall be effective as a matter of law on the termination of this Lease) without the consent of the Leasehold or Subleasehold Mortgagee or Sublessee, except:

30.04.6.1 for default as permitted in such, and

30.04.6.2 for the purpose of permitting Landlord to enter into a sublease with another or Sublessee who will occupy not less than the same amount of space demised by the canceled or sublease at a rental rate per square foot and for terms not less than the rental rates per square foot, and for at least the remainder of the unexpired terms, respectively, of the canceled or sublease.

30.04.7 Nothing contained in this Lease shall require any Leasehold or Subleasehold Mortgagee or its nominee as a condition to its exercise of its right to enter into a new lease to cure any default of Tenant or Sublessee not reasonably susceptible of being cured by such Leasehold or Subleasehold Mortgagee or its nominees, in order to comply with the provisions of this Article 30.

30.04.8 The provisions of this Article 30 shall survive any termination of this Lease.

30.05 Leasehold in Reversion and Assignment in Lieu of Foreclosure. Tenant's or Sublessee's right to mortgage and otherwise encumber this Lease and the leasehold estate in whole or in part shall include the right to require a lease in reversion which lease in reversion shall become effective upon the termination of this Lease, and shall have the same terms and provisions, including expiration date, as this Lease. The Leasehold or Subleasehold Mortgagee shall have the unrestricted right to take this Lease by lease in reversion or by assignment in lieu of foreclosure and to sell it either after foreclosure or after taking the assignment or becoming tenant under the lease in reversion all without the consent of Landlord. The Leasehold or Subleasehold Mortgagee shall not be liable for Tenant's obligations hereunder until such a time as it becomes the new tenant, either by lease in reversion, foreclosure or assignment and then only for the period of its ownership or possession of the leasehold estate.

30.06 Rights to Sublease and Non-Disturbance to Sublessees. Tenant shall have the right to enter a Sublease and consent to any sub-subleases without any approval or consent of Landlord; however, notwithstanding any other provisions of this Lease, no sublease or sub-sublease shall relieve Tenant of any obligations under the terms of this Lease unless a release is granted by the Landlord in accordance with this Article 30 above. Additionally, each sublease and sub-sublease must be for a use compatible with the standards and requirements set forth in this Lease, and specifically the construction, maintenance and operation of, at minimum, a forty-six (46) unit Affordable Housing apartment building on the Premises (note, the parties agree that the maximum number of units on the Premises shall be fifty-five (55) units of rental housing). Tenant must give written notice to Landlord specifying the name and address of any Sublessee and sub-

sublessee to which all notices required by this Lease shall be sent, and a copy of the sublease and sub-sublease agreement. Tenant shall provide Landlord with copies of all subleases and sub-subleases entered into during each quarter. Landlord agrees to grant Non-Disturbance Agreements for Sublessees and/or sub-sublessees which provides that in the event of a termination of this Lease, the portion of the Premises covered by such sublease and/or sub-sublease, due to an event of default committed by the Tenant, such Sublessee and sub-sublessee will not be disturbed and will be allowed to continue peacefully in possession directly under this Lease as the successor tenant, provided that the following conditions are met:

30.06.1 the Sublessee and any sub-sublessee is not a "related party" to Tenant provided, however, that Tenant, or any individual, corporation, general or limited partnership or other entity holding an equity interest in Tenant, shall be permitted to be a co-general partner or special limited partner in any tax credit limited partnership relating to the Premises, which limited partnership may be a Sublessee and/or sub-sublessee without being deemed a "related party"; and provided further that affiliates of the Tenant may enter into subleases for commercial or other uses consistent with this Lease on market terms without being deemed a "related party"; and

30.06.2 the Sublessee and any sub-sublessee shall be in compliance with the terms and conditions of its sublease and any sub-sublease; and

30.06.3 the Sublessee and any sub-sublessee shall agree to attorn to Landlord. Landlord further agrees that it will grant such assurances to such Sublessees and sub-sublessees so long as they remain in compliance with the terms of their subleases and

sub-subleases, and provided further that any such subleases and sub-subleases do not extend beyond the expiration of the term of this Lease:

30.07 Estoppel Certificates from Landlord. Upon request of Tenant or any Leasehold Mortgagee, Subleasehold Mortgagee or Sublessee, Landlord agrees to give such requesting party an estoppel certificate in accordance with this Article 30. Landlord agrees at any time and from time to time, upon not less than thirty (30) days prior written notice by Tenant or by a Leasehold Mortgagee, Sublessee or Subleasehold Mortgagee, to furnish a statement in writing, in substantially the form attached hereto as "Exhibit C" setting forth the rents, payments and other monies then payable under the Lease, if then known; certifying that this Lease is unmodified and in full force and effect (or if there shall have been modifications that the Lease is in full force and effect as modified and stating the modifications) and the dates to which rents, payments and other monies have been paid; stating whether or not to the best of Landlord's knowledge, Tenant is in default in keeping, observing and performing any of the terms of this Lease, and, if Tenant shall be in default, specifying each such default of which Landlord may have knowledge. It is intended that any such statement delivered pursuant to this Section 30.07 may be relied upon by any prospective assignee, transferee or purchaser of Tenant's interest in this Lease, any prospective Sublessee or any Leasehold Mortgagee or Subleasehold Mortgagee or any assignee thereof, but reliance on such certificate may not extend to any default of Tenant as to which Landlord shall have had no actual knowledge.

30.08 Limited Waiver of Landlord Lien. In order to enable Tenant and its Sublessees to secure financing for the purchase of fixtures, equipment, and other personalty to be located on or in the Premises, whether by security agreement and financing statement, mortgage or other form of security instrument, Landlord does waive and will from time to

time, upon request, execute and deliver an acknowledgment that it has waived its "landlord's" or other statutory, common law or contractual liens securing payment of rent or performance of Tenant's other covenants under this Lease as to such fixtures, equipment or other personalty.

30.09 No Subordination or Mortgaging of Landlord's Fee Title. There shall be no subordination of Landlord's fee simple interest in the Premises to the lien of any Leasehold Mortgage or Subleasehold Mortgage financing nor shall Landlord be required to join in such mortgage financing. No Leasehold Mortgagee or Subleasehold Mortgagee may impose any lien upon the Landlord's fee simple interest in the Premises.

**ARTICLE 31**  
**RENTAL REGULATORY REQUIREMENTS**

31.01 After the award of any funding by the Landlord regarding the Premises, the Tenant will enter into a Rental Regulatory Agreement with the Landlord, which shall be in conformance with all applicable rules and regulations of the State of Florida and the Landlord, for a period of not less than thirty (30) years. The Tenant hereby agrees that the use of such funds shall be in accordance with the terms and conditions of this Lease, and for developing Affordable Housing on the Premises. Any failure by the Tenant to utilize the funds correctly, pursuant to the terms and conditions of the Rental Regulatory Agreement shall be an event of default under this Lease.

