

MASTER DEVELOPMENT AGREEMENT

BETWEEN

MIAMI-DADE COUNTY

AND

XYZ, LLC.

(SITE NAME)

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- Exhibit A-1 - Preliminary Unit Amenities
- Exhibit A-2 Community Benefits Program
- Exhibit B - Financial Benefits
- Exhibit C - Site Plans, Renderings and Perspectives
- Exhibit D - Development Budget/Pro Forma
- Exhibit E - Development Schedule
- Exhibit F - Unit Mix
- Exhibit G - Summary of Key Development Team Members
- Exhibit H - Management Agreement
- Exhibit I - HUD UFAS Accessibility Checklist
- Exhibit J - Legal Description
- Exhibit K - Phase Option Agreement
- Exhibit L - Form of Estoppel

SAMPLE

MASTER DEVELOPMENT AGREEMENT

XYZ, 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**”), hereby enter into this Master Development Agreement (this “**Agreement**”), effective as of _____, _____ (the “**Effective Date**”), to memorialize certain business terms, conditions and agreements regarding future redevelopment of (SITE NAME) in Miami-Dade County, Florida (the “**Development**”).

1. Definitions.

- (a) “**A/E**” shall have the meaning set forth in Section 4(b).
- (b) “**Affordable Housing**” shall mean housing units that do not exceed the maximum monthly rent limits (as determined by the Florida Housing Finance Corporation for its multifamily rental programs) for households at or below eighty (80) percent of the medium income level for the Miami-Dade County Metropolitan Statistical Area.
- (c) “**Agreement**” shall have the meaning set forth in the introductory paragraph of this Agreement.
- (d) “**Annual Rent**” shall have the meaning set forth in Section 5(c).
- (e) “**Applicable Transfer**” shall have the meaning set forth in Section 28.
- (f) “**APP**” shall have the meaning set forth in Section 27.
- (g) “**Board**” shall have the meaning set forth in Section 3(a).
- (h) “**Capitalized Payment**” shall have the meaning set forth in Section 5(b).
- (i) “**Community Benefits Program**” shall mean those programs set forth in Exhibit A-2 of this Agreement, which the Developer agrees to provide in connection with the Development, all subject to the terms and conditions of this Agreement.
- (j) “**Construction Completion**” shall mean, with respect to an applicable Phase, the earlier of the receipt of a temporary certificate of occupancy or the receipt of a permanent certificate of occupancy.
- (k) “**County**” shall have the meaning set forth in the introductory paragraph of this Agreement and shall also include its housing department, Miami-Dade Public Housing and Community Development Department.
- (l) “**County’s Responsible Wages**” shall mean the requirement for minimum payment of specified wages to employees performing work on County construction contracts and privately funded construction on County owned land as set forth in Section 2-11.16, Miami-Dade County Code of Ordinances
- (m) “**Cure Period**” shall have the meaning set forth in Section 10.
- (n) “**Default Notice**” shall have the meaning set forth in Section 10.
- (o) “**Department of Cultural Affairs**” shall have the meaning set forth in Section 27.

