

# MEMORANDUM

Agenda Item No. 8(K)(1)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** October 17, 2023

**FROM:** Geri Bonzon-Keenan  
County Attorney

**SUBJECT:** Resolution retroactively authorizing the County Mayor's action in executing an option to enter into a ground lease with Gallery at Marti Park, LLC as assignee of RUDG, LLC (RUDG) that evidences and preserves site control of a portion of Joe Moretti Phase Two public housing development, known as **Gallery at Marti Park** (project site); and authorizing the County Mayor to: (1) execute such agreements or documents as may be required by the United States Department of Housing and Urban Development (HUD) and Florida Housing Finance Corporation to evidence such site control of the project site; (2) execute the first amendment to Joe Moretti Phase Two Master Development Agreement with RUDG LLC; (3) execute a consulting agreement with RUDG, with a consulting fee equal to 22 percent of any developer fee estimated at \$2,295,287.50; (4) in accordance with section 125.35, Florida Statutes, and subject to the approval of HUD, execute a 75-year ground lease with RUDG in the total estimated amount of \$133,973,915.52, inclusive of a lump sum ground lease payment of \$616,000.00; an annual share of 16.5 percent of the revenue/net cash flow payable, commencing after the stabilization estimated at \$133,357,915.52; an asset management fee in the amount of \$17,500.00; a monthly **Davis Bacon monitoring fee in the amount of \$2,500.00, estimated at \$50,000.00**; and 30 percent of the net proceeds of the sale or refinance of the project site; (5) subject to HUD'S approval, execute any and all necessary Rental Assistance Demonstration and/or mixed-finance agreements and all other documents related to the development; (6) submit a demolition and/or disposition application to HUD, if required; and (7) execute amendments to annual contributions contracts, if required; and (8) exercise all provisions contained therein waiving Resolution No. R-130-06 and Implementing Order 8-4

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


  
Geri Bonzon-Keenan  
County Attorney

GBK/gh

MDC001

**Date:** October 17, 2023

**To:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**From:** Daniella Levine Cava  
Mayor 

**Subject:** Recommendation for Approval of the Execution of the first amendment to Joe Moretti Phase Two Master Development Agreement with RUDG LLC, and a Consulting Agreement and a 75-Year Ground Lease to Gallery at Marti Park, LLC as Assignee of RUDG, LLC.

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## **Executive Summary**

On October 21, 2014, the Board of County Commissioners (“Board”) adopted Resolution No. R-946-14, which authorized the County Mayor or County Mayor’s designee to execute the Master Development Agreement (“MDA”) with RUDG, LLC and its affiliates for the redevelopment of Joe Moretti Phase Two (“project site”), a public housing development in Miami-Dade County, which MDA was fully executed on December 24, 2014. This item recommends that the Board retroactively authorize the County Mayor or County Mayor’s designee’s action in executing the option to enter into a ground lease with Gallery at Marti Park, LLC (collectively referred herein as “RUDG”), that evidences and preserves site control as required by the United States Department of Housing and Urban Development (HUD) and the Florida Housing Finance Corporation (FHFC), for the redevelopment of a portion of Joe Moretti Phase Two, known as Gallery at Marti Park (“project site”). This item also seeks the Board’s approval to authorize the County Mayor or County Mayor’s designee to execute the first amendment to Joe Moretti Phase Two MDA with RUDG, a Consulting Agreement, and approve and authorize the execution of the 75-Year Ground Lease (“lease”) with RUDG, and any agreements or documents as may be required by FHFC, and other related agreements with RUDG, subject to approval of the United States Department of Housing and Urban Development (“HUD”), for the redevelopment of the project site.

## **Recommendation**

It is recommended that the Board :

1. Retroactively authorize the County Mayor or County Mayor’s designee’s action in executing the option to enter into a ground lease with RUDG that evidences and preserves site control as required by HUD and FHFC;
2. Authorize the County Mayor or County Mayor’s designee to take any additional steps required by FHFC or other funding source to preserve RUDG’s site control of the project site until such time as HUD has approved the lease;
3. Approve and authorize the County Mayor or County Mayor’s designee to execute the first amendment to Joe Moretti Phase Two MDA between the County and RUDG LLC;
4. Approve and authorize the County Mayor or County Mayor’s designee to execute a consulting agreement between the County and RUDG for the redevelopment of the project site, with a consulting fee equal to a 22 percent of any developer fee estimated at \$2,295,287.00, and to exercise all provisions contained in therein;

5. In accordance with section 125.35, Florida Statutes, and subject to HUD's approval, approve and authorize the County Mayor or County Mayor's designee to: (1) execute a lease with RUDG in the total estimated amount of \$133,973,915.52, inclusive of a lump sum ground lease payment of \$616,000.00; an annual share of 16.5 percent of the revenue/net cash flow payable, commencing after the stabilization period, about one year after issuance of certificate of occupancy of the project through the end of the lease term, estimated at \$133,357,915.52; an asset management fee in the amount of \$17,500.00 commencing on the earlier of year 10 or the first year of positive cash flow after full payment of the deferred developer fee; monthly Davis Bacon monitoring fee in the amount of \$2,500.00, estimated at \$50,000.00; and 30 percent of the net proceeds of the sale or refinance of the subject property; and (2) exercise all provisions contained therein, including, but not limited to, (a) termination and technical and non-substantive amendment provisions; (b) exercising right of first refusal option; (c) reviewing and approving documents, plans, any and all other requests required of, or allowed by, RUDG, its sublessees or assignees, to be submitted to County; (d) consenting to actions, events, and undertakings by RUDG or extensions of time periods for which consent is required by County, including, but not limited to, extensions of time for the performance of any obligation by County; (e) execute any and all documents on behalf of County necessary or convenient to the foregoing approvals, consents, and appointments; (f) assisting RUDG with and executing on behalf of the County any applications or other documents, needed to comply with applicable regulatory procedures and to secure financing, permits or other approvals to accomplish the construction of any and all improvements in and redevelopment of the project site; (g) executing joinders and consents to easement and access agreements, for the purposes of granting any needed non-exclusive vehicular and/or pedestrian ingress and egress access routes and for any parking within and throughout the project; and (h) amending the lease to correct any typographical or non-material errors, to address revisions or supplements hereto of a non-material nature or to carry out the purposes of the lease.
6. Subject to HUD's approval, authorize the County Mayor or County Mayor's designee to execute any and all necessary RAD and/or mixed-finance and related agreements and any and all other documents related to necessary for the development, management, and operation of the project site;
7. Authorize the County Mayor or County Mayor's designee to submit a demolition and/or disposition application to HUD, if required, for the project site for the purpose of demolishing and disposing of the existing buildings located on the project site;
8. Authorize the County Mayor or County Mayor's designee to execute amendments to annual contributions contracts (ACC), if required; to execute any agreements, releases from declarations of trust, and any other documents on behalf of the County, subject HUD's approval; and to exercise amendments, modification, cancellations and termination clauses; and
9. Waive Resolution No. R-130-06 and Implementing Order 8-4 that requires the lease to be fully negotiated and executed prior to placement on the Board's agenda because the lease must be approved by HUD prior to its execution.

**Scope**

The scope of this item is countywide in nature; however, the project site is located in District 5, which is represented by Commissioner Eileen Higgins.

**Fiscal Impact/Funding Source**

There is no fiscal impact to the County related to the approval of the first amendment to the MDA between the County and RUDG. However, there will be a positive fiscal impact to the County for approving and executing the consulting agreement and the lease, which will result in revenue sharing and capital improvements to the project as further described below. It is estimated that through the leasing of the project site the County will receive a total estimated amount of \$133,973,915.52, inclusive of a lump sum ground lease payment of \$616,000.00; an annual share of 16.5 percent of the revenue/net cash flow payable, commencing after the stabilization period, about one year after issuance of certificate of occupancy of the project site through the end of the lease term, estimated at \$133,357,915.52. Further, as established under the first amendment to the MDA, the County will receive a monthly Davis Bacon monitoring fee in the amount of \$2,500.00, estimated at \$50,000.00; an asset management fee in the amount of \$17,500.00 commencing on the earlier of year 10 or the first year of positive cash flow after full payment of the deferred developer fee, and 30 percent of the net proceeds of the sale or refinance of the subject property. It is further estimated that by executing the consulting agreement the County will receive a consulting fee equal to 22 percent of any developer fee estimated at \$2,295,287.50.

**Track Record/Monitor**

Alex R. Ballina, Director of Public Housing and Community Development Department (Department) is the Project Manager and Indira Rajkumar-Futch is the Procurement Contracting Manager. They, along with the Department staff, will monitor compliance with the agreements described herein.

**Delegated Authority**

Upon the approval of this item, the County Mayor or County Mayor's designee will be authorized to: (1) execute such agreements or documents as may be required by HUD and FHFC, including, but not limited to, an option to enter into a ground lease or similar instrument with RUDG to evidence and preserve site control, and to take any additional steps required by FHFC to preserve RUDG's site control of the project sites until such time as HUD has approved the lease; and (2) execute the lease, subject to HUD's approval, and MDA, and to exercise all provisions contained therein including, but not limited to, termination and technical and non-substantive amendment provisions. Further, the County Mayor or County Mayor's designee will further have the authority to (a) exercising termination and technical and non-substantive amendment; (b) exercising right of first refusal option; (c) reviewing and approving documents, plans, any and all other requests required of, or allowed by, RUDG, its sublessees or assignees, to be submitted to County; (d) consenting to actions, events, and undertakings by RUDG or extensions of time periods for which consent is required by County, including, but not limited to, extensions of time for the performance of any obligation by County; (e) executing any and all documents on behalf of County necessary or convenient to the foregoing approvals, consents, and appointments; (f) assisting RUDG with and execute on behalf of the County any applications or other documents, needed to comply with applicable regulatory procedures and to secure financing, permits or other approvals to accomplish the construction of any and all improvements in and redevelopment of the project site; (g) executing joinders and consents to easement and access agreements, for the purposes of granting any needed non-exclusive vehicular and/or pedestrian ingress and egress access routes and for any parking within and throughout the project; and (h) amending the lease to correct any typographical or non-material errors, to address revisions or supplements hereto of a non-material nature or to carry out the purposes of the lease. The County Mayor or County Mayor's designee will also have the authority to: (a) subject to HUD's approval, execute any and all necessary



RAD and/or mixed-finance and related agreements and any and all other documents related to necessary for the development, management, and operation of the project site; (b) submit a demolition and/or disposition application to HUD, if required, for the project for the purpose of demolishing and disposing of the existing building located on the project site; (c) execute amendments to the ACCs, if required; (d) execute any agreement, release from declarations of trust, and any other documents on behalf of the County, subject HUD's approval; (e) and exercise amendments, modification, cancellations and termination clauses.

### **Background**

The project site is part of the County's effort to re-develop, modernize, and financially stabilize most of the County's public housing units through the RAD program, which is a federal program that allows public housing authorities to convert public housing, which have been facing significant federal funding decreases, to a more financially stable Section 8 project-based funding model. Through the RAD conversion process public housing can be modernized through redevelopment projects that are able to leverage additional financing from public and private sources, public housing units are replaced on a one-for-one basis, and current residents are provided with a guaranteed right to return along with other resident protection rights. In March 2019, the County obtained a portfolio award from HUD which allows the County to redevelop 6,426 of its existing public housing units, including the project site, through the RAD conversion process. Subsequently, the County's portfolio award was amended to increase the total number of units converted through RAD to 7,718.

On November 23, 2011, the Board adopted Resolution R-106-11, which awarded site control of Joe Moretti Phase Two through a ground lease to RUDG, pursuant to advertised Request for Proposal ("RFP") No. 794 on July 14, 2011. However, in September 2022, HUD issued a notice to all public housing agencies, including the County, and housing finance authorities, instructing them to avoid executing ground leases when a developer is seeking low-income tax credits or other funding because the execution of such leases would trigger a violation of the ACC with HUD and raise environmental concerns. Notwithstanding this directive, the notice authorizes public housing agencies to execute options to enter into ground leases. Therefore, this item seeks retroactive approval of the County Mayor or County Mayor's designee's action in executing the lease option agreement, which is attached to the resolution. The action was taken to ensure that RUDG maintained site control of the project site.

Additionally, this item seeks authorization to execute the first amendment to the MDA, a Consulting Agreement, and the lease subject to HUD's approval. Pursuant to the first amendment to the MDA and the lease, RUDG has agreed to construct a development that will consist of approximately 176 mixed-income units, which will include 15 RAD and 21 non-RAD Section 18 units. RUDG has also agreed to the following financial terms associated with the lease of the project site. RUDG will pay the County (a) a ground lease payment of \$133,973,915.52, inclusive of a lump sum ground lease payment of \$616,000.00; and (b) an annual share of 16.5 percent of the revenue net cash flow payable, commencing after the stabilization period, about one year after issuance of certificate of occupancy of the project site through the end of the lease term, estimated at \$133,357,915.52. Additionally, as established under the first amendment to the MDA, RUDG will pay the County (a) a monthly Davis Bacon monitoring fee in the amount of \$2,500.00, estimated at \$50,000.00; (b) an asset management fee in the amount of \$17,500.00 beginning the earlier of year 10 or the first year of positive cash flow after full payment of the deferred developer fee; and (c) 30 percent of the net proceeds of the sale or refinance of the subject property. It is further estimated in the consulting agreement that RUDG will pay the County consulting fee equal to 22 percent of any developer fee estimated at \$2,295,287.50, which fee will be on equal footing to RUDG's share, and will be paid to the County on a pro rata basis as it is distributed to RUDG.