**ARTICLE 32**  
**ART IN PLUBLIC PLACES**

32.01 The Tenant acknowledges and agrees that in accordance with Section 2-11.15, of the *Miami-Dade County Code*, it is required to allocate not less than one and one-half (1½%) percent of the total capital cost (design and construction) of the development to

the Art in Public Places Trust Fund. These funds can solely be used for commissioning and/or acquiring works of public art for the Premises. The Tenant agrees to work collaboratively with the Miami-Dade Art in Public Places Trust to administer the "artist selection process" and implement the Art in Public Places program as defined in the Miami-Dade County Procedures Manual for Art in Public Places, which manual is attached hereto, and marked as "Exhibit D", and incorporated herein by reference.

**ARTICLE 33**  
**ADDITIONAL PROVISIONS**

33.01 Non-Discrimination.

The Board of County Commissioners declared and established as a matter of policy, by Resolution No. 9601 dated March 24, 1964, that there shall be no discrimination based on race, color, creed, or national origin and Resolution No. 85-92 dated January 21, 1992, that there shall be no discrimination on the basis of disability in connection with any County property or facilities operated or maintained under lease agreement, license, or other agreement from Miami-Dade County, or its agencies.

33.02 Tenant agrees to comply with the intention of Resolution No. 9601 dated March 24, 1964 and Resolution No. 85-92 dated January 21, 1992, in the use of the Premises, and the construction and future operation of a Affordable Housing apartment building thereon, and maintenance of any such buildings or structure(s) and/or improvements that are constructed on or about the Premises.

33.03 Notification of any injury on the Premises. Tenant agrees that it will immediately notify the Landlord should any person sustain(s), or is found to have sustained, a serious bodily injury or dies on or about the Premises, due to any cause that might give rise to liability for or to the Landlord, for personal injury or wrongful death. The parties

hereby agree that the definition of serious bodily injury shall include, but not be limited to, any injury to a person which requires medical treatment either at a hospital or by emergency medical technicians. Further, in instances where someone sustained a serious bodily injury or died, due to any cause that might give rise to liability for or to the Landlord, for personal injury or wrongful death, in addition to any other requirement(s) regarding notice under this Lease, the Tenant shall also immediately (same day, or in situations where the same day is not possible, then next day) call the Landlord's Internal Services Department, and notify the Director of such incident, in detail, with or without the name of the individual that died or sustained the serious bodily injury. Further, in instances where an individual died or sustained a serious bodily injury, the Tenant must complete a detailed injury and incident report and immediately (same day or next day) send it to the Landlord, in accordance with the terms of the notice provisions found in this Lease.

33.04 Security. The Tenant, as mentioned above in Section 14.01 of this Lease, is solely responsible for securing and maintaining its own security in and around, and for, the Premises. Should the Tenant, at any time and for any reason, believe that security and/or additional security is needed to protect the Tenant, or any of its invitees, licensees, guests, employees, staff, management, residents/occupants, and/or anyone else, and/or the personal property belonging to any of the foregoing, and/or the Premises, then it is understood and agreed that Tenant shall, at its sole cost and expense, hire and maintain such security. The Tenant further acknowledges and agrees that the Landlord is not expected to supply, or otherwise provide, any security staff and/or security equipment to, on, or about the Premises which would be designed to prevent or deter vandalism, theft, burglary, and/or any other type of criminal activity or any other type of incident.

33.05 The Tenant hereby acknowledges that in accordance with the Landlord's rules and regulations, all privately funded construction with a total value over \$200,000

must comply with Sections 10-33.02 and 2-10.4.01 of the County Code of Miami Dade County ("Code"), which governs, respectively, the Landlord's Community Small Business Enterprise ("CSBE") program, and the Community Business Enterprise ("CBE") Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services. As a result, the Tenant hereby agrees to timely submit, or cause to be submitted, any design and construction packages, to the Small Business Development Division of the Regulatory and Economic Resources Department ("SBD/RER") prior to advertisement, for review and determination of appropriate small business program measures, and the application of same. The Tenant further agrees that all design and construction packages must be advertised and awarded with the applicable small business measures in accordance with the requirements of the above mentioned sections of the Code.

**ARTICLE 34**  
**GOVERNING LAW**

34.01 This Lease, including any exhibits or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida. The parties agree that venue shall be in Miami-Dade County, Florida.

**ARTICLE 35**  
**WRITTEN AGREEMENT**

35.01 This Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by resolution approved by the Board of County Commissioners.

35.02 Each signatory of this Lease represents hereby that he or she has the authority to execute, bind and deliver the same on behalf of the party hereto for which such signatory is acting.

35.03 Each party has participated fully in the negotiation and preparation of this Lease with full benefit of counsel. Accordingly, this Lease shall not be more strictly construed against either party.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]  
[ONLY THE SIGNATURE PAGE REMAINS]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease, with the intent for it to be legally binding, as of the day and year first above written.

**Landlord:**

**MIAMI-DADE COUNTY**

a political subdivision of the State of Florida

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

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

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

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

\_\_\_\_\_  
Witness/Attest:

\_\_\_\_\_  
Witness/Attest:

**Tenant:**

**RAINBOW HOUSING CORPORATION**

a Florida not-for-profit corporation

By: Richard L. Marquess-Barry

Name: Father Richard Marquess-Barry

Title: Officer

[Signature]  
Witness/Attest:

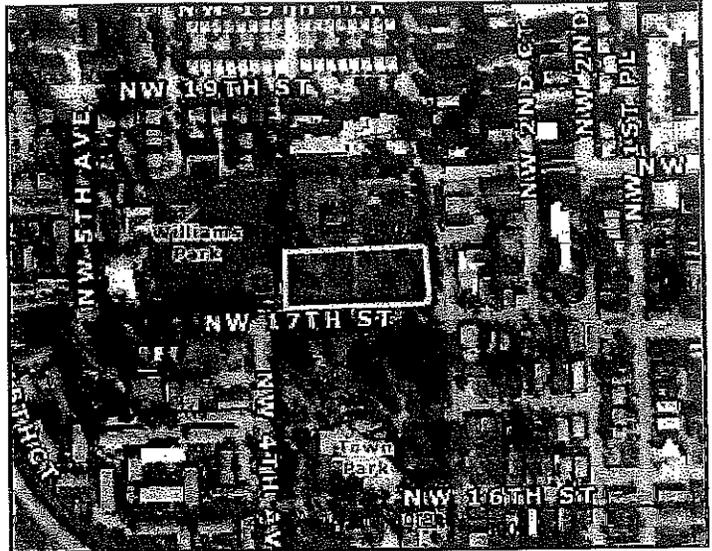
[Signature]  
Witness/Attest:

**EXHIBIT A  
MAP OF PREMISES**

**Summary Report**

Generated On : 6/23/2014

Property Information	
Folio:	01-3136-065-0070
Property Address:	301 NW 17ST <
Owner	MIAMI-DADE COUNTY OCED
Mailing Address	701 NW 1ST CT 14TH FL MIAMI, FL33136
Primary Zone	3901 KING HGTS ORCHARD VILLA
Primary Land Use	8047 VACANT GOVERNMENTAL : DADE COUNTY
Beds / Baths / Half	0 / 0 / 0
Floors	0
Living Units	0
Actual Area	0 Sq.Ft
Living Area	0 Sq.Ft
Adjusted Area	0 Sq.Ft
Lot Size	60,412 Sq.Ft
Year Built	0



Assessment Information			
Year	2014	2013	2012
Land Value	\$483,296	\$265,813	\$314,142
Building Value	\$0	\$0	\$0
XF Value	\$17,430	\$17,640	\$19,950
Market Value	\$500,726	\$283,453	\$334,092
Assessed Value	\$251,975	\$229,069	\$208,245

Taxable Value Information			
	2014	2013	2012
<b>County</b>			
Exemption Value	\$251,975	\$229,069	\$208,245
Taxable Value	\$0	\$0	\$0
<b>School Board</b>			
Exemption Value	\$500,726	\$283,453	\$334,092
Taxable Value	\$0	\$0	\$0
<b>City</b>			
Exemption Value	\$251,975	\$229,069	\$208,245
Taxable Value	\$0	\$0	\$0
<b>Regional</b>			
Exemption Value	\$251,975	\$229,069	\$208,245
Taxable Value	\$0	\$0	\$0

Benefits Information				
Benefit	Type	2014	2013	2012
Non-Homestead Cap	Assessment Reduction	\$248,751	\$54,384	\$125,847
County	Exemption	\$251,975	\$229,069	\$208,245

Note: Not all benefits are applicable to all Taxable Values (i.e. County, School Board, City, Regional).

Sales Information			
Previous Sale	Price	OR Book-Page	Qualification Description

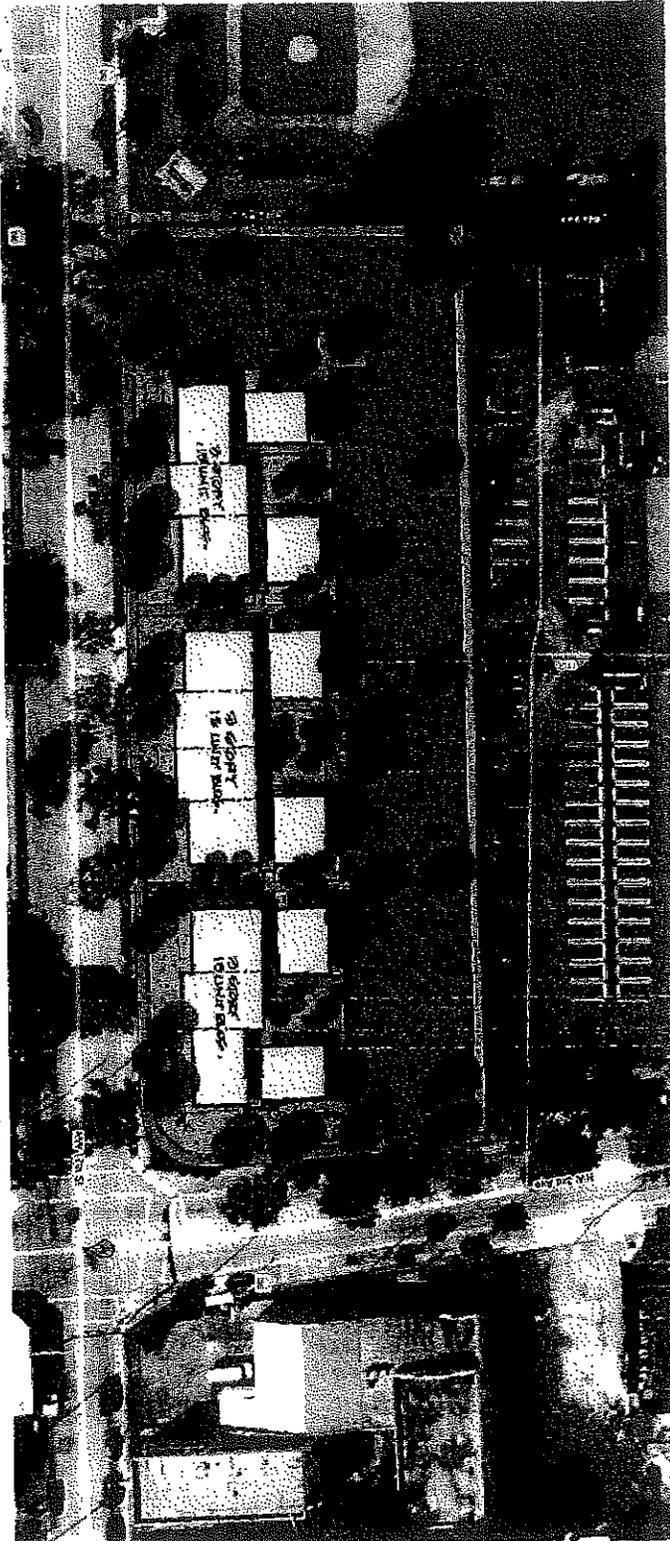
Short Legal Description
36 53 41 1.39 AC M/L TOWNPARK SUB 5 PB 91-10 TRACT 17 LOT SIZE 60412 SQUARE FEET OR 26334-0613 0308 3

The Office of the Property Appraiser is continually editing and updating the tax roll. This website may not reflect the most current information on record. The Property Appraiser and Miami-Dade County assumes no liability, see full disclaimer and User Agreement at <http://www.miamidade.gov/info/disclaimer.asp> (<http://www.miamidade.gov/info/disclaimer.asp>)

Version:

73

**EXHIBIT B  
DEVELOPMENT CONCEPT**



CONCEPTUAL SITE PLAN  
N.T.S.



THESE PLANS AND SPECIFICATIONS  
WAS PREPARED BY THE ARCHITECT  
FOR THE PROJECT AND IS NOT TO BE  
USED FOR ANY OTHER PROJECT  
WITHOUT THE WRITTEN CONSENT  
OF THE ARCHITECT.



**EXHIBIT C**  
**Landlord's Estoppel Certificate**

Re: Ground Lease dated \_\_\_\_\_, 20\_\_\_\_ (the "Lease"), by and between Miami-Dade County (hereinafter "Landlord") and the Rainbow Housing Corporation, a Florida not-for-profit corporation (hereinafter "Tenant").