- (p) “**Developer**” shall have the meaning set forth in the introductory paragraph of this Agreement.
- (q) “**Developer Fee**” shall have the meaning set forth in Section 5(a).
- (r) “**Development**” shall have the meaning set forth in the introductory paragraph of this Agreement.
- (s) “**Development Budget**” shall have the meaning set forth in Section 3(b).
- (t) “**Development Plan**” shall have the meaning set forth in Section 4(a)(1).
- (u) “**Development Schedule**” shall have the meaning set forth in Section 3(b).
- (v) “**Economic Unavoidable Delay**” shall mean (i) delays due to strikes; acts of God; pandemics or other public health crises (including the economic consequences of same) that impact the Development; (ii) floods; fires; any act, neglect or failure to perform of or by the County (to the extent that it affects performance by Developer); (iii) enemy action; civil disturbance; sabotage; restraint by court or public authority; (iv) extraordinary economic or political conditions or events that result in a significant decline in economic activity that impairs access to debt or equity markets by developers of development projects in the United States or South Florida similar to the portion of the Development being developed or that allows committed debt or equity participants to terminate their debt or equity commitment, such as a temporary or long term liquidity crisis or recession, or (v) new duties, taxes, or other charges imposed as a result of geopolitical actions that result in a material increase in the construction costs for the Development.
- (w) “**Effective Date**” shall have the meaning set forth in the introductory paragraph of this Agreement.
- (x) “**Effective Termination Date**” shall have the meaning set forth in Section 8(e)(i).
- (y) “**Existing Residents**” shall mean those residents currently residing at (SITE NAME) who will have all the resident rights that HUD’s RAD program requires, as outlined in the RAD Notices.
- (z) “**Event of Infeasibility**” shall have the meaning set forth in Section 8(b).
- (aa) “**FGBC**” shall have the meaning set forth in Section 4(b)(25).
- (bb) “**FHFC**” shall mean the Florida Housing Finance Corporation.
- (cc) “**Financial Benefits**” shall have the meaning set forth in Section 4(b)(21).
- (dd) “**Financial Closing**” shall mean closing on construction financing for a particular Phase of the Development.
- (ee) “**Force Majeure Event**” shall have the meaning set forth in Section 9(c).
- (ff) “**HUD**” shall mean United States Department of Housing and Urban Development.
- (gg) “**HUD PIC**” shall have the meaning set forth in Section 3(c).
- (hh) “**IPSIG**” shall have the meaning set forth in Section 25.
- (ii) “**LEED**” shall have the meaning set forth in Section 4(b)(25).

- (jj) “**Lessor Note**” shall have the meaning set forth in Section 5(b)(ii).
- (kk) “**LIHTC**” shall mean Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code.
- (ll) “**Liquidated Damages**” shall mean those damages to be paid by the Developer to the County for failure to provide any material portion of any item of the Community Benefits Programs, which shall be calculated and assessed in the manner set forth in Section 9(d) for Community Benefits Programs.
- (mm) “**Management Agent**” shall have the meaning set forth in Section 7(a).
- (nn) “**Management Agreement**” shall have the meaning set forth in Section 7(a).
- (oo) “**Material Changes**” shall have the meaning set forth in Section 3(b).
- (pp) “**Net Cash Flow Participation**” shall have the meaning set forth in Section 5(d).
- (qq) “**NGBS**” shall have the meaning set forth in Section 4(b)(12).
- (rr) “**Owner Entity**” shall have the meaning set forth in Section 3(c).
- (ss) “**PBRA**” shall have the meaning set forth in Section 16(b)(i).
- (tt) “**PBVs**” shall have the meaning set forth in Section 16(b)(i).
- (uu) “**Phase**” shall have the meaning set forth in Section 3(b).
- (vv) “**Phase Development Plan**” shall have the meaning set forth in Section 4(a)(1).
- (ww) “**Phase Ground Lease**” shall have the meaning set forth in Section 3(a).
- (xx) “**Phase Option Agreement**” shall have the meaning set forth in Section 3(a).
- (yy) “**Procedures Manual**” shall have the meaning set forth in Section 27.
- (zz) “**Proper Invoice**” shall have the meaning set forth in Section 6(c).
- (aaa) “**Property**” shall mean (SITE NAME) as legally described on attached Exhibit J.
- (bbb) “**RAD**” shall mean 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.
- (ccc) “**RAD Conversion Commitment**” shall mean a commitment from HUD to the County and an Owner Entity to provide a RAD HAP Contract in accordance with the conditions stated in such commitment.
- (ddd) “**RAD Financing Plan**” shall mean as such term is defined in the RAD Implementation Notice.
- (eee) “**RAD HAP Contract**” shall mean a Housing Assistance Payments Contract in the form required by RAD Requirements.
- (fff) “**RAD Requirements**” shall mean all requirements of RAD, including, without limitation, those set forth in HUD Notice H-2019-09/ PIH-2019-23 (the “**RAD Implementation Notice**”)

and HUD Notice PIH-2016-17 (HA)/ H-2016-17 (the “**RAD Fair Housing Notice**”), each as they may be amended.