Expediting the approval process is consistent with the Department's need to provide assurances to HUD that the County is making significant progress on the RAD program. As required by the RAD program, the Department continues to explain the RAD program to residents to hear their concerns and to answer any questions. The Department is also required by HUD to have a series of at least four meetings with the community throughout the execution of the project. This requirement also complies with the Board's Rules of Procedure. Since the project site is currently vacant, no resident meetings have been held; however, the project is part of the Department's annual plan and as part of its process the Residents Advisory Board has been informed of this project. In addition, the Department requires that RUDG to establish a grievance and care procedure to address any of the resident's and community's concerns through the process of redeveloping the project site.



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Morris Copeland  
Chief Community Services Officer




## MEMORANDUM

(Revised)

**TO:** Honorable Chairman Oliver G. Gilbert, III  
and Members, Board of County Commissioners

**DATE:** October 17, 2023

**FROM:**   
Gen Bonzon-Keenan  
County Attorney

**SUBJECT:** Agenda Item No. 8(K)(1)

Please note any items checked.

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

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

Agenda Item No. 8(K)(1)  
10-17-23

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

RESOLUTION RETROACTIVELY AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE'S ACTION IN EXECUTING AN OPTION TO ENTER INTO A GROUND LEASE WITH GALLERY AT MARTI PARK, LLC AS ASSIGNEE OF RUDG, LLC (RUDG) THAT EVIDENCES AND PRESERVES SITE CONTROL OF A PORTION OF JOE MORETTI PHASE TWO PUBLIC HOUSING DEVELOPMENT, KNOWN AS GALLERY AT MARTI PARK (PROJECT SITE); AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO: (1) EXECUTE SUCH AGREEMENTS OR DOCUMENTS AS MAY BE REQUIRED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) AND FLORIDA HOUSING FINANCE CORPORATION TO EVIDENCE SUCH SITE CONTROL OF THE PROJECT SITE; (2) EXECUTE THE FIRST AMENDMENT TO JOE MORETTI PHASE TWO MASTER DEVELOPMENT AGREEMENT WITH RUDG LLC; (3) EXECUTE A CONSULTING AGREEMENT WITH RUDG, WITH A CONSULTING FEE EQUAL TO 22 PERCENT OF ANY DEVELOPER FEE ESTIMATED AT \$2,295,287.50; (4) IN ACCORDANCE WITH SECTION 125.35, FLORIDA STATUTES, AND SUBJECT TO THE APPROVAL OF HUD, EXECUTE A 75-YEAR GROUND LEASE WITH RUDG IN THE TOTAL ESTIMATED AMOUNT OF \$133,973,915.52, INCLUSIVE OF A LUMP SUM GROUND LEASE PAYMENT OF \$616,000.00; AN ANNUAL SHARE OF 16.5 PERCENT OF THE REVENUE/NET CASH FLOW PAYABLE, COMMENCING AFTER THE STABILIZATION ESTIMATED AT \$133,357,915.52; AN ASSET MANAGEMENT FEE IN THE AMOUNT OF \$17,500.00; A MONTHLY DAVIS BACON MONITORING FEE IN THE AMOUNT OF \$2,500.00, ESTIMATED AT \$50,000.00; AND 30 PERCENT OF THE NET PROCEEDS OF THE SALE OR REFINANCE OF THE PROJECT SITE; (5) SUBJECT TO HUD'S APPROVAL, EXECUTE ANY AND ALL NECESSARY RENTAL ASSISTANCE DEMONSTRATION AND/OR MIXED-FINANCE AGREEMENTS AND ALL OTHER DOCUMENTS RELATED TO THE DEVELOPMENT; (6) SUBMIT A DEMOLITION AND/OR DISPOSITION APPLICATION TO HUD, IF REQUIRED; AND (7) EXECUTE AMENDMENTS TO ANNUAL CONTRIBUTIONS CONTRACTS, IF REQUIRED; AND (8) EXERCISE ALL PROVISIONS CONTAINED THEREIN; WAIVING RESOLUTION NO. R-130-06 AND IMPLEMENTING ORDER 8-4

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

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

**Section 1.** This Board retroactively authorizes the County Mayor or County Mayor's designee's action in executing the option to enter into a ground lease with Gallery at Marti Park LLC as assignee of RUDG, LLC (collectively referred to as RUDG), in substantially the form attached hereto as Attachment "A" and incorporated herein by reference, that evidences and preserves site control of a portion of Joe Moretti Phase Two public housing development, known as Gallery at Marti Park ("project site") as required by the United States Department of Housing and Urban Development (HUD) and Florida Housing Finance Corporation (FHFC). This Board further authorizes the County Mayor or County Mayor's designee to take any additional steps required by FHFC to preserve RUDG's site control of the project site until such time as HUD has approved the 75-year ground lease ("lease") described in section 4 of this resolution.

**Section 2.** This Board authorizes the County Mayor or County Mayor's designee to execute the first amendment to Joe Moretti Phase Two Master Development Agreement between the County and RUDG LLC, in substantially the form attached hereto as Attachment "B" and incorporated herein by reference.

**Section 3.** This Board authorizes the County Mayor or County Mayor's designee to execute a consulting agreement between the County and RUDG for the redevelopment of the project site, with a consulting fee equal to a 22 percent of any developer fee estimated at \$2,295,287.00, in substantially the form attached hereto as Attachment "C" and incorporated herein by reference. This Board further authorizes the County Mayor or County Mayor's designee to exercise all provisions contained in the consulting agreement.

**Section 4.** In accordance with section 125.35, Florida Statutes, and subject to HUD's approval, this Board authorizes the County Mayor or County Mayor's designee to execute a lease with RUDG, in substantially the form attached hereto as Attachment "D" and incorporated herein by reference, in the total estimated amount of \$133,973,915.52, inclusive of a lump sum ground lease payment of \$616,000.00; an annual share of 16.5 percent of the revenue/net cash flow payable, commencing after the stabilization period, about one year after issuance of certificate of occupancy of the Project through the end of the lease term, estimated at \$133,357,915.52; an asset management fee in the amount of \$17,500.00 beginning the earlier of year 10 or the first year of positive cash flow after full payment of the deferred developer fee; a monthly Davis Bacon monitoring fee in the amount of \$2,500.00, estimated at \$50,000.00; and 30 percent of the net proceeds of the sale or refinance of the subject property. This Board further authorizes the County Mayor or the County Mayor's designee to exercise all provisions contained in the lease, including, but not limited to, (a) termination and technical and non-substantive amendment provisions; (b) exercising right of first refusal option; (c) reviewing and approving documents, plans, any and all other requests required of, or allowed by, RUDG, its sublessees or assignees, to be submitted to County; (d) consenting to actions, events, and undertakings by RUDG or extensions of time periods for which consent is required by County, including, but not limited to, extensions of time for the performance of any obligation by County; (e) executing any and all documents on behalf of County necessary or convenient to the foregoing approvals, consents, and appointments; (f) assisting RUDG with and executing on behalf of the County any applications or other documents, needed to comply with applicable regulatory procedures and to secure financing, permits or other approvals to accomplish the construction of any and all improvements in and redevelopment of the project site; (g) executing joinders and consents to easement and access agreements, for the purposes of granting any needed non-exclusive vehicular and/or pedestrian ingress and egress

access routes and for any parking within and throughout the project; and (h) amending the lease to correct any typographical or non-material errors, to address revisions or supplements hereto of a non-material nature or to carry out the purposes of the lease.

**Section 5.** This Board waives Resolution No. R-130-06 and Implementing Order 8-4 that requires the lease to be fully negotiated and executed prior to placement on the Board's agenda because the lease must be approved by HUD prior to its execution.

**Section 6.** Subject to HUD's approval, this Board authorizes the County Mayor or County Mayor's designee to execute any and all necessary Rental Assistance Demonstration program and/or mixed-finance and related agreements and any and all other documents related to necessary for the development, management, and operation of the project site.

**Section 7.** This Board authorizes the County Mayor or the County Mayor's designee to submit a demolition and/or disposition application to HUD, if required, for the project site for the purpose of demolishing and disposing of the existing building located on the project site.

**Section 8.** This Board authorizes the County Mayor or County Mayor's designee to execute amendments to annual contributions contracts, if required; to execute any agreement, release from declarations of trust, and any other documents on behalf of the County, subject HUD's approval, and to exercise amendments, modification, cancellations and termination clauses.

**Section 9.** This Board directs the County Mayor or County Mayor's designee to provide a copy of the option to enter into a ground lease, lease or similar instrument to the Property Appraiser's Office.

**Section 10.** This Board directs the County Mayor or County Mayor's designee, pursuant to Resolution No. R-974-09, to record in the public record the option to enter into a ground lease or similar instrument, if required, lease, covenants, reverters and mortgages creating or reserving a real property interest in favor of the County, and to provide copies of such recorded instruments

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

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

Oliver G. Gilbert, III, Chairman	
Anthony Rodríguez, Vice Chairman	
Marleine Bastien	Juan Carlos Bermudez
Kevin Marino Cabrera	Sen. René García
Roberto J. Gonzalez	Keon Hardemon
Danielle Cohen Higgins	Eileen Higgins
Kionne L. McGhee	Raquel A. Regalado
Micky Steinberg	



The Chairperson thereupon declared this resolution duly passed and adopted this 17<sup>th</sup> day of October, 2023. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

JUAN FERNANDEZ-BARQUIN, CLERK

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

Approved by County Attorney as  
to form and legal sufficiency.



Terrence A. Smith

## Attachment A

### OPTION TO GROUND LEASE

This Option to Ground Lease (this “**Option**”) is made and entered into as of Sept. 8, 2023 by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida, and a “public housing agency” as defined in accordance with the provisions of the United States Housing Act of 1937, as amended, (42 U.S.C. § 1437, *et seq.*) (the “**Authority**”), and **GALLERY AT MARTI PARK, LLC**, a Florida limited liability company, and its affiliates (the “**Optionee**”).

### WITNESSETH

WHEREAS, the Authority has selected RUDG, LLC (the “**Developer**”), to redevelop a portion of Joe Moretti Phase 2 under a project titled Gallery at Marti Park.

WHEREAS, the Authority owns public housing located on land in Miami-Dade County, Florida, as more particularly described on Exhibit A attached hereto and incorporated herein (the “**Property**”).

WHEREAS, Developer has caused Optionee to be organized to serve as the “Owner Entity” with respect to this phase of the redevelopment effort (the “**Development Phase**”).

WHEREAS, Optionee intends to redevelop (under the Rental Assistance Demonstration (“**RAD**”) program of the United States Department of Housing and Urban Development (“**HUD**”) the public housing currently on the Property, together with the construction of related site improvements and amenities on the Property (the “**Project**”).

WHEREAS, Optionee intends to apply to the Request for Applications (“**RFA**”). issued by the Florida Housing Finance Corporation (“**FHFC**”) for tax-exempt bonds and/or low-income housing tax credits (“**LIHTC**”) to assist in the development of the Project.

WHEREAS, in connection with the LIHTC application to FHFC and otherwise to pursue financing, Optionee must demonstrate that it has “site control” of the Property sufficient to comply with the applicable financing requirements and issues this Option in order to satisfy same.

WHEREAS, the Option provides Optionee with the option to enter into a long-term ground lease of the Property (the “**Lease**”) with the Authority in order to facilitate the Project, which the Authority and Optionee seek to pursue.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and the mutual covenants of the Authority and Optionee and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Optionee hereby agree as follows:

1. Option. At any time on or before the Termination Date (as defined in Section 2), Optionee shall have the right and option to lease the Property pursuant to the Lease. Optionee may exercise the option granted herein at any time during the time prior to the Termination Date by notifying the Authority in writing at least thirty (30) days prior to the date the Lease shall become effective; provided, however, that the form and substance of the Lease and the execution and delivery of the Lease shall be subject to the approval of HUD, if and as required.

2. Term. Unless exercised by execution of the Lease or extended in writing by the parties hereto, this Option shall terminate without notice on August 30, 2024 (the “**Termination Date**”).

3. Terms and Conditions of Lease. The material terms of the Lease shall be as follows:

- a. The Lease term shall be seventy-five (75) years.
- b. The lease will contain such reasonable terms and conditions as are required by the Authority, lenders, investors, and HUD.
- c. The Lease rent shall be as follows:
  - i. An annual share of 16.5% the revenue/net cash flow payable, commencing after the stabilization period, about one year after issuance of Certificate of Occupancy of the Project through the end of the Lease term, payable out of the available net cash flow distributable by Optionee; and
  - ii. a one-time capitalized lease payment, to be paid upon Commencement Date, in the amount of \$616,000.00., which amount is calculated by the number of units (i.e., 176) times \$3,500.00. If greater or fewer than 176 units are constructed, the Capitalized Payment shall be adjusted on a unit-for-unit basis.
- d. Title to the Property shall be “as is” and subject to of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements including, but not limited to, use restrictions placed on the Property in conformance with HUD or FHFC requirements, and any other permitted exceptions agreed to by the Authority and Optionee. The Authority and Optionee acknowledge and agree that Optionee will rely on title insurance with respect to its leasehold interest in the Property and its ownership interest in the Project.
- e. The Optionee will be responsible for all operating expenses of the Property, including insurance and all real estate taxes or payments in lieu of real estate taxes.
- f. Except as expressly set forth in the Lease, neither the Authority nor the Optionee will have the right to transfer or assign its rights under the Lease, except with the

consent of the other and, if applicable, of HUD.

- g. Use of the Property will be the redevelopment, construction, and operation of affordable housing including units to be assisted under the HUD RAD/Section 18 program or otherwise.