Ladies and Gentlemen:

Landlord has been advised that \_\_\_\_\_ ("Lender") intends to make a loan to Tenant (the "Loan") in connection with the Premises described in the Lease, and that, in making the Loan, Lender will act in material reliance upon this Estoppel Certificate from Landlord. Landlord hereby certifies, represents, warrants, acknowledges and agrees as follows:

1. A true, complete and correct copy of the Lease is attached to this Estoppel Certificate. There have been no amendments, modifications, extensions, renewals or replacements of the Lease (other than as attached hereto).
2. Other than those contained in writing in the Lease, Tenant has made no representations, warranties or covenants to or in favor of Landlord with respect to the Premises or the Project.
3. The Lease is in full force and effect. Tenant has accepted the Premises, presently is in possession of same, and is paying the Rent specified in the Lease on a current basis as of [date]. Landlord has no knowledge of any set offs, claims or defenses to the enforcement of the Lease or Tenant's rights thereunder (except as expressed hereunder or attached hereto).
4. To Landlord's knowledge, neither Tenant nor Landlord is in default or breach under the Lease, and no event has occurred or condition exists which, with the giving of notice or passage of time, or both, could result in an event of default or breach under the Lease by either party (except as expressed hereunder or attached hereto).
5. As of [date], Rent is as specified in Exhibit "A" hereto. No Rent has been paid by Tenant in advance under the Lease (except as expressed hereunder or attached hereto).
6. Landlord has no knowledge of any present condition or event that may give rise to a violation of any federal, state, county or municipal law, regulation, ordinance, statute, rule, order or directive applicable to the Lease, the Premises or the Project (except as expressed hereunder or attached hereto).

Except as otherwise expressly defined in this Estoppel Certificate, all capitalized and/or defined terms when used herein will have the same meanings as given such terms in the Lease. This Certificate may be delivered by Landlord by facsimile or telecopier signature.

Dated this \_\_\_\_ day of \_\_\_\_\_.

Very truly yours,

**EXHIBIT D**  
**Miami-Dade County Procedures Manual for Art in Public Places**

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**SUMMARY**

The Art in Public Places (APP) program is a requirement for all capital projects of Miami-Dade County and each municipality in Miami-Dade County that develop new government buildings that shelter people in a wholly or partially enclosed manner and serve a public purpose. The County Code requires that 1½ % of the construction cost of new government buildings be dedicated to public art projects through the APP program. This procedure explains how to work with the Department of Cultural Affairs to implement the APP requirement and also covers the processes to follow for maintenance, repair and inventory of public art works. There is a section that describes the procedures for municipalities to comply with the APP requirement and for private sector capital development on land owned by local government or on private property with the building owned by local government. In addition, there is a section containing the procedures for accessioning and deaccessioning artworks in the Public Art Collection. There is a "Frequently Asked Questions" section that is based on a series of opinions issued by the Office of the County Attorney to help clarify the requirements of the APP program.

**PROCEDURE**

**General Information for Implementing APP Projects**

1. Contact the Department of Cultural Affairs to set up a meeting to confirm the eligibility of the capital project for the APP and to review a complete capital budget for the project and perform an accurate calculation of the APP contribution.
2. All capital costs are included in the calculation of the 1½% APP allocation, including but not limited to:
  - architectural and engineering fees;
  - specialty consulting fees;
  - construction costs (including all systems and features that make a facility functional);
  - site work; and
  - allowance accounts (e.g., permitting, surveying, inspections)
  - contingency allowance.The only exclusions are land acquisition and subsequent changes to the construction contract through change orders.
3. Departments convey funds to APP from the moment the department receives spending authority for the capital project. APP will work with department to determine the best approach and timing for the conveyance of the funds to the Department of Cultural Affairs.
4. APP funds are used by the Department of Cultural Affairs for commissioning works of art, APP program administrative costs, and repair and maintenance expenses.
5. Municipal, state, federal, private and other non-County funds for a capital project are subject to the 1½% public art requirement.
6. APP may use funds generated from a construction project for acquisition of art works for other government facilities throughout the County. Every effort is made to use funds generated by a department's project within that department.

7. Projects done through development agreements (i.e., the County contracts with another party to develop a building that the County will own now or in the future) are subject to the APP requirement.
  - Development agreements must include language provided by APP regarding the requirement to transfer public art funds to Art in Public Places.

#### Tools for Departments to Implement APP

1. A completed APP Capital Project Budget Allocation Worksheet must be submitted by departments to the Department of Cultural Affairs as soon as a capital project budget is developed. APP staff will confirm the accuracy of the calculation of the APP requirement for the project (see sample "APP Capital Budget Allocation Worksheet" on page 13; this form is available from APP staff).
2. APP will provide appropriate language to departments for inclusion under the "General Conditions Section 01042 - Art in Public Places Coordination" of the departments' capital projects contracts with architects, engineers, consultants, outside project management services, construction and development agreements.
3. Examples of prior APP projects, the list of members of the APP Trust and other APP background information can be found at [www.miamidadearts.org](http://www.miamidadearts.org).

#### The APP Artists Selection Process

1. APP works collaboratively with departments on developing the artists' selection process:
  - To identify opportunities for public art in a project (with departments' project managers, planners and architects);
  - To understand the unique features of the department's capital project (e.g., community impact, timetable requirements, etc.); and
  - To draft the "Call to Artists" (i.e., the APP request for artists' qualifications and/or proposals).
2. An APP Professional Advisory Committee (PAC) is convened to review artists' submissions and to make commission recommendations to the APP Trust. Committee members are arts professionals appointed by the APP Trust.
  - Departments attend and participate in the PAC selection process (especially, project managers/architects/engineers and representatives from the specific users of the building).
  - Community representatives can participate at the departments' and APP's discretion.
  - The size and scope of the project helps determine the opportunities identified for public art and the number of artists that may be selected to work on a project.
3. The PAC's recommendations of artists are approved and finalized by the Art in Public Places Trust (a 15-member board appointed by the Board of County Commissioners).
4. APP staff manages the work of the selected artists and closely coordinates this work with departments' project managers, architects/engineers/specialty consultants and contractors.

#### Keys to Successful APP Projects

1. Calculation of APP project funds must be done in consultation and concurrence with APP staff and based on actual A&E, consultants' and contractors' contract awards.
2. It is essential to contact APP as soon as capital project planning begins so that the timetable for the artists' selection process can be coordinated with the overall project's early design work.