- (ggg) “**RAD Unit(s)**” shall mean any unit assisted by a RAD HAP Contract.
- (hhh) “**Redevelopment Plan**” shall have the meaning set forth in Section 3(b).
- (iii) “**RFP**” shall have the meaning set forth in Section 3(a).
- (jjj) “**Scope of Work**” shall have the meaning set forth in Section 3(b).
- (kkk) “**Section 42**” shall have the meaning set forth in Section 3(b).
- (lll) “**Termination for Cause**” shall have the meaning set forth in Section 8(b).
- (mmm) “**Relocation Plan**” shall have the meaning set forth in Section 4(b)(12).
- (nnn) “**UFAS**” shall mean Uniform Federal Accessibility Standards, in accordance with the accessibility requirements of HUD’s Section 504 (24 CFR 8.32).
- (ooo) “**Unit Mix**” shall have the meaning set forth in Section 3(b).
- (ppp) “**Use Period**” shall have the meaning set forth in Section 4(b)(12).
- (qqq) “**Use Restrictions**” shall have the meaning set forth in Section 4(b)(12).
- (rrr) “**VCA**” shall mean Voluntary Compliance Agreement.

2. **Nature of Agreement.**

This Agreement sets forth the principal terms that have been agreed to by the parties concerning the Development. It is anticipated that this Agreement will constitute the “Master Development Agreement” for the development and construction of the Development. The parties are executing this Agreement to establish the principal terms of the transaction in order to enable both parties to proceed with an understanding of their obligations and agreements with regard to the Development.

This Agreement is intended to provide an overall framework for a cooperative, public-private, highly coordinated approach to the implementation of the redevelopment plan of the Development. The County and the Developer agree to work with each other in good faith to execute any subsequent agreements that may be needed to complete the Development.

3. **Development Feasibility and Structure.**

- (a) Request for Proposals and Developer’s Response. The County sought proposals under WOPR No. 01295-03 (the “**WOPR**”) for the Development from qualified housing developers. XYZ, LLC . submitted a response to the WOPR on September 29, 2021. This Master Development Agreement along with the Award Recommendation of Developer Rights will be presented to the Miami-Dade Board of County Commissioners (the “**Board**”) for approval and to adopt a Resolution, awarding the developer rights, and executing the Master Development Agreement to the Developer, as assignee of XYZ, LLC., and authorizing further negotiations with the Developer with respect to this Agreement. The County hereby approves the designation of the Developer as the developer for the Development, subject to and in accordance with the terms and conditions provided herein. Upon written notice from the Developer and with written agreement by the County the County, shall enter into an option to lease with an Owner Entity

with respect to such portion of the Property as identified by the Developer in the written notice.

- (b) The option to lease shall be substantially in the form attached hereto as Exhibit K (the "**Phase Option Agreement**"). Upon the exercise of the option to lease by the Owner Entity and the entering into of a lease related thereto (a "**Phase Ground Lease**"), such Owner Entity shall receive an assignment of the development rights with respect to such portion of the Property. Prior to or simultaneously with the Commencement Date of the initial Phase Ground Lease, Tenant shall deliver written notice to Landlord of the date on which Tenant intends to commence construction of the initial Phase One. Construction shall commence no later than thirty (30) days after the commencement date. Construction of each remaining Phase shall commence no later than ninety days (90) after receiving the Previous Phase Certificate of Occupancy. As in all Phases, in the event timely written notice is not received by the Landlord on the remaining Phases by the respective timing and dates, the Landlord may at its sole option and by written notice to the Tenant deem this agreement terminated for the remaining phases and at the Landlord's sole discretion and right award the development rights of the remaining Phases to another Development entity. Such date hereinafter referred to as the Phase **Turnover Date**).
- (c) For avoidance of doubt, any Phase Ground Lease with an Owner Entity shall be permitted only pursuant to the approval process set forth in the Phase Option Agreement. Upon the Developer's assignment of its development rights to Owner Entities, the Developer's responsibilities hereunder with respect to such portion of the Property will cease and be of no further effect, and such responsibilities will transfer to such other Owner Entities, as applicable, and the County will enter into an estoppel agreement, in substantially the form attached to Agreement as Exhibit L (subject to such revisions as reasonably requested by investors and lenders with respect to each applicable Phase), providing, amongst other matters, confirmation of the obligations arising under this Agreement that have been completed by such Phase.
- (d) Development Overview. The parties acknowledge and agree to comply with all RAD Requirements in existence at the time of execution of this Agreement and future RAD requirements, that may be amended from time to time. The Development shall be a mixed-income development, consisting of the construction of up to 605 new mixed-income multifamily rental units (or the maximum permitted by applicable zoning requirements). This development will include 00 RAD units receiving project-based voucher assistance under the RAD program, Affordable Housing, workforce housing units as defined by Section 33.193.6 of the Code of Miami-Dade County, as may be amended from time to time, and market rate housing (as applicable, however no Phase whatsoever shall incorporate only Market Rate Housing and each phase shall as applicable incorporate and include Affordable, Workforce and Market Rate Housing. The Development will be carried out in multiple phases (each referred to as a "**Phase**"). The Development will consolidate (SITE NAME) into one site. In addition, the development will include state-of-the-art apartments and amenities, and significant community benefits as described on Exhibit A-1 and A-2. All RAD Units and affordable housing units in each Phase will be operated and maintained as qualified Low Income Housing Tax Credit ("**LIHTC**") units under Section 42 of the Internal Revenue Code of 1986 ("**Section 42**"), as amended, for a period of not less than the Tax Credit Compliance Period (as such term is defined in Section 42 and required by the Florida Housing Finance Corporation ("**FHFC**") and any applicable extended use period.