4. Conditions. The Authority and the Optionee shall each be obligated to execute and deliver the Lease only upon the satisfaction of each of the following conditions:

- a. the Optionee shall have obtained any and all government approvals, licenses, permits and other approvals necessary for the development of the Project, including, without limitation, such approvals as may be required under the National Environmental Policy Act and regulations thereunder. Without limitation, Optionee and/or the Authority shall have completed any federally required environmental review and its request for release of federal funds has been approved (and upon compliance with any conditions of approval established by the Responsible Entity and/or HUD), unless it has been determined that the transfer is exempt from federal environmental review and a request for release of funds is not required.
- b. the Optionee shall have received an allocation of tax-exempt financing and/or LIHTC for the Project, facilitated the contribution of equity through the admission of an equity investor in the Owner Entity, and arranged debt financing that the parties agree are sufficient to develop the Property; and
- c. The Authority shall have received, on or before entering into the Lease, HUD's approval, if required, of the disposition of the Property, the conversion of assistance under the RAD program, and transactional documents including the form of the Lease.
- d. The property is encumbered by a DOT (in favor of HUD), which recording folio numbers can be found under Exhibit A. The proposed Ground Lease will include any HUD required model language. Neither Authority nor Optionee shall have any obligation to lease the land/property, and no transfer of a leasehold or fee title interest to Optionee may occur, unless and until HUD has provided a written notification that HUD has completed a Federally required environmental review and, subject to any other contingencies of that approval notification. Prior to execution of the Ground Lease or transfer of fee title, HUD's disposition approval under Section 18 or other pertinent statute must be obtained; any existing residents of dwelling units on the property must be relocated, as necessary and consistent with applicable relocation requirements, if required by HUD; any HUD approved demolition actions on the property must be completed.

5. Termination. In addition to the terms established on Section 2 above, the occurrence of any of the following shall give the Authority the right to terminate this Option to Ground Lease upon the terms and conditions set forth below:

- a. Optionee fails to exercise its intention to apply to the Florida Housing Finance Corporation (“**FHFC**”) for tax-exempt bonds and/or low-income housing tax credits (“**LIHTC**”).
- b. Institution of proceedings in voluntary bankruptcy by the Optionee.
- c. Institution of proceedings in involuntary bankruptcy against the Optionee if such proceedings continue for a period of Ninety (90) days or more.
- d. Assignment of Lease by the Authority for the benefit of creditors.
- e. A final determination of termination of this Option to Ground Lease in a court of law in favor of the Authority in litigation instituted by the Optionee against the Authority or brought by the Authority against Optionee.
- f. Optionee’s failure to cure, within thirty (30) days following Optionee’s receipt of written notice from the Authority with respect to Optionee’s failure to cure a condition posing a threat to health or safety of the public or patrons (or such longer period if the default is not capable of being cured in such 30 days period).

6. Debt Financing. The Optionee will be permitted to assign or encumber its leasehold interest under the Lease as security for debt financing for the Project. Such assignments or encumbrances will be subject to the approval of the Authority and, if applicable, HUD.

7. Restrictive Covenant. In the event Optionee receives an allocation of LIHTC or tax-exempt bonds, the Authority hereby agrees that in its capacity as ground lessor under the Lease it shall execute for recordation a Low-Income Housing Tax Credit restrictive covenant if and as required by FHFC.

8. HUD/RAD Requirements. The parties to this Option shall comply with all applicable HUD and RAD Requirements including any applicable use restrictions. This Option is subject to those regulations and required approvals including all those regulations and required HUD approvals, including those under the RAD program, as applicable.

9. **URA Compliance**: The Authority acknowledges that prior to entering into this Option:

- a. Optionee has represented that it does not have authority to acquire property by eminent domain.
- b. Optionee has clearly advised the Authority that the Optionee is unable to acquire the property if negotiations fail to result in an agreement; and
- c. Optionee has informed the Authority in writing of what it believes to be the market value of the Property; or, in the alternative, that the Option calls for a price to be set at a future date based on an appraisal of fair market value that will be made available to the Authority.

10. Conveyance “AS IS.” The Authority will lease the Property to Optionee on an “AS IS, WHERE-IS, WITH ALL FLAWS” basis with no representations or warranties whatsoever regarding the Property.

11. License to Inspect. Prior to Closing on the Development Phase, the Authority shall grant Optionee a license to go onto the Property (or so much of it as the Authority then controls) and conduct all such inspections and testing as is reasonably necessary for development of the Project, provided that:

a. The Authority is given at least 48 hours’ prior notice in writing, where feasible, or such shorter notice as it reasonably agrees to, including a description of any inspections and testing to be performed.

b. all inspection and testing will be conducted in compliance with all applicable requirements and done in a manner to minimize any material interference with any tenant’s use and enjoyment of the Property.

c. Optionee and its contractors shall carry the insurance reasonably required by the Authority (which insurance shall cover any investigation performed pursuant to this license) and shall provide the Authority with proof of coverage at the time of any request for access and shall name the Authority as an additional insured, as its interests may appear, on any such insurance.

d. unless due to the gross negligence or substantial misconduct of the Authority its commissioners, officers, agents, contractors or employees, Optionee shall defend, indemnify and hold the Authority, its commissioners, officers, agents, contractors or employees, and their successors and assigns, harmless against and from any and all liability, claim of liability or expense arising out of or in any way connected with (i) any default by Optionee in performing any of its obligations hereunder or in accordance with the applicable requirements, or (ii) any negligent, reckless or intentionally tortious act or omission of Optionee or any of its agents, contractors, servants or employees in exercising its rights hereunder, such indemnification obligation of Optionee to survive any expiration or termination of this Option; and

e. upon completion of any investigation or testing, Optionee shall return the Property to substantially the same condition as existed prior to Optionee undertaking such investigation or testing unless otherwise agreed in writing by the Authority, in which event Optionee agrees to accept the site at Closing in such resulting condition and to restore the Property in the event Optionee fails to achieve Closing, except as otherwise agreed to by the Authority in writing, such restoration obligation of Optionee to survive any expiration or termination of this Option.

12. Recordation. Neither this Option nor the Lease shall be recorded, but upon execution of the Lease a memorandum of the Lease shall be recorded in the appropriate office of public records. All costs of transfer and recordation will be borne by the Optionee as a Project expense, and not by the Authority.

13. Notices. Any and all notices, elections, demands or communications permitted or

required to be made under this Option shall be in writing, signed by the party giving such notice, and shall be delivered in person or sent by registered or certified mail to the other party hereto. The date of personal delivery or the date of such mailing, as the case may be, shall be the date that such notice or election shall be deemed to have been given. For the purpose of this Option:

If to County:	Miami-Dade County c/o Miami-Dade Public Housing and Community Development 701 N.W. 1 <sup>st</sup> Court, 16 <sup>th</sup> Floor Miami, Florida 33136 Attn: Alex R. Ballina, Director
With a copy to:	Miami-Dade County Attorney's Office 111 N.W. 1 <sup>st</sup> Street, Suite 2810 Miami, Florida 33128 Attn: Terrence A. Smith, Esq. Assistant County Attorney
If to the Developer:	RUDG, LLC 2850 Tigertail Avenue, 7th Floor Miami, Florida 33133 Attn: Alberto Milo, Jr.
With a copy to:	Bilzin Sumberg Baena Price & Axelrod LLP 1450 Brickell Avenue, 23rd Floor Miami, Florida 33131 Attn: Terry M. Lovell, Esq.

14. Choice of Law. This Option shall be governed by and construed in accordance with the laws of the State of Florida without regard to the conflicts of laws provision thereof. Any action or proceeding arising hereunder shall be brought in the State or Federal Courts in Miami-Dade County, Florida.

15. No Assignment. The Optionee shall not assign its interest in the Option without the prior written consent of the Authority.

16. Counterparts. This Option may be executed in multiple original counterparts, each of which shall constitute an original document binding upon the party or parties signing the same. It shall not be necessary that all parties sign all counterparts, and this Option shall be binding if each party shall have executed at least one counterpart. A fully executed facsimile or PDF copy of this Option, a copy of this Option signed by DocuSign or similar service or transmitted electronically, shall be effective as an original for any and all purposes.

[signature page follow]



IN WITNESS WHEREOF, the parties herein have set their hands as of the day and year first above written.

**COUNTY:**

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

By: [Signature]  
Name: MORRIS COPELAND, CPM  
Title: CHIEF COMMUNITY SERVICES OFFICER  
MIAMI-DADE COUNTY, FL

Attest: Juan Fernandez-Barquin, Clerk of the Court and Comptroller

By: [Signature]  
(Deputy Clerk Signature)  
Print Name: Olga Valverde - e18183

Date: 8/8/23

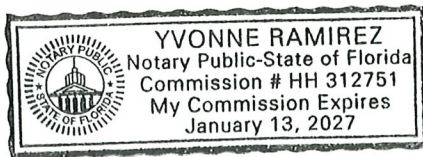


Approved as to form and legal sufficiency.

By: [Signature]  
Terrence A. Smith  
Assistant County Attorney

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 6th day of September, by Morris Copeland as Chief Community Services Officer of Miami-Dade County, a political subdivision of the State of Florida.



[Signature]  
Notary Public, State of Florida  
Yvonne Ramirez  
Print, Type or Stamp Name

Personally Known X or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

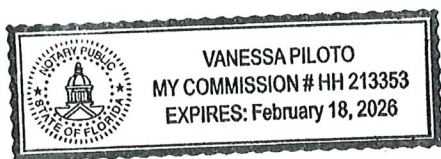
**OPTIONEE:**

**GALLERY AT MARTI PARK, LLC**, a Florida  
Limited Liability Company

By: 724R  
Name: Tony Del Pozzo  
Title: Vice President

STATE OF FLORIDA  
COUNTY OF Dade

The foregoing instrument was acknowledged before me by means of ☒ physical presence  
or ☐ online notarization, this 30<sup>th</sup> day of August, 2023, by Tony Del Pozzo,  
Vice President of Gallery at Marti Park, a FL. LLC.



Vanessa Piloto  
Notary Public, State of Florida  
Vanessa Piloto  
Print, Type or Stamp Name

Personally Known ☒ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**Exhibit A**

**Land**

Address: 450 SW 5th Street, Folio No. 01-0203-060-1020

**Legal Description:**

Lots 4 through 8, Block 36, "Map of Miami Dade County Florida", according to the Plat thereof, recorded in Plat Book "B", Page 41, of the Public Records of Miami-Dade County, Florida

AND

Address: 445 SW 6th Street, Folio No. 01-0203-060-1090

**Legal Description:**

Lot 15, Block 36, "Map of Miami Dade County Florida", according to the Plat thereof, recorded in Plat Book "B", Page 41 of the Public Records of Miami-Dade County, Florida

**FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT  
BETWEEN MIAMI-DADE COUNTY AND RUDG, LLC (JOE MORETTI PHASE  
TWO), AND ITS AFFILIATES.**

**THIS FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT** (the “**First Amendment**”) is entered this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between **RUDG, LLC**, a Florida limited liability company, (the “**Developer**”) and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida and a “public housing agency” as defined in the United States Housing Act of 1937, as amended (the “**County**”), to memorialize certain modifications and clarifications to business terms, conditions, and agreements regarding future redevelopment of Joe Moretti Phase Two, a public housing development in Miami-Dade County (the "Joe Moretti Phase Two Development").

WHEREAS, the Developer and the County entered into that certain Master Development Agreement (the “**Agreement**”), executed effective as of December 24<sup>th</sup>, 2014;

WHEREAS, the Developer and the County contemplated in the Agreement that the Scope of Work (Exhibit A-1 of the agreement) would have two Phases;

“Phase 2A” would consist of rehabilitating the existing ninety-six (96) public housing units at 535 SW 6 Ave Miami, FL.

“Phase 2B” would consist of rehabilitating and/or redeveloping six separate parcels containing a total of ninety-six (96) public housing units in twelve buildings, a senior center and corresponding parking lot located at 400 and 450 SW 5 Street; 445 and 801 SW 6 Street; 600 SW 4 Street; and 600 SW 8 Avenue.

WHEREAS, the Developer has successfully completed the rehabilitation of Phase 2A and Phase 2B;

WHEREAS, RUDG has submitted a proposal to construct one-hundred and seventy-six (176) additional mixed-financed units on the Joe Moretti Phase Two Sites, including fifteen (15) RAD PBV, twenty-one (21) non-RAD S18 PBV (total of thirty-six (36) transferred RAD units from Haley Sofge Towers (FL005000835), sixty-one (61) workforce units between 80% and 120% of AMI, and seventy-nine (79) market rate units, hereinafter referred to as “Gallery at Marti Park” which would be considered Phase 2C of the redevelopment;

WHEREAS, the Developer intends to assign its development rights to a portion of the Joe Moretti Phase Two site to Gallery at Marti Park, LLC, a Florida Limited Liability Company (the owner entity of Phase 2C);

WHEREAS, the County will effectuate the construction of the additional units and related financing through a new Ground Lease for two portions of the scattered-site (withing the original Phase 2B sites) to Gallery at Marti Park, LLC;

WHEREAS, the Developer proposes to enter into this First Amendment in order to modify the Agreement to contemplate the additional Phase 2C;



WHEREAS, with the addition of one-hundred and seventy-six mixed financed units, the County hereby modifies section 5 of the MDA to include the provision set forth in Exhibit E;

NOW THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree to amend the Agreement as follows:

1. The foregoing recitals set forth above are made part of this Amendment.
2. The parties agree that the Developer will construct one-hundred and seventy-six (176) additional mixed-financed units on the Joe Moretti Phase Two Sites, including fifteen (15) RAD PBV, twenty-one (21) non-RAD S18 PBV (total of thirty-six (36) transferred RAD units from Haley Sofge Towers (FL005000835), sixty-one (61) workforce units between 80% and 120% of AMI , and seventy-nine (79) market rate units, hereinafter referred to as "Gallery at Marti Park" which would be considered Phase 2C of the redevelopment.
3. A scope of work with respect to Phase 2C is attached hereto as Exhibit A (hereinafter referred to as the "Scope of Work"), a development budget (including uses funded by undefined sources) is attached hereto as Exhibit B (hereinafter referred to as the "Redevelopment Budget"). A development schedule is attached hereto as Exhibit C (hereinafter referred to as the "Redevelopment Schedule"). A description of the unit types, sizes and targeted income levels (the "Unit Mix") is attached as Exhibit D, the Financial Benefits are included as Exhibit E.
4. The County hereby agrees to and approves any changes to the Agreement necessary to effectuate the foregoing, including but not limited to, changes to the Unit Mix, the Scope of Work, the Redevelopment Budget, and the Redevelopment Schedule as contemplated herein.
5. This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.
6. Each capitalized term used, but not defined, herein shall have the same meaning assigned to such term in the Agreement.
7. The Developer shall comply with the requirements of E-Verify as more fully described in Exhibit F attached hereto and incorporated herein by reference.
8. This Amendment and the Agreement shall be construed in accordance with, and is governed by the laws of the State of Florida. Any claim, dispute, proceeding, or

cause of action arising out of or in any way relating to this Amendment or the Agreement, or the parties' relationship, shall be decided by the laws of the State of Florida. The parties agree that venue for any of the foregoing shall lie exclusively in the courts located in Miami-Dade County, Florida.