3. Departments' full involvement with APP in identifying opportunities for art works, participating in the selection process and developing the art projects helps ensure that departments' needs can be addressed.
4. Departments must include APP requirements in all capital projects agreements and contracts.
5. Representatives from departments must be identified for clear, consistent and regular communication and coordination with APP staff for each stage of the work - planning, A&E selection, design, construction and commissioning; these representatives must have direct access to decision-making authority for APP issues.
6. Departments must keep APP fully informed of capital project developments and especially of changes in order to avoid additional APP costs (e.g., redesign of art works, artists' delay claims, storage costs for art works, etc.); costs associated with failure to communicate with APP are the responsibility of the department.
7. The APP project manager must be included on the department's project management team, the artist(s) on the A&E team and the artist's fabricator/installer on the contractor's team; this is essential to ensure that departments' capital projects and the development of art works remain interlocked (e.g., planning, design and construction of the building is coordinated closely with the development and installation of the art work).

#### Maintenance

1. Art in Public Places will dedicate 15% of all new public art allocations to a repair and maintenance fund that will be utilized for specialized tasks required to restore and/or repair works of art in its collection (i.e., these funds are allocated from within the 1½ % of APP funds generated by the capital project). These funds will be replenished on an ongoing basis with proceeds from new commissions.
2. Maintenance requirements of the commissioned artwork are discussed and coordinated with the department in advance of the project completion to ensure the long-term care of the work.
3. Contact APP before undertaking maintenance and/or repair of any art work. Works of art may require specialized treatment for upkeep and qualified professionals for maintenance.
4. When a work of art is designed as an integrated part of a building, it simply may require that the department conduct standard cleaning procedures. For example, an artist-designed terrazzo floor typically requires the same kind of maintenance as a regular terrazzo floor and the department is responsible for doing the maintenance. Please call APP if there is any question about the care of a department's integrated art work.
5. Art works fabricated from special materials may require specialized maintenance treatment. For example, a bronze or stone work of art must be cleaned and treated with a specific maintenance product of a certain brand. Please call APP for guidance regarding the maintenance of art works made of special materials.
6. It is the departments' responsibility to train cleaning crews regarding the treatment of public art works to ensure proper care; APP is available to provide guidance for this training.

#### Repair

1. Never attempt to repair an art work.
2. Contact APP immediately to report any damage to an art work and an APP staff member will be responsible for assessing the damage and determining the repair procedures.

Inventory: Departments' Responsibilities

1. Departments are responsible for conducting an annual inventory of their public art works and for reporting the results to APP.
2. Departments must appoint an APP liaison responsible for the annual inventory and annually inform APP regarding contact information for this individual.
3. Departments cannot move or relocate works of art; APP must be contacted if a department wants to move or relocate a work of art.

Inventory: APP's Responsibilities

1. APP annually will provide departments with a list of the art works and locations of the works in the departments to initiate the annual inventory.
2. APP will provide departments with contact information for its Collections Manager who is responsible for the inventory results.
3. APP will respond to departments' requests to move or relocate art works.

Information for Municipalities to Implement APP Projects

1. Municipal governments are required to implement the APP provision set forth in the County Code.
2. Municipalities have the option of administering their own public art projects or working collaboratively with Miami-Dade Art in Public Places to administer, manage and implement the public art projects.
3. If the municipality chooses to implement its own public art projects, it is responsible for adhering to the program's requirements, as outlined in these procedures and highlighted as follows:
  - 1½% of the total capital cost of new government buildings must be allocated for the commission or purchase of artworks as defined in these procedures;
  - a competitive, quality-based artist selection process must take place and a selection committee with knowledge and expertise in the visual arts must select the art work;
  - APP funds must be used solely for commissioning works of public art and a professional artist must be contracted with to implement the public art project;
  - a percentage of the APP funds may be set aside for program administrative costs and repair and maintenance expenses for the public art project. It is recommended that up to 15% of the total public art allocation be set aside for costs associated with administering the project and up to 15% be set aside for costs associated with the future maintenance of the public art project;
  - Miami-Dade County Department of Cultural Affairs and its APP staff are available to work with municipalities to assist them and confirm that they are meeting the APP program's requirements;
  - for General Obligation Bond-funded (GOB) projects, APP funds must be spent within the project that generates the APP funds; and
  - if a municipality chooses to implement its own public art projects, but requires the technical assistance of Miami-Dade County APP, a negotiated administrative fee can be determined based upon the complexity and duration of the project.
4. If the municipality chooses to work collaboratively with Miami-Dade APP to implement the public art requirements, Miami-Dade APP will oversee and provide services, highlighted as follows:

- work collaboratively with the municipality and its project team to identify opportunities for public art in the facility;
  - draft and distribute Call to Artists;
  - administer artist selection process;
  - coordinate the submission of the recommended artist(s) to the Miami-Dade APP Trust;
  - provide contract language for municipality's architect and contractor contracts to ensure APP coordination;
  - provide technical assistance to the selected artist(s) and serve as liaison between the artist(s) and commissioning municipality and its project team;
  - manage contract negotiations and process payments with artist(s);
  - coordinate installation of art work(s) with the municipality's project managers, architects/engineers/specialty consultants and contractor;
  - if a municipality chooses to work collaboratively with Miami-Dade APP, 15% of the total public art funds will be allocated to Miami-Dade Department of Cultural Affairs for costs associated with its administration of the public art project; and
  - if required by the municipality, the selected artist(s)/artwork(s), along with an alternate recommendation, will be presented to and reviewed by the municipality's governing body prior to the final approval of the Miami-Dade APP Trust.
5. Municipalities will own the resulting public art works and will be responsible for the maintenance, repair (as necessary), and inventorying of public art works. Municipalities can consult with Miami-Dade APP for assistance with these responsibilities.

Information for Private Sector Capital Development on Land Owned by Local Government or on Private Property with the Building Owned by Local Government

1. Capital projects done through agreements with a private entity, including but not limited to leases or development agreements (i.e., the local government contracts with another party to develop a building that the local government will own now or in the future), are subject to the APP requirement if:
  - The project meets the eligibility criteria for the public art requirement (e.g., it is a building that shelters people in a wholly or partially enclosed manner); and
  - The project serves a public purpose whether operated by local government or on its behalf, by a private operator; and/or
  - The project relies on surrounding or adjacent local government buildings to function and is an integral component of the overall infrastructure of a public complex (e.g., a cargo facility at the airport); and/or
  - The project enhances a patron experience at a local government facility (e.g., a restaurant).
2. Capital projects that are done through agreements with a private entity, including but not limited to leases or development agreements (i.e., the local government contracts with another party to develop a building that the local government will own now or in the future), to be operated by the private entity, may not be eligible for the art in public places requirement if:
  - The agreement between the local government and the private entity for the private entity to operate the project has a term in excess of 50 years; and/or
  - The agreement between the local government and the private entity has a provision that allows the private entity the option to purchase the facility; and/or
  - There is no local government funding and/or no local government rent abatements or reductions provided to the private entity; and/or

- The project has no public purpose and is not part of a complex of surrounding or adjacent local government buildings that function as a public complex and/or does not enhance a patron experience at a local government facility.
3. Capital projects that include complexes in which one or more of the buildings and/or a portion of a building meet the criteria for the APP requirement may need to comply with the APP requirement for those eligible buildings and/or eligible portions of the building (e.g., a public parking garage built as a part of a private development complex that otherwise may not be subject to the APP requirement).
  4. Determinations as to the applicability of the public art requirement initially are made by the Director of the Miami-Dade Department of Cultural Affairs, are based on the section 2-11.15 of the County Code, Administrative Order 3-11 and the Miami-Dade Procedures Manual (Procedure No. 358), and may be considered by the Review Committee as set forth in Administrative Order 3-11, prior to consideration of the Board of County Commissioners.