The preliminary schematic plans for (SITE NAME) are attached hereto at Exhibit C (hereinafter referred to as the "**Scope of Work**"). These preliminary Schematic Plans are subject to change as set forth in this Section 3(b). An initial development budget for the Phases

of the Development will be attached (as set forth below) hereto as Exhibit D (hereinafter referred to as the “**Development Budget**”), and will include a pre-development budget for each phase. An initial development schedule will be attached (as set forth below) hereto as Exhibit E (hereinafter referred to as the “**Development Schedule**”). A description of the unit types, sizes and targeted income levels (the “**Unit Mix**”) for the Development is attached as Exhibit F. A list of key Development team members is attached as Exhibit G. The Scope of Work, Development Budget, Development Schedule, and the Unit Mix shall be referred to as the “**Redevelopment Plan**.”

The Developer will submit the Development Budget and Development Schedule to the County within sixty (60) days after the Effective Date for the County’s review, comment and approval. Upon approval of the Development Budget and Development Schedule by the County, each will be incorporated hereto, respectively, as Exhibit D and Exhibit E. If the County has not provided the Developer with written notice of its approval of the Development Budget and Development Schedule or with any written comments with respect thereto within the later of (i) thirty (30) days of submission, or (ii) ninety (90) days following the execution of this Agreement, the County shall be deemed to have consented to the Development Budget and Development Schedule.

Following the County’s approval of the Development Budget and Development Schedule, Developer shall be required to obtain the County’s approval, such approval not to be unreasonably withheld, only with respect to Material Changes to the Redevelopment Plan and as Material Changes become necessary. At a minimum, notice of any Development updates shall be provided in monthly intervals. After the County provides County’s approval (or deemed approval) of the Redevelopment Plan, any other changes, other than Material Changes, shall be deemed effective upon the Developer providing to the County notice of said change(s). Subject to the preceding sentence, the following shall be considered “**Material Changes**”:

- (1) Changes to the Unit Mix that preclude the redevelopment of 00 RAD Units at a ratio to other units of 50% or less per Phase;
- (2) Prior to Financial Closing of any Phase, an increase in the Development Budget by more than 10%, net of inflation as determined by the R. S. Means City Cost Index for Miami; or
- (3) Prior to Financial Closing of any Phase, changes to the Development Schedule that delay Construction Completion or lease-up by more than one hundred twenty (120) calendar days.

If the County has not provided the Developer with written notice of its approval of any submitted Material Change(s) to the Redevelopment Plan or with any written comments to any such submitted Material Change(s) within thirty (30) days of submission, the County shall be deemed to have consented to any such Material Change(s) to the Redevelopment Plan.