9. If any provisions of this Amendment or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Amendment, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue valid and be enforced to the fullest extent permitted by law.
10. This Amendment and any exhibits attached to this Amendment and the Agreement set forth all of the covenants, promises, agreements, conditions and understandings between the parties, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than those set forth in the Agreement, as modified by this Amendment.
11. Except as expressly modified in this Amendment, all of the terms, covenants and conditions of the Agreement and previous Amendment(s), shall remain in full force and effect and are ratified as confirmed; provided that in the event of a conflict between the terms, covenants and conditions of the Agreement and this Amendment and its Exhibit and Attachments, the terms of this Amendment shall govern.
12. This Amendment shall constitute a part of the Agreement and references to the Agreement hereafter shall automatically include a reference to this Amendment.
13. This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. Facsimile or electronically transmitted signatures shall be deemed for all purposes to be originals.
14. All provisions in the Agreement and any attachments thereto in conflict with this Amendment shall be and hereby are changed to conform with this Amendment.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have caused this First Amendment Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

**COUNTY:**

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

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

Attest: Juan Fernandez-Barquin, Clerk of the Court  
and Comptroller

By: \_\_\_\_\_  
(Deputy Clerk Signature)

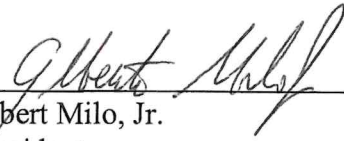
Print Name: \_\_\_\_\_

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

Approved as to form and legal sufficiency.

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

**RUDG, LLC**, a Florida Limited Liability Company

By:   
Name: Albert Milo, Jr.  
Title: President



## EXHIBIT A – SCOPE OF WORK

<b><u>Project Name:</u></b>	Gallery at Marti Park
<b><u>Total Number of Units:</u></b>	176 Units
<b><u>Building Type:</u></b>	Highrise (12 stories)
<b><u>Development Stage:</u></b>	Approx. 168 parking spaces between garage and surface lot

RUDG, LLC, under its affiliated entity Gallery at Marti Park, LLC, (“Related Urban”) is pleased to present Gallery at Marti Park (the “GAMP”), a 176-unit mixed-income development in the Little Havana neighborhood of Miami.

GAMP will be providing units at various income levels including 30% AMI, 80% AMI, 120% AMI and unrestricted market rate units. GAMP will include 36 RAD units under the RAD Section 18 Blend Program whereby 15 units will be placed under a RAD contract and 21 units under non-RAD PBV contracts.

GAMP is being developed on two County-owned parcels adjacent to Joe Moretti Phase 2B Site 1, a 32-unit public housing site that was renovated by Related Urban in 2022. Related Urban will be entering into a 75-year ground lease with Miami-Dade County for the aforementioned parcels that currently consist of surface parking and a one-story building housing the Myers Senior Center, which will be replaced on the ground level of the proposed 12-story building. The proposed building will also contain 2 levels of parking that contribute to approximately 168 parking spaces inclusive of surface parking to the south of the development.

Resident amenities at GAMP will include the following: private bike storage room, dog washing station, package room and a recreational deck on the fourth level with outdoor grilling areas connected to a fitness center, clubhouse and coworking center.

## EXHIBIT B - Development Budget

### Gallery at Marti Park

#### EXECUTIVE SUMMARY

Address	450 SW 5th Street
	Miami
Total Units	176
Rentable Sqft	145,759
Avg. Size	828

	Construction Source of Funds	Per Unit	Permanent Source of Funds	Per Unit
<b>SOURCES</b>				
Tax Credit Equity	3,639,467	20,679	12,131,557	68,929
Tax-Exempt Debt::	50,000,000	284,091	49,900,000	283,523
Taxable Debt:	8,000,000	45,455	-	-
Miami-Dade County Surtax:	4,000,000	22,727	4,000,000	22,727
Deferred Developer Fee:	8,373,093	47,574	7,981,003	45,347
<b>TOTAL</b>	<b>74,012,560</b>	<b>420,526</b>	<b>74,012,560</b>	<b>420,526</b>

USES	Program Limit	Total	Per Unit
<b>Acquisition</b>			
Capitalized Lease Payment		616,000	3,500
<b>Construction</b>			
Residential Construction		38,500,000	218,750
Myers Senior Center (CSF)		1,000,000	5,682
GC Fees	14%	5,530,000	31,420
Hard Cost Contingency:	5%	2,251,500	12,793
Demolition & Abatement		150,000	852
Hard Costs		47,431,500	269,497
<b>Soft Costs</b>			
Builder's Risk & General Liability Insurance / P&P Bonds		1,059,717	6,021
Architectural & Engineering		1,165,000	6,619
Permits & Municipal Fees		1,180,571	6,708
Other Development Soft Costs		2,216,034	12,591
Legal Fees		475,000	2,699
Financing Costs - Issuance & Origination		1,636,215	9,297
Equity Syndication Costs		267,942	1,522
Reserves & Escrows		640,140	3,637
Construction Interest Reserve		5,887,000	33,449
Soft Cost Contingency	5%	400,024	2,273
Soft Costs		14,927,643	84,816
<b>TOTAL COSTS before Developer Fee</b>		<b>62,975,143</b>	<b>357,813</b>
Developer Fee	18%	11,037,416	62,713
<b>TOTAL COSTS</b>		<b>74,012,560</b>	<b>420,526</b>

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## EXHIBIT C – DEVELOPMENT SCHEDULE

<b><u>Financial Closing:</u></b>	Q4 2023
<b><u>Construction Commencement:</u></b>	Q1 2024
<b><u>25% Completion:</u></b>	Q2 2024
<b><u>50% Completion:</u></b>	Q4 2024
<b><u>75% Completion:</u></b>	Q2 2025
<b><u>TCO:</u></b>	Q3 2025
<b><u>CO:</u></b>	Q4 2025

**Exhibit D - Unit Mix**

<b># of Units</b>	<b># of Bedrooms</b>	<b># of Bathrooms</b>	<b>S.Q.F.T</b>	<b>Income Target</b>
9	0	1	450 Sqft	30% AMI (RAD)
6	1	1	623 Sqft	30% AMI (RAD)
21	1	1	623 Sqft	30% AMI (RAD)
3	1	1	623 Sqft	80% AMI
2	1	1	623 Sqft	120% AMI
6	1	1	623 Sqft	Unrestricted
32	2	2	915 Sqft	80% AMI
24	2	2	915 Sqft	120% AMI
73	2	2	915 Sqft	Unrestricted

## Exhibit E

### Financial Benefits

- (a) Developer Fee. The Developer agrees that the County shall earn a fee, to be structured in a manner reasonably acceptable to the parties, equal to 22% of the total Developer Fee described herein and actually received by the Developer or its affiliate for all Phases. The County's share of the Developer Fee will be pari-passu to the Developer's share, and will be paid to the County on a pro rata basis as it is distributed to the Developer.
- (b) Capitalized Lease Payment. With respect to the Ground Lease the Developer agrees to pay a Lump Sum Ground Lease payment of \$616,000.00. The Capitalized Payment for the entire Development referred to as Gallery at Marti Park in the amount of \$616,000.00 (\$3,500.00 per unit); provided, however, that in the event that the Development includes more than 176 units, the Capitalized Payment shall be adjusted on a unit-for-unit basis. This Capitalized Payment is set to be paid upon Financial Closing of Phase 2C.
- (c) Share of Revenues/ Net Cash Flow. The Developer agrees that the County shall receive a share of revenue/net cash flow of 16.5%. This shall apply to revenues from all components of a project, including the non-RAD units. The share of revenues/net cash flow shall be received by the County from the Developer after stabilization period, about one year after issuance of Certificate of Occupancy, and through the termination date of the ground lease agreement.
- (d) Asset Management Fee. Beginning the earlier of Year 10 or the first year of positive cash flow after full payment of the deferred developer fee, if any, Developer shall pay to the County an asset management fee in the amount of \$17,500 per year for the Phase of the Development referred to as Phase 2C - A.K.A. Gallery at Marti Park; (the "Asset Management Fee"). The Asset Management fee shall increase by 4% annually.
- (e) County Residual Participation. On all Phases, upon any sale, refinance, cash-out transaction, or resyndication of the Low Income Housing Tax Credits, involving the Developer's leasehold interests or properties, other than those in which the County is the purchasing entity, the County will receive 30% of the Developer managing member's net proceeds from such transactions after debt, expenses, fees and agreed upon and customary offsets for repairs, approved operating loans to the project and other related costs (the "Net Proceeds").
- (f) The Developer shall pay a \$2,500.00 per month fee to PHCD during the entire construction duration of the project for Davis-Bacon compliance review. The first payment shall be due 30 days after the construction of the project has begun. Failure to comply with Davis-Bacon wage rate or other federal required classification requirements will affect payments to the Developer (refer to Section 6, Payment Provisions). In addition, the County will assess the Developer up to a \$500.00 daily penalty fee to cover reasonable administrative costs it incurs for managing issues associated with the Developer's, and/or its consultants, contractors or vendors, non-compliance with the applicable regulations. This includes, but is not limited to, compliance with Davis-Bacon wages and HUD Section 3 requirements.

This fee will be assessed for all days starting on the date that the County notifies the Developer of non-compliance and will be assessed until the date that the issue is acknowledged in writing as being resolved either by the County or Developer.

## ATTACHMENT C

### CONSULTING AGREEMENT GALLERY AT MARTI PARK

THIS CONSULTING AGREEMENT (the "Agreement") is dated as of [\_\_\_\_], 2023 by and between **GALLERY AT MARTI PARK DEVELOPER, LLC**, a Florida limited liability company (the "Developer") and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (the "Consultant").

#### RECITALS

The Developer and the Consultant acknowledge the following:

A. Gallery at Marti Park, LLC, a Florida limited liability company (the "Owner"), is the lessee of certain property located in Miami, Florida (the "Property").

B. The Owner intends to construct an apartment project on the Property to be known as Gallery at Marti Park (the "Project"). The Project will receive low-income housing tax credits (the "Tax Credits") under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").

C. The Owner has engaged the Developer to provide certain development services with respect to the Project.

D. The Developer desires to engage the Consultant to assist it with its construction obligations relating to the Project, and the parties desire to confirm their agreements in writing.

#### AGREEMENTS

In consideration of the Recitals and the mutual agreements which follow, the Developer and the Consultant agree as follows:

1. Developer has agreed to provide various services to the Owner related to the construction of the Project. To assist the Developer in connection with its delivery of such services to the Owner, the Consultant shall perform the services described below and any and all services incidental thereto in connection with construction of the Project (the "Consultant Services"):

(a) Assisting the Developer in preparing an architectural program for the Project including, without limitation, the overall design of the Project, the configuration of apartment units and residential common areas, the types of services to offer to residential tenants and the facilities that should be made available to residential tenants (such as community rooms, parking areas, decks, gardens and the like).



(b) Assisting the Developer in preparing for meetings with public officials at the city, county and state levels related to the construction of the Project and attending any such meetings with the Developer when requested by the Developer.

(c) Assisting the Developer with local community groups on any issues related to construction or resident services of the Project.

(d) Assisting the Developer in reviewing, evaluating and making recommendations with respect to documents, correspondence, proposals, information, and requests related to the construction of the Project.

(e) Performing any and all other services that may be agreed upon by the Developer and the Consultant in connection with construction of the Project.

2. Subject to the terms of that certain Development Agreement between the Owner and the Developer (the "Development Agreement"), the Owner has agreed to pay the Developer the approximate sum currently estimated to be \$10,433,125.00 (the "Development Fee") for the services being provided by the Developer to the Owner. The Developer and the Consultant acknowledge that pursuant to the terms of the Development Agreement and under certain circumstances, the Development Fee may be reduced. In consideration of the Consultant Services provided by the Consultant to the Developer, the Developer shall pay the Consultant twenty-two percent (22%) of any Development Fee received from the Owner currently estimated to be \$2,295,287.50 (the "Consultant Fee") within five (5) days after the Developer receives a payment of the Development Fee. The Consultant Fee includes payment for all of Consultant's overhead in connection with the Consultant Services.