#### Accession Procedures

1. Accessioning is the formal acceptance of an artwork into the Miami-Dade County Art in Public Places Collection (Collection). Accessioning artwork into the Collection indicates the intent to apply professional standards of care, display, and maintenance over the life of the artwork, or until the artwork is no longer displayable and is deaccessioned from the Collection.
2. Artworks will be entered into the Collection inventory as soon as a commissioning or purchasing contract is executed and these inventory entries will be annotated as "works in progress" with periodic updates included as necessary to describe the status of completion accurately. Artworks will be annotated as fully accessioned in the Collection inventory only upon completion of all facets of the commissioning or purchasing contract or of the required review process for gifts and other artworks. Conditions, restrictions, or limitations cannot be attached to the accessioning that would limit the use of the artwork.
3. The signed contract transferring title for the artwork and clearly defining the rights and responsibilities of all parties will accompany every acquisition.
4. Acquisitions result from:
  - Projects of the Miami-Dade County Art in Public Places Program pursuant to Section 2.11.15 of the Miami-Dade County Code;
  - Gifts with a fair market value greater than \$1,000, which will be reviewed and accessioned in accordance with the Miami-Dade County Administrative Order No. 1-3;
  - Gifts with a fair market value less than \$1,000 that are reviewed and accepted by the Art in Public Places Trust; or
  - Other artworks, including but not limited to found items that are un-accessioned items found in the existing Collection or in the possession of Miami-Dade County government that are reviewed and accepted by the Art in Public Places Trust.
5. All acquisitions will be entered into the Collection inventory and added to the General Services Administration (GSA) Capital Inventory Record.
6. Once the Art in Public Places program takes possession of an artwork, it should have the sole right to determine how and when that artwork is shown, safeguarded, or de-accessioned, subject to its professional practices and policies and in accordance with County policy.

### Deaccession Procedures

1. The deaccessioning of artwork is the removal of an object from the Miami-Dade County Art in Public Places Collection. This includes the removal of the artwork from its public site, removal from the maintenance cycle, and moving of records, both hard copy and electronic, into a Deaccessioned Collection file and as required by Miami-Dade County Administrative Order No. 8-2, transferred into the archived portion of the GSA Capital Inventory Record. Deaccessioning will be considered only after a careful evaluation of the artwork within the context of the Collection as a whole and will be consistent with Miami-Dade County Administrative Order No. 8-2 – Care, Control and Disposal of County Property. Only the Miami-Dade County Art in Public Places Trust has the authority to deaccession artworks in the Art in Public Places Collection.
2. Once an artwork has been accessioned, it may not be deaccessioned on the basis of content.
3. An artwork may be considered for deaccession under the following conditions only:
  - The artwork cannot be located after reasonable and diligent searches. As required by Miami-Dade County Administrative Order No. 8-2, a police report must be filed for unlocated artwork(s) and an investigation report and recommendation must be submitted to GSA;
  - The artwork has been damaged beyond repair, damaged to the extent that it no longer represents the artist's intent, or damaged to the extent that the expenses of restoration and repair are found to equal or exceed current market value of the artwork. As required by Miami-Dade County Administrative Order No. 8-2, a police report must be filed for damaged or destroyed artwork(s) and an investigation report and recommendation must be submitted to GSA;
  - The artwork is not, or is only rarely, on display due to lack of a suitable site;
  - For site-integrated or site-specific artworks, the site for which the artwork was specifically created is structurally or otherwise altered and can no longer accommodate the artwork, is made publicly inaccessible as a result of new construction, demolition, or security enhancement, or has its surrounding environment altered in a way that significantly and adversely impacts the artwork;
  - For site-integrated or site-specific artworks, the site for which the artwork was specifically created is sold or acquired by an entity other than Miami-Dade County;
  - The artwork was purchased as a semi-permanent acquisition and the County's predetermined period of obligation is terminated;
  - There is a documented history of incident(s) that shows the artwork is a threat to public safety;
  - The artist legally exercises the right of disassociation granted by the Visual Artists Rights Act of 1990, preventing the use of his or her name as the creator of the artwork;
  - The artwork requires excessive maintenance and/or the condition or security of the artwork cannot be reasonably guaranteed;
  - The artwork has been determined by the Art in Public Places Trust deaccession process to be of inferior quality relative to the quality of other works in the Collection or the County wishes to replace the artwork with a work of more significance by the same artist; and/or
  - At the time of accessioning, complete information on the provenance of the artwork was not available, or more information has since become available, indicating that the artwork should not be part of the Miami-Dade County Art in Public Places Collection.
4. Department of Cultural Affairs staff will prepare a written recommendation for deaccession of artworks from the Collection based on one or more of the conditions in Section 3 above for

review and evaluation by the Miami-Dade County Art in Public Places Professional Advisory Committee (Professional Advisory Committee), and subsequent review, evaluation and action by the Art in Public Places Trust. The staff reserves the option of hiring a consultant for advice on specific elements of the artwork being considered through the deaccession process.