3. Developer and Consultant acknowledge that Consultant has not provided, has no obligation to provide and shall not provide under this Agreement any services in connection with (a) the acquisition of any real estate upon which the Project will be located, (b) the allocation of the Tax Credits to the Project, (c) any matters related to the permanent loan for the Project or (d) any matters related to the syndication of any equity interests in the Owner.

4. Signatures sent via facsimile transmission shall be deemed original signatures for purposes of creating a valid and binding contract.

5. This Agreement may be executed in counterparts, each of which shall be deemed an original and all which shall be deemed one and the same instrument.

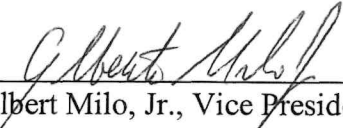
6. This Agreement may be amended only by a writing signed by all of the parties hereto and shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

[Signatures on next page]



**DEVELOPER:**

GALLERY AT MARTI PARK  
DEVELOPER, LLC, a Florida limited  
liability company

By:   
Albert Milo, Jr., Vice President

**COUNTY:**

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

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

Attest: Juan Fernandez-Barquin, Clerk of  
the Court and Comptroller

By: \_\_\_\_\_  
(Deputy Clerk Signature)

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

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

Approved as to form and legal sufficiency.

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

[Signature Page to Gallery at Marti Park Consulting Agreement]

**Attachment D**

**GROUND LEASE**

Dated as of \_\_\_\_\_, 2023

between

**MIAMI-DADE COUNTY**

Landlord

and

**GALLERY AT MARTI PARK, LLC**

Tenant

## **GROUND LEASE**

THIS GROUND LEASE ("Lease"), made as of \_\_\_\_\_, 2023 (the ***Lease Date***) by and between **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida and a "public housing agency" as defined in the United States Housing Act of 1937 (42 U.S.C. §1437 *et seq.*, as amended) (***Landlord***) and **GALLERY AT MARTI PARK, LLC**, a Florida limited liability company an affiliate of RUDG, LLC, (***Tenant***).

## **WITNESSETH:**

**WHEREAS**, Landlord is the owner of the Land (as defined below) consisting of certain real property located in Miami-Dade County.

**WHEREAS**, Tenant has proposed to newly construct approximately 176 units (affordable, workforce and market rate housing) on the Land, of which 36 units shall be Elderly project-based Section 8 units, through the RAD/Section 18 blend program; in addition to an approximately 5,000 square foot community center that will replace the existing Myers Senior Center and

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

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

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

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

**WHEREAS**, nothing in this Lease shall in any way be utilized to request documentation relating to or authorizing consideration of Tenant's social, political, or ideological interests when determining if Tenant is a responsible vendor [i.e., supplier, organization] or give preference to Tenant based on its social, political, or ideological interests,

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

## **ARTICLE I**

### **DEFINITIONS**

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

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

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

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

(c) Reserved.

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

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

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

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

(h) **Environmental Laws** means any present and future Federal, State or local law, ordinance, rule, regulation, permit, license or binding determination of any governmental authority relating to, imposing liability or standards concerning or otherwise addressing the protection of land, water, air or the environment, including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (**CERCLA**); the Resource, Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (**RCRA**); the Toxic Substances Control Act, 15 U.S.C. §2601 et seq. (**TOSCA**); the Clean Air Act, 42 U.S.C. §7401 et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq. and any so-called "Superfund" or "Superlien" law; as each is from time to time amended and hereafter in effect.

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

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

- (k) **HUD** means the United States Department of Housing and Urban Development.
- (l) **Improvements** means all repairs, betterments, buildings and improvements hereafter constructed or rehabilitated on the Land, and any additional parking areas, walkways, landscaping, fencing or other amenities on the Land.
- (m) **Land** means that certain real property located in Miami-Dade County, legally described in Exhibit A, together with all easements, rights, privileges, licenses, covenants and other matters that benefit or burden the real property. The Land and the Improvements are sometimes referred to herein as the “**Project**”.
- (n) **Landlord** means Miami-Dade County, a political subdivision of the State of Florida and a “public housing agency” as defined in the Act.
- (o) **Lease** means this ground lease as the same shall be amended from time to time.
- (p) **Lease Year** means, in the case of the first lease year, the period from the Commencement Date through the last day of the 12<sup>th</sup> month of that year; thereafter, each successive twelve-calendar month period following the expiration of the first lease year of the Term; except that in the event of the termination of this Lease on any day other than the last day of a Lease Year then the last Lease Year of the Term shall be the period from the end of the preceding Lease Year to such date of termination.
- (q) **Partial Taking** has the meaning set forth in Section 6.2(d).
- (r) **Operating Agreement** means the Amended and Restated Operating Agreement of Tenant to be entered into on or about the Commencement Date and pursuant to which the Tenant’s equity investor (the “Investor”) will be admitted as a member of the Tenant.
- (s) **Permitted Encumbrances** means such recorded title matters as are disclosed pursuant to the title commitment to be obtained by Tenant pursuant to Section 7.1 and are not identified by Tenant as objectionable matters pursuant to the procedure provided in Section 7.3.
- (t) **Personal Property** means all fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), fittings, appliances, apparatus, equipment, machinery, chattels, building materials, and other property of every kind and nature whatsoever, and replacements and proceeds thereof, and additions thereto, now or at any time hereafter owned by Tenant, or in which Tenant has or shall have an interest, now or at any time hereafter affixed to, attached to, appurtenant to, located or placed upon, or used in any way in connection with the present and future complete and comfortable use, enjoyment or occupancy for operation and maintenance of the Premises, excepting any personal property or fixtures owned by any tenant (other than the Tenant) occupying the Premises and used by such tenant in the conduct of its business in the space occupied by it to the extent the same does not become the property of Tenant under the lease with such tenant or pursuant to applicable law.
- (u) **Plans and Specifications** means the plans and specifications for the Improvements to be constructed (or rehabilitated) on the Land by Tenant.
- (v) **Premises** means the Land, the Improvements and the Personal Property.

(w) **Project-Based Voucher (PBV) Program** means a component of a public housing agency's (PHA's) Housing Choice Voucher (HCV) program. PHAs are not allocated additional funding for PBV units; the PHA uses its tenant-based voucher funding to allocate project-based units to a project. Projects are typically selected for PBVs through a competitive process managed by the PHA; although in certain cases projects may be selected non-competitively. These PBV's are independent of the project based vouchers allowed through RAD.

(x) **RAD Document** means any document effectuating any part of RAD Requirements, including without limitation, a RAD Conversion Commitment, a RAD Use Agreement, and a RAD HAP Contract.

(y) **RAD HAP Contract** means Housing Assistance Payments Contract(s) for project based vouchers in the form required by RAD Requirements.

(z) **RAD Program** means HUD's Rental Assistance Demonstration program originally authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55), as it may be re-authorized or amended, as further governed by HUD Notice H-2019-09, PIH-2019-23 (HA), Rental Assistance Demonstration Final Implementation-Revision 4, and any subsequent revisions thereto.

(aa) **RAD Requirements** means all requirements for the RAD Program applicable to Tenant as set forth in the RAD Documents and any other rules or regulations promulgated by HUD for the RAD Program.

(bb) **RAD Unit** means any of the 36 units on the Premises (or elsewhere if pursuant to a "transfer of assistance" approved by Landlord and HUD) to be converted and operated in accordance with RAD Requirements.

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

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

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

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

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

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

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

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

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

## 1.2. Interpretation.

The words "hereof," "herein," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular Section, subsection or subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural and vice versa unless the context shall otherwise indicate.

1.3. Exhibits.

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

## ARTICLE II

### PREMISES AND TERM

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

## ARTICLE III

### RENT AND OTHER PAYMENTS TO LANDLORD

3.1. Rent.

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

(a) an annual rental amount equal to sixteen and one-half percent (16.5%) of the available (net) cash flow that is distributable by Tenant to its Manager entity, after stabilization period, about one year after issuance of Certificate of Occupancy, and through the termination date of this lease ("**Annual Rent**"), and

(b) a one-time capitalized lease payment, to be paid upon the Commencement Date in the amount of \$616,000 (the "**Capitalized Payment**"), which amount is calculated by multiplying the number of units (*i.e.*, 176) *times* \$3,500.00.

"**Rent**" means the sum of Annual Rent and the Capitalized Payment. If greater or fewer than 176 units are constructed at the Premises, the Capitalized Payment shall be adjusted on a unit-for-unit basis. Annual Rent shall be payable within one-hundred twenty (120) days following the end of the Project's fiscal year. Any portion of the Annual Rent not paid with respect to any given year shall accrue and be deferred to be paid along with the following year's Annual Rent payment or as otherwise agreed to by the Parties. No Annual Rent shall accrue until after full payment of any deferred developer fees payable to Tenant. Rent shall be made payable to the Miami-Dade County Board of County Commissioners, c/o Public Housing and Community Development, 701 N.W. 1<sup>st</sup> Court, 16<sup>th</sup> Floor, Miami, Florida 33136, or at such other place and to such other person as Landlord may from time to time designate in writing, as set forth herein. Prior to the Commencement Date, Tenant is not obligated to pay Rent or any other sums to the Landlord under this Lease.

3.2. Other Payments. Tenant covenants and agrees to pay to Landlord additional payments, as and when set forth in herein and/ or under the Master Development Agreement for this project. All additional payments shall be made payable to the Miami-Dade County Board of County Commissioners, c/o Public Housing and Community Development, 701 N.W. 1<sup>st</sup> Court, 16<sup>th</sup> Floor, Miami, Florida 33136, or at such other place and to such other person as Landlord may from time to time designate in writing, as set forth herein. Prior to the Commencement Date, Tenant is not obligated to pay Rent or any other sums to the Landlord under this Lease.

3.3. Surrender. Upon the expiration of this Lease by the passage of time or otherwise, Tenant will quietly yield, surrender and deliver up possession of the Premises to Landlord. In the event Tenant fails to vacate the Premises and remove such personal property as Tenant is allowed to remove from the Premises at the end of the Term, or at the earlier termination of this Lease, Landlord shall be deemed Tenant's agent to remove such items from the Premises at Tenant's sole cost and expense. Furthermore, should Tenant fail to vacate the Premises in accordance with the terms of this Lease at the end of the Term, or at the earlier termination of this Lease, the Tenant shall pay to Landlord a charge for each day of occupancy after expiration or termination of the Lease in an amount equal to 150% of Tenant's Rent prorated on a daily basis. Such charge shall be in addition to any actual damages suffered by Landlord by Tenant's failure to vacate the Premises, for which Tenant shall be fully liable, it being understood and agreed, however, that Tenant shall under no circumstances be liable to Landlord for any incidental, indirect, punitive or consequential damages (including, but not limited to, loss of revenue or anticipated profits).

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

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

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



3.7. Contested Obligations. If Tenant shall deem itself aggrieved by any Real Estate Taxes or other charges for which it is responsible hereunder and shall elect to contest the payment thereof, Tenant may make such payment under protest or, if postponement of such payment will not jeopardize Landlord's title to the Land, or subject Landlord to the risk of any criminal liability or civil liability or penalty, Tenant may postpone the same provided that it shall secure such payment and the interest and penalties thereon and the costs of the contest on the determination or the proceedings or suit in which such contest may be had, by causing to be delivered to Landlord cash or other security satisfactory to Landlord, or a bond of indemnity of a good and solvent surety company, in form and amount satisfactory to Landlord. Either party paying any Real Estate Taxes or other charges shall be entitled to recover, receive and retain for its own benefit all abatements and refunds of such Real Estate Taxes or other charges, unless it has previously been reimbursed by the other party, in which case an equitable distribution will be made. Tenant agrees to save Landlord harmless from all costs and expenses incurred on account of Tenant's participation in such proceedings or as a result of Tenant's failure to pay Real Estate Taxes and other related charges with respect to the Premises. Landlord, without obligating itself to incur any costs or expenses in connection with such proceedings, shall cooperate with Tenant by providing such information and executing such applications, documents or filings as requested by Tenant, each with respect to such proceedings so far as reasonably necessary; provided, however, that Tenant acknowledges that the foregoing duty to cooperate will not require the Landlord to take any legal position contrary to the position taken by the Miami-Dade County Property Appraiser or Tax Collector in any such proceeding. Tenant shall not discontinue any abatement proceedings begun by it without first giving the Landlord written notice of its intent to do so and reasonable opportunity to be substituted in such proceedings. Landlord shall promptly furnish to Tenant a copy of any notice of any Real Estate Taxes received by Landlord.

3.8. Control and Liabilities. Landlord acknowledges and agrees that Landlord is and shall be, at all times prior to the Commencement Date, in use, control and occupancy of the Premises and all improvements located thereon. In connection with the foregoing, Landlord further acknowledges and agrees that Landlord is responsible for maintaining, repairing, securing, supervising and managing the Premises, including with respect to any third parties (e.g., tenants) located in the Premises. All debts, obligations and liabilities arising prior to the Commencement Date in the course of business of the Premises or otherwise in connection with the use, occupancy or operation thereof (including, but not limited to, all such liabilities for utilities, taxes and other costs and expenses related to the Premises; all such liabilities under or with respect to Environmental Laws or claims; all such liabilities under or with respect to any personal injury claims; and any and all obligations related to the operation, maintenance, repair, security, supervision and management of the Premises) are and shall be the obligation of Landlord, and Tenant shall not be liable or otherwise responsible for any such debts, obligations or liabilities or have any duties to the Landlord or any third parties with respect to the use, occupancy or operation of the Premises.

## **ARTICLE IV**

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

4.1. Indemnity for Tenant's Acts. Landlord shall continue to operate the Premises until the Commencement Date as provided in Section 5.1(b), below. From and after the Commencement Date, Tenant shall indemnify and hold harmless the Landlord and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Landlord or its officers, employees, agents or instrumentalities may

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

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

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

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

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

person has ever been served upon Landlord, its agents or employees, claiming any violation of any Environmental Law or any liability thereunder, or requiring or calling any attention to the need for any Environmental Cleanup Work on or in connection with the Premises, and neither Landlord, its agents or employees has ever been informed of any threatened or proposed serving of any such notice of violation or corrective work order; and

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

#### 4.3. Liens.

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

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

(c) Tenant shall have the right to contest any such lien or encumbrance by appropriate proceedings which shall prevent the collection of or other realization upon such lien or encumbrance so contested, and the sale, forfeiture or loss of the Premises to satisfy the same;

provided that such contest shall not subject Landlord to the risk of any criminal liability or civil penalty, and provided further that Tenant shall give reasonable security to insure payment of such lien or encumbrance and to prevent any sale or forfeiture of the Premises by reason of such nonpayment, and Tenant hereby indemnifies Landlord for any such liability or penalty. Upon the termination after final appeal of any proceeding relating to any amount contested by Tenant pursuant to this Section 4.3, Tenant shall immediately pay any amount determined in such proceeding to be due, and in the event Tenant fails to make such payment, Landlord shall have the right after five (5) business days' notice to Tenant to make any such payment on behalf of Tenant and charge Tenant therefor.

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

#### 4.4. Insurance Requirements.

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

### **ARTICLE V**

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

##### 5.1. Use; Covenants.

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

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

- 100% of the units in the Premises will be set aside for occupancy by workforce, low-, very low, extremely low-income and market rate households.
- It will (a) enter into the RAD HAP Contract when the same is presented by Landlord; (b) apply to Landlord for renewal of the RAD HAP Contract not later than ninety (90) days prior to the expiration of the RAD HAP Contract or any extension thereof, and (c) accept renewal of the RAD HAP Contract; and failure to do so will be considered a default under this Lease;

- During the Term, Tenant will operate and maintain the RAD Units in accordance with the requirements of the RAD Program for so long as the RAD Use Agreement and RAD HAP Contract so require, except to the extent that any requirement may be specifically waived in writing by Landlord and/or HUD, as appropriate; and
- Neither the Improvements, nor any part thereof, may be demolished other than (1) in accordance with the RAD Requirements and with prior written approval of Landlord or (2) as part of a restoration from a casualty. Tenant is required to maintain insurance sufficient to cover full replacement of the Improvements and any shortfall shall be the sole obligation of the Tenant to fund.

(c) If, prior to the Commencement Date, the Premises becomes subject to a taking by virtue of eminent domain, to any extent whatsoever, Tenant may, in its sole discretion, terminate this Lease by written notice to the Landlord, whereupon neither party hereto shall have any further rights or obligations hereunder.

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

(e) In the event of a conflict between the RAD Requirements and this Lease, the RAD Requirements shall govern.

## 5.2. Residential Improvements.

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

such services or utilities. Any and all buildings, fixtures, improvements, trade fixtures and equipment placed in, on, or upon the Premises shall remain the sole and exclusive property of Tenant and its subtenants, notwithstanding their affixation to, annexation to, or incorporation into the Premises, until the termination of this Lease, at which time title to any such buildings, fixtures, Improvements trade fixtures and equipment that belong to Tenant shall vest in Landlord.

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

### 5.3. Tenant's Obligations.

(a) Tenant shall, at its sole cost and expense, maintain the Premises, reasonable wear and tear excepted, and make repairs, restorations, and replacements to the Improvements, including without limitation the landscaping, irrigation, heating, ventilating, air conditioning, mechanical, electrical, elevator, and plumbing systems; structural roof, walls, floors and foundations; and the fixtures and appurtenances as and when needed to preserve them in good working order and condition, and regardless of whether the repairs, restorations, and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the fault or not the fault of Tenant, its agents, employees, invitees, visitors, and contractors. All such repairs, restorations, and replacements will be in quality and class, as elected by Tenant, either equal to or better than the original work or installations and shall be in accordance with all applicable building codes; provided, however, nothing herein contained shall obligate or hold Tenant responsible for any repairs, restorations, or replacements to the Improvements required as a result of an event, act or omission that occurred or existed prior to the Commencement Date.

(b) Tenant may make any alterations, improvements, or additions to the Premises as Tenant may desire, if the alteration, improvement, or addition will not change the use of the Property as multifamily housing and there is no resulting reduction in housing units required at the Property, or permanent reduction of Project amenities and such alterations, improvements or additions to the Premises comply with applicable law and do not impair the value of the Project. Tenant shall, prior to commencing any such actions, give notice to Landlord and provide Landlord with complete plans and specifications therefor.

### 5.4. Compliance with Law.

(a) Tenant shall, at its expense, perform all its activities on the Premises in compliance, and shall cause all occupants of any portion thereof to comply, with all applicable laws (including but not limited to section 255.05, Florida Statutes, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and 24 C.F.R. Parts 8 and 9, which prohibit discrimination against persons with disabilities in any program or activity receiving Federal Financial assistance. 24 C.F.R. § 40.4, which establishes the Uniform Federal Accessibility Standards (UFAS) as the standard design, construction, or alteration of residential structures, the Americans with Disabilities Act, and applicable Fair Housing laws and ordinances), ordinances, codes and regulations affecting the Premises or its uses, as the same may be administered by authorized governmental officials.

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

1. Tenant shall operate the Premises in compliance with all Environmental Laws applicable to Tenant relative to the Premises and shall identify, secure and maintain all required governmental permits and licenses as may be necessary for the Premises. All required governmental permits and licenses issued to Tenant and associated with the Premises shall remain in effect or shall be renewed in a timely manner, and Tenant shall comply therewith and cause all third parties to comply therewith. All Hazardous Substances present, handled, generated or used on the Premises will be managed, transported and disposed of in a lawful manner. Tenant shall exercise due care and not cause or allow on or upon the Premises, or as may affect the Premises, any act which may result in the discharge of any waste or hazardous materials in violation of Environmental Law, or otherwise damage or cause the depreciation in value to the Premises, or any part thereof due to the release of any waste or hazardous materials on or about the Premises in violation of Environmental Law. Tenant shall not knowingly permit the Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Substances, except in such amounts as are ordinarily used, stored or generated in similar projects, or otherwise knowingly permit the presence of Hazardous Substances in, on or under the Premises in violation of any applicable law.
2. Tenant shall promptly provide Landlord with copies of all forms, notices and other information concerning any releases, spills or other incidents relating to Hazardous Substances or any violations of Environmental Laws at or relating to the Premises upon discovery of such releases, spills or incidents, when received by Tenant from any government agency or other third party, or when and as supplied to any government agency or other third party. Additionally, Tenant hereby agrees to immediately notify Landlord, in writing, should an accident or incident occur in which any waste and/or hazardous materials are released or otherwise discharged on or about the Premises.
3. Tenant will construct and maintain premises to be compliant with Section 504 and the Americans With Disabilities Act and their amendments.

5.5. Ownership of Improvements/Surrender of Premises.

At all times during the Term, Tenant shall be deemed to exclusively own the Improvements and the Personal Property for federal tax purposes, and Tenant alone shall be entitled to all of the tax attributes of ownership thereof, including, without limitation, the right to claim depreciation or cost recovery deductions and the right to claim the low-income housing tax credit described in Section 42 of the Code, with respect to the Improvements and the Personal Property, and Tenant shall have the right to amortize capital costs and to claim any other federal tax benefits attributable to the Improvements and the Personal Property. At the expiration or earlier termination of the Term of this Lease or any portion thereof, Tenant shall peaceably leave, quit and surrender the Premises, and the Improvements thereon (or the portion thereof so terminated), subject to the rights of tenants in possession of residential units under leases with Tenant, provided that such tenants are not in default thereunder and attorn to Landlord as their lessor. Upon such expiration

or termination, the Premises (or portion thereof so terminated) shall become the sole property of Landlord at no cost to Landlord and shall be free of all liens and encumbrances and in the condition set forth in Section 5.3 (consistent with prudent and appropriate property management and maintenance during the Term) and, in the event of a casualty, to the provisions of Article VI. Tenant acknowledges and agrees that upon the expiration or sooner termination of this Lease any and all rights and interests it may have either at law or in equity to the Premises shall immediately cease. Tenant and Landlord will establish Right of First Refusal, Right of First Offer, and Purchase Options for Landlord to be able to purchase the improvements or acquire the improvements.

#### 5.6. Easements.

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

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

(a) Except as otherwise permitted hereunder, Tenant agrees for itself and its successors and assigns in interest hereunder that it will not (1) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises generally, or (2) make or permit any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of any or all of the Premises, or the Improvements, or the occupancy and use thereof, other than in accordance with the RAD Requirements, as applicable, and this Lease (including, but not limited to (i) any sale at foreclosure or by the execution of any judgment of any or all of Tenant's rights hereunder, or (ii) any transfer by operation of law), without first obtaining Landlord's express written consent thereto, which shall not be unreasonably withheld.

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



Sublessee shall be in compliance with the terms and conditions of its Sublease; and the Sublessee shall agree to attorn to Landlord. Landlord further agrees that it will grant such assurances to such Sublessee so long as it remains in compliance with the terms of its Sublease, and provided further that any such Sublease does not extend beyond the expiration of the Term of this Lease.

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

#### 5.8. Creating Sustainable Buildings.

(a) Tenant shall design the Development to be consistent with a Silver certification rating from the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") as required by County Implementing Order 8-8. Pursuant to Implementing Order 8-8, the requirement for applying the appropriate LEED Silver standard may be modified due to special circumstances of the Development. Such modification shall be for the express purpose of ensuring the use of the most appropriate or relevant rating standard, and shall not, in any way, exempt the requirement to apply green building practices to the maximum extent possible. This substitution process shall be administered by and through the County's Office of Resilience Sustainability Manager.

(b) The LEED Silver certification or designation relative to the Development is outlined by the U.S. Green Building Council. Tenant agrees to regularly provide Landlord with copies of any and all records and/or reports (including but not limited to any approvals, rejections and/or comments) from the neutral and independent third-party reviewing the Development relative to the LEED Silver designation from the U.S. Green Building Council or certification from the NGBS.

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

(d) Energy-efficient reflective roofs or green roofs are also specifically required per Miami-Dade County Resolution No. R-1103-10.

#### 5.9. Sea Level Rise and Heat Resilience.

In accordance with Miami Dade County Board of County Commissioners' Resolution R-451-14, the Developer shall be required to consider sea level rise projections and potential impacts as best estimated at the time of the Projects, using regionally consistent unified sea level rise projections and sea level rise data mapping websites, during all project phases including but not limited to planning, design, and construction, to ensure that the Projects will function properly for fifty (50) years or the design life of the projects, whichever is greater.

The Developer shall provide a comprehensive landscape plan for all open spaces that meets or exceeds the minimum standards described in the Miami-Dade County Landscaping Ordinance Chapters 18A and 18B and aligns with the Landscape Manual, while also complying with any municipal landscape code requirements, in a way that reduces building energy use intensity, aids onsite stormwater management, and expands existing tree canopy to increase community resilience to extreme heat while also enhancing overall appearance. In accordance with CDMP Policy LU-8I, the Developer is encouraged to incorporate additional heat mitigation elements into the project including porous pavements, cool roofs, and high albedo surfaces. The Developer will be required to consult with all appropriate County departments and plans will need to be in accordance with Miami-Dade County Implementing Order IO 8-8 and approved by Miami Dade PHCD Department.

#### 5.10. Miami-Dade County Art in Public Places Requirements.

This Development is subject to the Art in Public Places ("APP") provisions in Section 2.11.15 of the Miami-Dade County Code and Administrative Order 3-11, as managed by the Miami-Dade County Department of Cultural Affairs ("Department of Cultural Affairs") pursuant to Procedure 358 in the Miami-Dade County Procedures Manual ("Procedures Manual"). The Developer shall transmit 1.5% of the project costs for all development on County land (as outlined in the Procedures Manual) to the Department of Cultural Affairs for the implementation of the APP program. The Developer is required to work collaboratively with the Department of Cultural Affairs on the implementation of the APP program pursuant to the requirements of said program. The referenced documents can be accessed at:

[https://library.municode.com/fl/miami - dade county/codes/code of ordinances](https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances)

<http://www.miamidade.gov/ao/home.asp?Process=alphalist>

<http://intra.miamidade.gov/managementandbudget/library/procedures/358.pdf>

#### 5.11. E-Verify Requirements

By entering into this Contract, the Contractor and its Subcontractors are jointly and severally obligated to comply with the provisions of Section 448.095, Florida Statutes, as amended, titled "Employment Eligibility." The Contractor affirms that (a) it has registered and uses the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees of the Contractor; (b) it has required all Subcontractors to this Contract to register and use the E-Verify system to verify the work authorization status of all new employees of the Subcontractor; (c) it has an affidavit from all Subcontractors to this Contract attesting that the Subcontractor does not employ, contract with, or subcontract with, unauthorized aliens; and (d) it shall maintain copies of any such affidavits for duration of the Contract.

If County has a good faith belief that Contractor has knowingly violated Section 448.09(1), Florida Statutes, then County shall terminate this contract in accordance with Section 448.095(5)(c), Florida Statutes. In the event of such termination the Contractor agrees and acknowledges that it may not be awarded a public contract for at least one (1) year from the date of such termination and that Contractor shall be liable for any additional costs incurred by the County because of such termination.