5. Artists whose work is being considered for deaccession shall be notified by mail using the current address provided by the artist. Artists also shall be notified of the recommendation of the Professional Advisory Committee and of the Art in Public Places Trust meeting scheduled to consider this recommendation.
6. All legal documents relating to the artwork, including but not limited to contracts with the artist and agreements related to a donation of the artwork as applicable, will be consulted as part of the deaccession process. When applicable and feasible, the donor of an artwork under consideration for deaccessioning will be notified.
7. At a Professional Advisory Committee meeting, Miami-Dade County Department of Cultural Affairs staff will present reports on artworks to consider for deaccession that include:
  - Reasons for the suggested deaccession accompanied by such other documentation and information as may be relevant;
  - Acquisition method, cost, and estimated current market value;
  - Documentation of correspondence with the artist;
  - Photo documentation of site conditions (if applicable);
  - In the case of damage, a report that includes the official police and investigation reports and recommendation, and documents the original cost of the artwork, estimated market value, and the estimated cost of repair; and/or
  - In the case of theft or loss, the official police and investigation report and recommendation, including when possible, a report prepared by the agency responsible for the site of the loss.
8. The Professional Advisory Committee will then make a recommendation to the Miami-Dade County Art in Public Places Trust, including actions regarding the disposition of the artwork pursuant to Section 9 below. If the Professional Advisory Committee recommends that an artwork be retained, an explanation stating the Committee's reasons and recommendations shall be set forth in the minutes of the Committee's meeting and shall be submitted to the Art in Public Places Trust. The Trust may decide to seek additional information.
9. The decision to deaccession artwork will result from a resolution requiring a majority vote by the Miami-Dade County Art in Public Places Trust. Upon this decision to deaccession artwork, the Trust will consider what action should be taken, with priority given to public benefit from the Collection. Every step will be taken to arrive at a mutual balance between observing the rights of the artist and public benefit. Actions will be consistent with Miami-Dade County Administrative Order No. 8-2 and may include:
  - Trade through artist, gallery, museum, or other institutions for one or more other artwork(s) of comparable value by the same artist or to reduce the purchase price of a replacement artwork;
  - Long term or permanent loan offered first to other governmental units and then, to eligible community based organizations, such as museums or educational/non-profit institutions, subject to being afforded equal participation opportunity to review and select the artwork(s);
  - Donation first to other governmental units and then, to eligible community based organizations, such as museums or educational/non-profit institutions, subject to being afforded equal participation opportunity to review and select the artwork(s);
  - Sale to interested potential bidders with "first offer" right to governmental units located within Miami-Dade County, in compliance with Administrative Order No. 8-2 governing

- surplus County property. Any pre-existing contractual agreements between the artist and the County regarding resale shall be honored, including but not limited to the original artist's having first right of refusal to purchase his or her artwork at its current market value;
- In special situations, the Miami-Dade County Art in Public Places can negotiate the transfer of an artwork to another entity. For site-integrated or site-specific artworks, when the site for which the artwork was specifically created is sold or acquired by an entity other than Miami-Dade County, the ownership of the artwork can transfer to that entity. Artwork in the Public Art Collection should be in exhibitable condition and continue to reflect the artist's original intent. Should the artwork selected for transfer need to be repaired, cleaned, or restored, the negotiated transfer will include conservation provisions and, unless negotiated otherwise, the receiving entity pays for the restoration. The receiving entity should have an art plan that defines their commitment to the artist and the continued care of the artwork; and/or
  - For artwork(s) not able to be disposed of by the methods outlined above, destruction or recycling of materials comprising the artwork, in accordance with Chapter 274 of the Florida Statutes, so that no piece is recognizable as part of that artwork.
10. In the event the artist disagrees with the decision of the Miami-Dade County Art in Public Places Trust, the artist may request reconsideration of the deaccession. This request must be filed in writing with the Miami-Dade County Department of Cultural Affairs within 30 days of the Trust's deaccession decision, and it must be based on information that was not considered during the Professional Advisory Committee's and the Art in Public Places Trust's meetings on the deaccession.
  11. The Miami-Dade County Department of Cultural Affairs will work cooperatively with the General Services Administration, Fixed Assets & Division Operations section of the County regarding the implementation of this policy for deaccessioned artworks and will notify GSA about all actions under formal consideration and taken by the Miami-Dade County Art in Public Places Trust affecting artwork(s) in the County's inventory.
  12. A report will be sent to the County Mayor, Board of County Commissioners, County Manager and GSA regarding the Miami-Dade County Art in Public Places Trust's action(s) regarding deaccessioned artworks.
  13. The artwork, or its remains, shall be disposed of by the Miami-Dade County Art in Public Places staff, or its agents, upon deaccession action. It is the obligation of the Miami-Dade County Art in Public Places Program to ensure that all disposals with regard to the Collection be formally and publicly conducted and adequately documented in accordance with applicable provisions of the Florida Statutes and the Code of Miami-Dade County utilizing a variety of disposal methodologies.
  14. A permanent record of the artwork's inclusion in the Miami-Dade County Art in Public Places Collection, and reasons for its removal, shall be maintained in a Deaccessioned Collection file, and will be kept as a separate section of the Miami-Dade County Art in Public Places Collection records. Miami-Dade County Department of Cultural Affairs staff will notify GSA Fixed Assets & Division Operations section of all deaccessioned artwork(s) so that the artwork(s) can be deleted from the Department's Capital Inventory Record.
  15. No artworks shall be sold or traded to a member of a governing body or staff of Miami-Dade County government including the members of the Miami-Dade County Art in Public Places Trust and its Professional Advisory Committee, consistent with Miami-Dade County conflict of interest policies.
  16. All proceeds from the sale of any artwork from the Miami-Dade County Art in Public Places Collection shall be deposited in the Art in Public Places Trust Fund. Funds from artwork

sales may be used in any manner consistent with the enabling legislation of the Art in Public Places program and County policies regarding public artwork.

### Frequently Asked Questions

1. Applicable Projects and Costs.
  - What if we are uncertain about whether the APP requirement applies to a project or components of a project?
  - Call the APP staff if you have any questions about the APP requirements. In addition, the FAQs below may provide answers to your questions.
2. Contingency Allowances.
  - Are contingency allowances covered by the APP requirement, even if eventually they are not used or fully used for the project.
  - Yes. The APP allocation is calculated and transferred to APP upon the award of the contract.
3. Inspector General.
  - In calculating the APP allocation, should the Inspector General cost be included in the base for the APP calculation?
  - Yes, the APP calculation is taken against the total contract amount.
4. Capital Outlay Reserve Funds (CORF).
  - Are construction projects funded by the Capital Outlay Reserve Fund covered by the APP requirement?
  - Yes. The APP requirement applies to all County construction projects for new buildings.
5. Funding Sources That Disallow Public Art.
  - Does the APP requirement apply to construction projects that are funded by grants or other sources which disallow public art?
  - If a grant or another funding source specifically prohibits the use of funds for compliance with the APP requirement, the department must use other funds to satisfy the APP requirement.
6. General Obligation Bond (GOB) Projects.
  - Does the APP requirement apply to GOB projects?
  - Yes, the APP requirement applies to all County construction projects for new buildings. In addition, the APP requirement applies to GOB projects for new buildings done by municipal governments.
7. Capital Work Done by the County.
  - Does the APP requirement apply to the cost of architectural and engineering services performed by County personnel and to the cost of in-house construction labor, materials, and/or machinery?
  - Yes. The APP requirement applies to the construction cost of new government buildings regardless of the source of funds for the project.
8. Private Sector-Funded Projects.
  - Does the APP requirement apply to buildings financed and constructed on County property by private sector investors?
  - Yes. The APP requirement applies to the construction cost of new government buildings regardless of the source of funds for the project. Please see the section, "[Information for Private Sector Capital Development on Land Owned by Local Government or on Private Property with the Building Owned by Local Government.](#)"
  - What happens if the APP funds are not included in the development agreement with the private sector and/or are not collected by the department from the private sector?