In addition, if County has a good faith belief that a Subcontractor has knowingly violated any provisions of Sections 448.09(1) or 448.095, Florida Statutes, but Contractor has otherwise complied with its requirements under those statutes, then Contractor agrees that it shall terminate its contract with the Subcontractor upon receipt of notice from the County of such violation by Subcontractor in accordance with Section 448.095(5)(c), Florida Statutes.

Any challenge to termination under this provision must be filed in the Circuit or County Court by the County, Contractor, or Subcontractor no later than twenty (20) calendar days after the date of contract termination. Public and private employers must enroll in the E-Verify System (<http://www.uscis.gov/e-verify>) and retain the I-9 Forms for inspection.

## **ARTICLE VI**

### **CASUALTY AND TAKING**

#### **6.1. Casualty.**

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

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

for the purpose of restoration or repair of the Premises. Permitted Leasehold Mortgagee shall have the right to participate in adjustment of losses as to casualty insurance proceeds and any settlement discussion relating to casualty or condemnation.

## 6.2. Taking.

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

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

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

(d) Partial Taking. In the event of a permanent Taking of less than all of the Premises (a "Partial Taking"), if Tenant reasonably determines that the continued development, use or occupancy of the remainder of the Premises by Tenant cannot reasonably be made to be economically viable, structurally sound, then Tenant may terminate this Lease, and the Tenant's portion of the Award shall be paid to Tenant, provided that any and all obligations of Tenant have been fully and completely complied with by Tenant as of the date of said Partial Taking. If Tenant shall not elect to terminate this Lease, Tenant shall be entitled to a reduction of rent of such amount as shall be just and equitable. Subject to the terms of the Permitted Leasehold Mortgages, if there is a Partial Taking and the Tenant does not terminate this Lease, the Tenant shall be entitled to receive and retain an equitable portion of the Award and shall apply such

portion of the Award necessary to repair or restore the Premises or the Improvements as nearly as possible to the condition the Premises or the Improvements were in immediately prior to such Partial Taking. Subject to the terms of the Permitted Leasehold Mortgages, if there is a Partial Taking which affects the use of the Premises after the term hereof, the Award shall be apportioned between the Tenant and the Landlord based on the ratio of the remaining term hereof and the remaining expected useful life of the Premises following the term hereof. Subject to the terms of the Permitted Leasehold Mortgages, notwithstanding any provision herein to the contrary, the Landlord shall be entitled to receive and retain any portion of the Award apportioned to the land upon which the Improvements are located. Should such award be insufficient to accomplish the restoration, such additional costs shall be paid by Tenant. Notwithstanding any provision of the Lease or by operation of law that leasehold improvements may be or shall become the property of Landlord at the termination of the Lease, the loss of the building and other improvements paid for by Tenant and such additional relief as may be provided by law shall be the basis of Tenant's damages against the condemning authority if a separate claim therefore is allowable under applicable law, or the basis of Tenant's damages to a portion of the total award if only one award is made.

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

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

### 6.3. Termination upon Non-Restoration.

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

## ARTICLE VII

### CONDITION OF PREMISES

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

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

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

7.3. Landlord's Title and Quiet Enjoyment. Landlord represents and warrants that Landlord is seized in fee simple title to the Premises, free and clear and unencumbered, other than as affected by the Permitted Encumbrances. Landlord covenants that, so long as Tenant pays rent and performs the covenants herein contained on its part to be paid and performed, Tenant will have lawful, quiet and peaceful possession and occupancy of the Premises and all other rights and benefits accruing to Tenant under the Lease throughout the Term, without hindrance or molestation by or on the part of Landlord or anyone claiming through Landlord. Landlord further represents and warrants that it has good right, full power and lawful authority to enter into this Lease. Tenant shall have the right to order a title insurance commitment on the Premises. In the

event the title insurance commitment shall reflect encumbrances or other conditions not acceptable to Tenant ("Defects"), then, Landlord, upon notification of the Defects, shall immediately and diligently proceed to cure same and shall have a reasonable time within which to cure the Defects. If, after the exercise of all reasonable diligence, Landlord is unable to clear the Defects, then Tenant may accept the Defects or Tenant may terminate the Lease and the parties shall be released from further liability so long as Tenant is not in default hereunder beyond any grace period applicable thereto, Tenant's possession of the Premises will not be disturbed by Landlord, its successors and assigns.

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

## ARTICLE VIII

### **DEFAULTS AND TERMINATION**

#### 8.1. Default.

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

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

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

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

(d) if Tenant shall be adjudicated bankrupt or be declared insolvent under the Federal Bankruptcy Code or any other federal or state law (as now or hereafter in effect) relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts (collectively called

**Bankruptcy Laws**), or if Tenant shall (a) apply for or consent to the appointment of, or the taking of possession by, any receiver, custodian, trustee, United States Trustee or Tenant or liquidator (or other similar official) of Tenant or of any substantial portion of Tenant's property; (b) admit in writing its inability to pay its debts generally as they become due; (c) make a general assignment for the benefit of its creditors; (d) file a petition commencing a voluntary case under or seeking to take advantage of a Bankruptcy Law; or (e) fail to controvert in a timely and appropriate manner, or in writing acquiesce to, any petition commencing an involuntary case against Tenant pursuant to any bankruptcy law; or

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

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

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

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

Notwithstanding anything to the contrary in this Lease, an Event of Default shall not be deemed to have occurred and Tenant shall not be deemed in default under this Lease if HUD fails to pay to Landlord the subsidies contemplated herein or if Landlord fails to pay the subsidies to Tenant pursuant to the RAD HAP Contract, or to meet Landlord's other obligations under this Lease. In the event HUD fails to pay to Landlord the subsidies contemplated herein, then Landlord at its sole discretion will (i) re-negotiate the terms of this Lease with the Tenant or (ii) use other method for redevelopment of the Premises, subject to the approval of the Board..

## 8.2. Remedies for Tenant's Default.

Upon or after the occurrence of any Event of Default which is not cured within any applicable cure period, and so long as same remains uncured, Landlord may terminate this Lease by providing not less than thirty (30) days' written notice (which notice may be contemporaneous with any notice provided under Section 8.1) to Tenant, setting forth Tenant's uncured, continuing default and Landlord's intent to exercise its rights to terminate, whereupon this Lease shall



terminate on the termination date therein set forth unless Tenant's default has been cured before such termination date. Upon such termination, Tenant's interest in the Premises shall automatically revert to Landlord, Tenant shall promptly quit and surrender the Premises to Landlord, without cost to Landlord, and Landlord may, without demand and further notice, reenter and take possession of the Premises, or any part thereof, and repossess the same as Landlord's former estate by summary proceedings, ejectment or otherwise without being deemed guilty of any manner of trespass and without prejudice to any remedies which Landlord might otherwise have for arrearages of Rent or other impositions hereunder or for a prior breach of the provisions of this Lease. The obligations of Tenant under this Lease which arose prior to termination shall survive such termination.

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

(a) Tenant fails to cause the Commencement Date to occur, within eleven (11) months following the Lease Date.

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

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

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

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

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

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

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

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

8.5. Regulatory Default.

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

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

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

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

#### 8.6. Performance by Landlord.

If Tenant shall fail to make any payment or perform any act required under this Lease, Landlord may (but need not) after giving not less than thirty (30) (except in case of emergencies and except where a shorter time period is specified elsewhere in this Lease) days' notice to Tenant and without waiving any default or releasing Tenant from any obligations, cure such default for the account of Tenant. Tenant shall promptly pay Landlord the amount of such charges, costs and expenses as Landlord shall have incurred in curing such default.

#### 8.7. Costs and Damages.

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

#### 8.8. Remedies Cumulative.

The absence in this Lease of any enumeration of events of default by Landlord or remedies of either party with respect to money damages or specific performance shall not constitute a

waiver by either party of its right to assert any claim or remedy available to it under law or in equity.

#### 8.9 Permitted Leasehold Mortgages.

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

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

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

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

(d) In the case of a default by the Tenant other than in the payment of money, and provided that a Permitted Leasehold Mortgagee has commenced to cure the default and is proceeding with due diligence to cure the default, the Landlord will refrain from terminating this Lease for a reasonable period of time (not to exceed 120 days from the date of the notice of default, unless (i) such cure cannot reasonably be completed within 120 days from the date of the notice of default, and (ii) a Permitted Leasehold Mortgagee continues to diligently pursue such cure to the reasonable satisfaction of the Landlord) within which time the Permitted Leasehold Mortgagee may either (i) obtain possession of the Premises (including possession by receiver); (ii) institute foreclosure proceedings and complete such foreclosure; or (iii) otherwise acquire the Tenant's interest under this Lease. The Permitted Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if the default, which was the subject of the notice, shall have been cured. Notwithstanding the foregoing, the Landlord will refrain from terminating this Lease in the event such Permitted Leasehold Mortgagee is enjoined or stayed in such possession or such foreclosure proceedings, and provided that the Permitted Leasehold Mortgagee has delivered to Landlord copies of any and all orders enjoining or staying such action, Landlord will grant such Permitted Leasehold Mortgagee such additional time as is required for such Permitted Leasehold Mortgagee to complete steps to acquire or sell Tenant's leasehold estate and interest in this Lease by foreclosure of its Permitted Leasehold Mortgage or

by other appropriate means with due diligence; however, nothing in this Section shall be construed to extend this Lease beyond the Term.

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

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

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

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

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

such Permitted Leasehold Mortgagee's interest in this Lease and in the leasehold estate created thereby.

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

## **ARTICLE IX**

### **SOVEREIGNTY AND POLICE POWERS**

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

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

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

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

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

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

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

## **ARTICLE X**

### **PUBLIC RECORDS ACT**

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

- (a) Keep and maintain public records that ordinarily and necessarily would be required by Landlord in order to perform the service;
- (b) Upon request of from Landlord's custodian of public records identified herein, provide the public with access to public records on the same terms and conditions that Landlord would provide the records and at a cost that does not exceed the cost provided in the Florida Public Records Act, Miami-Dade County Administrative Order No. 4-48, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Lease's term and following completion of the work under this Lease if Tenant does not transfer the records to Landlord; and
- (d) Meet all requirements for retaining public records and transfer to Landlord, at no cost to Landlord, all public records created, received, maintained and/or directly related to the performance of this Lease that are in possession of Tenant upon termination of this Lease. Upon termination of this Lease, Tenant shall destroy

any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to Landlord in a format that is compatible with the information technology systems of Landlord.

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

In the event Tenant does not comply with the public records disclosure requirements set forth in Section 119.0701, Florida Statutes, and this Article X, Landlord shall avail itself of the remedies set forth in Article 8.2 of this Lease.

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

**Miami-Dade County  
Miami-Dade Public Housing and Community Development  
701 N.W. 1<sup>st</sup> Court, 16<sup>th</sup> Floor  
Miami, Florida 33136  
Attention: Lizette Capote  
Email: [lcapote@miamidade.gov](mailto:lcapote@miamidade.gov)  
Phone: (786) 469-4126**

## **ARTICLE XI**

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

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

If Landlord, in its sole discretion (but subject to any applicable HUD requirements relating to disposition and State laws relating to the sale or conveyance of County-owned property), decides to sell its interest in the Premises, then, prior to marketing the Premises, Landlord shall give written notice of such intent to Tenant setting forth the terms and conditions on which Landlord desires to sell the Premises (**Sales Notice**). Tenant shall have sixty (60) days thereafter within which to notify Landlord of its intent to purchase the Premises offered for sale upon such terms and conditions as are set forth in the Sales Notice. If such Sales Notice is timely given, the Closing shall be ninety (90) days after the date of the Sales Notice. The status of title to be delivered and the instruments to be executed pursuant thereto shall be as stated in the Sales Notice and the amount of earnest money that Tenant shall be required to deposit with the notification of intent to purchase by matching the offer shall be as stated in the Sales Notice. Failure of Tenant to so notify Landlord in a timely manner shall be deemed an election not to purchase. In the event Tenant does not so timely notify Landlord of its intent to purchase the offered property upon the terms and conditions stated in the Sales Notice, Landlord shall be free to market such property on its own or through a broker and thereafter may sell the property,

subject to all of the terms and conditions of the Lease and any applicable requirements of HUD or any other legal requirements; provided that Landlord may not sell the Premises on terms and conditions that are materially different from those contained in any Sales Notice received by Tenant without first offering Tenant the opportunity once again to purchase the Premises in accordance with this Section 11.1 upon such materially different terms and conditions upon which Landlord bases its offer of sale.

11.2. Right of First Refusal for Tenant.

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

11.3. **Mortgagee Notice.** Tenant shall provide notice to every applicable Permitted Leasehold Mortgagee as to its election to acquire the Premises pursuant to Sections 11.1 or 11.2, above. Such notice shall be delivered within five (5) days following Tenant's notice to Landlord evidencing its intent to purchase the Premises.

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

11.5. Option and Right of First Refusal for Landlord. The County shall have the option and right of first refusal to purchase the Development at the end of the tax credit compliance period for an amount equal to all transfer fees, costs, expenses and taxes related to the purchase plus the greater of: (i) the fair market value of the property; and (ii) the lowest price that is permitted under Section 42(i)(7) of the Internal Revenue Code of 1986, as amended plus any operating deficit loans of any member and any taxes that are projected to be owed by any member as a result of such sale.

## ARTICLE XII

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



## 12.1. Inspector General.

### (a) Independent Private Inspector General Reviews

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

### (b) Miami-Dade County Inspector General Review

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

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

Upon written notice to the Tenant from the Inspector General or IPSIG retained by the Inspector General, the Tenant shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Tenant's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions,

financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

## **ARTICLE XIII**

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

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

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

13.3 **Investor.** Notwithstanding anything to the contrary contained in the Lease, following the admission of the Investor, the Investor shall be deemed a third-party beneficiary of the provisions of this Section for the sole and exclusive purpose of entitling the Investor to exercise its rights to notice and cure, as expressly stated herein. The foregoing right of the Investor to be a third-party beneficiary under the Lease shall be the only right of Investor (express or implied) to be a third-party beneficiary hereunder. Such third party beneficiary status shall terminate in the entirety upon the exit of such investor including the acquisition of the building improvements by Landlord or Landlord designee under a Purchase Option or Right of First Refusal Agreement.

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

## **ARTICLE XIV**

### **LANDLORD'S AUTHORITY**

14.1. Designation of Landlord's Representatives. The Miami-Dade County Mayor, or his or her designee, shall have the power, authority and right, on behalf of the Landlord, in its capacity as Landlord hereunder, and without any further resolution or action of the Miami-Dade County Board of County Commissioners, to:

(a) Review and approve documents, plans, applications, lease assignments and requests required or allowed by Tenant to be submitted to Landlord pursuant to this Lease;

(b) Consent or agree to actions, events, and undertakings by Tenant or extensions of time periods for which consent or agreement is required by Landlord, including, but not limited to, extending the date by which the Commencement Date must occur under Section 8.3) or granting extensions of time for the performance of any obligation by Tenant hereunder;

(c) Execute any and all documents on behalf of Landlord necessary or convenient to the foregoing approvals, consents, and appointments;

(d) Assist Tenant with and execute on behalf of Landlord any applications or other documents, needed to comply with applicable regulatory procedures and to secure financing, Entitlements, permits or other approvals to accomplish the construction of any and all improvements in and refurbishments of the Premises,

(e) Amend this Lease and any Subleases (and related recognition and non-disturbance agreements) to correct any typographical or non-material errors, to address revisions or supplements hereto of a non-material nature or to carry out the purposes of this Lease;

(f) Execute Subleases with Qualified Assignees, including any amendments, extensions, and modifications thereto, and/or the lease bifurcation documents contemplated by Section 5.7; and

(g) Execute recognition and non-disturbance agreements and issue estoppel statements as provided elsewhere in this Lease.

## **ARTICLE XV**

### **MISCELLANEOUS**

#### **15.1. Construction.**

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

#### **15.2. Performance Under Protest.**

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

#### 14.3 Compliance with Governing Requirements.

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

#### 14.4 No Waiver.

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

#### 15.3. Headings.

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

#### 15.4. Partial Invalidity.

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

#### 15.5. Decision Standards.

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

15.6. Bind and Inure.

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

15.7. Estoppel Certificate.

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

15.8. Recordation.

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

15.9. Notice.

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

If to the Landlord:	Miami-Dade County c/o Miami-Dade Public Housing and Community Development 701 N.W. 1 <sup>st</sup> Court, 16 <sup>th</sup> Floor Miami, Florida 33136
---------------------	--

Attn: Alex Ballian, Director

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

If to Tenant: Gallery at Marti Park, LLC  
2850 Tigertail Avenue, 7th Floor  
Miami, FL 33133  
Attn: Alberto Milo, Jr.

and a copy to: Bilzin Sumberg Baena Price & Axelrod LLP  
1450 Brickell Avenue, 23rd Floor  
Miami, FL 33131  
Attention: Terry M. Lovell, Esq.

and a copy to: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, FL 33130  
Attention: Brian J. McDonough, Esq

If to Investor: TCC Gallery at Marti Park, LLC  
c/o Truist Community Capital, LLC  
303 Peachtree Street, N.E., Suite 2200  
Mail Code GA-ATL-0243  
Atlanta, GA 30308

and a copy to: Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attention: Nathan Bernard, Esq.

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

15.10. Entire Agreement.

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

15.11. Amendment.

This Lease may be amended by mutual agreement of Landlord and Tenant, provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of Tenant to develop and operate the Premises. Tenant and Landlord hereby expressly stipulate and agree that, they will not modify this Lease in any way nor cancel or

terminate this Lease by mutual agreement nor will Tenant surrender its interest in this Lease, including but not limited to pursuant to the provisions of Section 6.3, without the prior written consent of all Permitted Leasehold Mortgagees and, following the admission of the Investor, the Tenant's Investor. No amendment to or termination of this Lease shall become effective without all such required consents. Tenant and Landlord further agree that they will not, respectively, take advantage of any provisions of the United States Bankruptcy Code that would result in a termination of this Lease or make it unenforceable.

15.12. Governing Law, Forum, and Jurisdiction.

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

15.13. Relationship of Parties; No Third Party Beneficiary.

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

15.14. Access.

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

15.15. Radon Gas.

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

15.16. Non-Merger.

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

15.17. Compliance with Governing Documents. Notwithstanding anything to the contrary herein, Landlord and Tenant hereby agree to comply with any and all applicable HUD notice and consent

requirements set forth in the Governing Documents by providing notice to HUD as required in the Governing Documents.

15.18. Vendor Registration. The Tenant shall be a registered vendor with the County – Internal Services Department, Strategic Procurement Division, for the duration of this Agreement. In becoming a registered vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. **Miami-Dade County Ownership Disclosure Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
2. **Miami-Dade County Employment Disclosure Affidavit** (Section 2.8.1(d)(2) of the Code of Miami-Dade County)
3. **Miami-Dade County Employment Drug-free Workplace Certification**  
(Section 2-8.1.2(b) of the Code of Miami-Dade County)
4. **Miami-Dade County Disability and Nondiscrimination Affidavit**  
(Section 2-8.1.5 of the Code of Miami-Dade County)
5. **Miami-Dade County Debarment Disclosure Affidavit**  
(Section 10.38 of the Code of Miami-Dade County)
6. **Miami-Dade County Vendor Obligation to County Affidavit**  
(Section 2-8.1 of the Code of Miami-Dade County)
7. **Miami-Dade County Code of Business Ethics Affidavit**  
(Sections 2-8.1(i), 2-11.1(b)(1) through (6) and (9), and 2-11.1(c) of the Code of Miami-Dade County)
8. **Miami-Dade County Family Leave Affidavit**  
(Article V of Chapter 11 of the Code of Miami-Dade County)
9. **Miami-Dade County Living Wage Affidavit**  
(Section 2-8.9 of the Code of Miami-Dade County)
10. **Miami-Dade County Domestic Leave and Reporting Affidavit** (Article VIII, Section 11A-60 - 11A-67 of the Code of Miami-Dade County)
11. **Miami-Dade County E-Verify Affidavit**  
(Executive Order 11-116)
12. **Miami-Dade County Pay Parity Affidavit**  
(Resolution R-1072-17)
13. **Miami-Dade County Suspected Workers' Compensation Fraud Affidavit**  
(Resolution R-919-18)
14. **Subcontracting Practices**  
(Section 2-8.8 of the Code of Miami-Dade County)
15. **Subcontractor/Supplier Listing**  
(Section 2-8.1 of the Code of Miami-Dade County)
16. **Form W-9 and 147c Letter**  
(as required by the Internal Revenue Service)
17. **FEIN Number or Social Security Number**



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

- Identification of individual account records
- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

**18. Office of the Inspector General**  
(Section 2-1076 of the Code of Miami-Dade County)

**19. Small Business Enterprises**  
*The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.1.1.1.1, 2-8.1.1.1.2 and 2-8.2.2 of the Code of Miami-Dade County and Title 49 of the Code of Federal Regulations.*

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

**15.19. Conflict of Interest and Code of Ethics.** Section 2-11.1(d) of the Code of Miami-Dade County requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. All autonomous personnel, quasi-judicial personnel, advisory personnel, and employees wishing to do business with the County are hereby advised they must comply with the applicable provisions of Section 2-11.1 of the Code of Miami-Dade County relating to Conflict of Interest and Code of Ethics. In accordance with Section 2-11.1 (y), the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) shall be empowered to review, interpret, render advisory opinions and letters of instruction and enforce the Conflict of Interest and Code of Ethics Ordinance.

## **ARTICLE XVI**

### **HUD-REQUIRED RAD PROVISIONS**

**16.1. HUD-Required RAD Provisions.** In addition to entering into this Lease, Landlord and Tenant also contemplate the provision of rental assistance to the Development pursuant to a RAD HAP Contract. If a RAD HAP Contract is entered into, HUD will require Landlord and Tenant to enter into a RAD Use Agreement in connection with the provision of rental assistance to the Development. Notwithstanding any other clause or provision in this Lease, upon execution of the RAD Use Agreement and for so long as the RAD Use Agreement is in effect, the following provisions shall apply:

(a) This Lease shall in all respects be subordinate to the RAD Use Agreement. Subordination continues in effect with respect to any future amendment, extension, renewal, or any other modification of the RAD Use Agreement or this Lease.

(b) If any of the provisions of this Lease conflict with the terms of the RAD Use Agreement, the provisions of the RAD Use Agreement shall control.

(c) The provisions in this Section 15.1 are required to be inserted into this Lease by HUD and may not be amended without HUD's prior written approval.

(d) Violation of the RAD Use Agreement constitutes a default of this Lease.

(e) Notwithstanding any other contract, document or other arrangement, upon termination of this Lease, title to the real property leased herein shall remain vested in Landlord and title to the buildings, fixtures, improvements, trade fixtures and equipment that belong to Tenant shall vest in Landlord.

(f) Neither the Tenant nor any of its partners or members shall have any authority to:

(i) Take any action in violation of the RAD Use Agreement; or

(ii) Fail to renew the RAD HAP Contract upon such terms and conditions applicable at the time of renewal when offered for renewal by the Landlord or HUD; or

(iii) Except to the extent permitted by the RAD HAP Contract or the RAD Use Agreement and the normal operation of the Development (e.g., in connection with a Sublease to a Qualified Assignee), neither the Tenant nor any partners or members shall have any authority without the consent of Landlord to sell, transfer, convey, assign, mortgage, pledge, sublease, or otherwise dispose of, at any time, the Development or any part thereof.

**(SIGNATURES ON FOLLOWING PAGE)**

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

**LANDLORD:**

**MIAMI-DADE COUNTY**

\_\_\_\_\_  
Witness

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

By: \_\_\_\_\_  
County Mayor or County Mayor's Designee

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

\_\_\_\_\_  
Witness

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

ATTEST: Juan Fernandez-Barquin,  
Clerk of the Court and Comptroller

By: \_\_\_\_\_  
(Deputy Clerk Signature)

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

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

Approved as to form and legal sufficiency:

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

**TENANT:**

Gallery at Marti Park, LLC a Florida limited liability company

By: Gallery at Marti Park Manager, LLC, a Florida limited liability company, its manager

\_\_\_\_\_  
Witness

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

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

\_\_\_\_\_  
Witness

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

**EXHIBIT A**

**Land**

Address: 450 SW 5th Street, Folio No. 01-0203-060-1020

**Legal Description:**

Lots 4 through 8, Block 36 "Map of Miami Dade County Florida", according to the Plat thereof, recorded in Plat Book "B", Page 41, of the Public Records of Miami-Dade County, Florida

AND

Address: 445 SW 6th Street, Folio No. 01-0203-060-1090

**Legal Description:**

Lot 15, Block 36, "Map of Miami Dade County Florida", according to the Plat thereof, recorded in Plat Book "B", Page 41 of the Public Records of Miami-Dade County, Florida

## EXHIBIT B

### Insurance Requirements

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

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

- A. Worker's Compensation Insurance for all employees of the vendor as required by Florida Statute 440.
- B. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate, not to exclude Explosion Collapse and Underground Hazards and Products and Completed Operations. **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 \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability or Errors & Omissions insurance covering architectural and/or engineering project design, construction supervision, administration and any related professional qualifications or functions required by the project from the Developer or the licensed design professional in an amount not less than \$2,000,000 per claim.
- E. Completed Value Builders' Risk Insurance on an "all risk" basis in an amount not less than one hundred (100%) percent of the completed value of the building(s) or structure(s). The policy shall be in the name of Miami Dade County and the Contractor.
- F. Umbrella Liability Insurance in an amount not less than \$5,000,000 per occurrence. If Excess Liability is provided must be on a follow form basis.
- G. Pollution Liability insurance, in an amount not less than \$1,000,000 covering third party claims, remediation expenses, and legal defense expenses arising from on-site and off-site loss, or expense or claim related to the release or threatened release of Hazardous Materials that result in contamination or degradation of the environment and surrounding ecosystems, and/or cause injury to humans and their economic interest.
- H. Property Insurance on an "All Risk" basis including Windstorm & Hail coverage in an amount not less than one hundred (100%) percent of the

replacement cost of the building(s). Miami-Dade County must be shown as a Loss Payee A.T.I.M.A. with respect to this coverage.

- I. Flood Insurance coverage shall be provided for properties located within a flood hazard zone, in an amount not less than the full replacement value(s) of the completed structure(s) or the maximum amount of coverage available through the National Flood Insurance Program (NFIP) whichever is greater. Miami-Dade County must be shown as a Loss Payee A.T.I.M.A. with respect to this coverage.

Excess/Umbrella Liability may be used to supplement minimum liability coverage requirements. Follow form basis is required if providing Excess Liability.

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 “**A-**” as to management, and no less than “**Class VII**” as to financial strength by Best’s Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest “List of All Insurance Companies Authorized or Approved to Do Business in Florida” issued by the State of Florida Department of Financial Services.

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

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

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

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

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

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

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

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

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

(f) If the Premises is located in a federally designated flood plain, an acceptable flood insurance policy shall also be delivered to the Landlord, providing coverage in the maximum amount reasonable necessary to insure against the risk of loss from damage to the Premises caused by a flood.

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