- The department will need to convey the funds for the APP requirement from another revenue source.
9. Conveyance of APP Funds.
- When are funds conveyed to APP? Whom do we contact for details about conveying funds?
  - Funds are conveyed to APP when the department receives spending authority for the capital project. For example, when an A&E contract is authorized, 1 ½% of the contract must be conveyed to APP. Please contact Deborah Margol, Deputy Director, Department of Cultural Affairs, for instructions to convey funds (305-375-2577; debo@miamidade.gov).
10. Demolition.
- Does the APP requirement apply to demolition costs?
  - Yes, if demolition is part of a construction project that is covered by the APP requirements.
11. Building Additions.
- Are additions to an existing structure covered by the APP requirement?
  - Yes, additions are considered to be "new government buildings."
12. Equipment.
- Are equipment costs subject to the APP requirement?
  - Yes. The APP requirement covers all systems and features that make a facility functional, even if the equipment is acquired through a separate contract.
13. Parking Garages.
- Does the APP requirement apply to a parking garage?
  - Yes.
14. Roadways and Sidewalks.
- Does the APP requirement apply to roadways and sidewalks?
  - Yes, if the roadways and sidewalks are part of a construction project that is covered by the APP requirement.
15. Selection of Art Must Be by APP.
- Can a department satisfy the APP requirement by selecting and purchasing an artwork itself?
  - No. Works of art must be selected in compliance with the process required by the APP program and overseen by the APP Trust and staff. Please see the section, "The APP Artists Selection Process" on page 2.
16. Adherence to the Art in Public Places Requirement.
- Can departments waive the APP requirement?
  - No. Section 2-11.15 of the Miami-Dade County Code sets forth the requirements for the APP program and provides that only the Board of County Commissioners has the authority to waive the APP requirement. Administrative Order 3-11 prescribes a process involving a Review Committee which can be convened by the Assistant County Manager in charge of the APP program to conduct a hearing of a request for a waiver and states that the Review Committee will evaluate such requests as follows: "If the facility does not conform to the definition of 'new governmental building' a waiver will be recommended to the Board of County Commissioners. Only the BCC is authorized to grant waivers. Waivers must be secured prior to the award of the construction contract."
17. Unsuitable Locations.
- Does the APP requirement apply to a new building that may not provide a suitable location for a public artwork and may the APP funds be transferred for expenditure to another site?

- Yes. The APP requirement covers all new government buildings. There is no requirement in Section 2-11.15 of the Miami-Dade County Code that artworks be located at the site of the project that funded the artwork. APP will work with departments to identify suitable alternative locations.

18. Donations of Artwork.

- What is the process for departments to accept donations of art work(s)?
- The process for accepting gifts of art works is covered by Administrative Order No. 1-3. It requires that the APP Trust and its Professional Advisory Committee review and provide the department with a recommendation for all donations of artwork or commemorative and/or memorial structures of artistic merit, valued in excess of \$1,000.

**CONTACT(S):**

**Department/Division**

Department of Cultural Affairs

**REFERENCE DOCUMENT(S):**

Section 2-11.15 of the Miami-Dade County Code

Administrative Order 3-11, Art in Public Places Program Implementation and Fund Transfer Procedure; Administrative Order No. 8-2, Care, Control and Disposal of County Property; Miami-Dade County Administrative Orders No. 1-3, Gifts to the County

Copies of all County Attorney Opinions related to these procedures are maintained by the Department of Cultural Affairs

**APP Capital Project Budget Allocation Worksheet**  
(Sample: Please request this form from APP staff)

Capital Project Name	Project No.	Submittal Date	Submitted by
Department		Project Start Date	Project End Date
Brief Description			

**Design & Admin Costs**

Item	Description	Estimated Cost	Actual Award Cost
A.	Professional Basic Fees (A/E Consultants)	\$	\$
B.	Specialty Consultants, Reimbursable Allowances, Soil Boring Testing, Surveying, Inspector General, etc	\$	\$
C.	Program Management (Project and Construction Management)	\$	\$
D.	Other Costs	\$	\$
<b>CATEGORY TOTAL (A thru D)</b>		\$	\$

**Construction Costs**

Item	Description	Estimated Cost	Actual Award Cost
E.	New Construction	\$	\$
F.	Demolition	\$	\$
G.	Built-in Equipment (such as moving escalators and walkways, elevators, fire & security alarm, IT, back up generators, etc)	\$	\$
H.	Furnishings, Fixtures, and Non-Integral Equipment	\$	\$
I.	All Civil Related Work (such as landscape, sidewalks, surface lot, roadway, pavement, lighting, etc)	\$	\$
J.	Environmental Remediation	\$	\$
K.	Allowance Accounts (e.g. permitting, threshold inspections, reimbursables, alternates, etc.)	\$	\$
L.	Contingency Account	\$	\$
<b>CATEGORY TOTAL (E thru L)</b>		\$	\$

	Estimated Cost	Actual Award Cost
Design & Admin Total	\$	\$
Construction Total	\$	\$
<b>Total Eligible Costs</b>	\$	\$

Estimated Amount of APP Allocation (1.5%)	\$	
Actual Amount of APP Allocation (1.5%)		\$

The above-referenced line items are not intended to be an all inclusive list of project expenses required to contribute to the APP allocation. These represent the most common expenses called out in eligible County capital projects. All capital expenses must be included on this form. Please contact Art in Public Places for questions about this form.

Schedule 4.01  
(form)

CONFIRMATION OF COMMENCEMENT DATE

Reference is made to the Rainbow Housing Corporation Ground Lease dated \_\_\_\_\_, 20\_\_\_\_, by and between Miami-Dade County, acting by and through the department of Public Housing and Community Development ("Landlord" or "PHCD"), and the Rainbow Housing Corporation, a Florida not-for-profit corporation ("Tenant"). This Confirmation of Commencement Date ("Confirmation of Commencement") is attached to the Lease as Schedule 4.02 thereto, and, when executed and delivered by Landlord to the Tenant shall be incorporated within and made a part of the Lease. Capitalized terms used in this Confirmation of Commencement without otherwise being defined herein will have the meanings given to them in the Lease. The Confirmation Date of the Lease is \_\_\_\_\_, 20\_\_\_\_. To confirm the Commencement Date, the Landlord has caused this instrument to be executed and delivered to the Tenant, defining the Commencement Date of the Lease.

ATTEST:  
HARVEY RUVIN, CLERK

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

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

BY ITS BOARD OF COUNTY  
COMMISSIONERS

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