Furthermore, a Phase Option Agreement will be executed by and between the County and the Owner Entity to reflect the site control granted to the Owner Entity with respect to each Phase. As provided above, the comprehensive Development contemplated herein will occur in Phases and the County will permit various direct leases, upon the exercise of the option set forth in the Phase Option Agreement, with various Owner Entities with respect to each of the various Phases that collectively comprise the Development. All proposed Phase Option Agreements will be first submitted to the County for review and approval prior to execution

of said Phase Option Agreement. The County will provide approval, which will not be unreasonably withheld, within thirty (30) calendar days. If the County does not respond to the Developer's submission of a proposed Phase Option Agreement then said Phase Option Agreement will be deemed as approved by the County. However, withstanding the above, prior to or simultaneously with the Commencement Date of the initial Phase Ground Lease, Tenant shall deliver written notice to Landlord of the date on which Tenant intends to commence construction of the initial Phase One and the remaining Phases. Construction shall commence no later than thirty (30) Days after the commencement date, additionally within ten (10) days after the initial commencement date, written notice will be given to Landlord of the date which Tenant intends to commence construction of the remaining Ground Lease Phases. Construction of each remaining Phase shall commence no later than ninety days (90) after receiving the Previous Phase Certificate of Occupancy. As in all Phases, in the event timely written notice is not received by the Landlord on the remaining Phases by the respective timing and dates, the Landlord may at its sole option and by written notice to the Tenant deem this agreement terminated for the remaining Phases and at the Landlord's sole discretion and right award the development rights of the remaining phases to another Development entity.

The parties understand that RAD Requirements require that any Existing Resident who is on a public housing lease, has submitted an application to be added to an existing lease, or is otherwise in lawful occupancy at the time of issuance of a RAD CHAP (i.e., Commitment to Enter into a Housing Assistance Payments Contract) has a right to return to the Development, but actual RAD Requirements will govern. The parties further acknowledge and agree that the number of RAD Units contemplated as part of the Development is intended to provide each Existing Resident a right to return to the Development upon Construction Completion, through a one-for-one replacement of all existing public housing units and by ensuring that each Existing Resident household has access to a right-sized unit for its household size. To assure the Existing Residents of options and choices in the development process, if an Existing Resident desires to move from the Development (instead of remaining in the Development and becoming a resident in a new RAD unit upon Construction Completion), the County will seek to provide the resident with alternative relocation resources, following the guidelines set forth in Miami-Dade Public Housing and Community Development's Admissions and Continued Occupancy Policy (ACOP) and any related County Resolutions.

- (e) Ownership Entities for Rental Phase and Selection of Investor. The Developer shall form different owners to own each Phase of the Development (each, an "**Owner Entity**"), as further evidenced by each Phase Option Agreement. Each Owner Entity will have a managing member that will be a limited liability company controlled by the Developer. The principal equity interest in the Owner Entity with respect to any Phase containing LIHTC Units will be owned by a LIHTC investor that is selected by the Developer and subject to approval by the County, not to be unreasonably withheld.

In cases where the Unit Mix includes RAD Units, as well as affordable and/or market rate units, the RAD Units shall be considered "fixed" or "floating," and identified as such in the HUD PIH Information Center ("**HUD PIC**") website, or any successor information system.

Notwithstanding the foregoing set forth in Sections 3(a) through 3(c), this Agreement and the parties' obligations hereunder are contingent upon the final approval of this Agreement by the Board, which shall be within the Board's sole discretion. If the Board, in its sole discretion, does not approve this Agreement, this Agreement shall be null and void.

4. **Development Responsibilities.**

(a) Developer Responsibilities. As more specifically set forth herein, the Developer (which, for purposes of this Section 4, will be deemed, if applicable, to be the Owner Entity to which Developer has entered into a Phase Ground Lease with the intent for such entity to develop all or a portion of the Property) shall be responsible for development services in connection with the new construction work in each Phase of the Development. The Developer shall be responsible to manage and maintain the continued occupancy of any Phase of the Development upon Construction Completion of the Development, as well as carrying out all other work for which Developer is responsible, as such responsibilities are detailed in this Agreement. Notwithstanding the foregoing, the parties acknowledge and agree that the Developer shall have no responsibility, liability or obligation (other than those obligations set forth in this Agreement) with respect to the existing units or the Existing Residents until they have been moved into a Phase of the Development. The actual services to be delivered by the Developer shall include all development services reasonably required to complete the construction of the Development and, except as otherwise provided herein and to the extent applicable, to cause each Owner Entity to facilitate the construction of each Phase of the Development, including, but not limited to:

- (1) establishing phasing and timetables, structuring and securing financing and obtaining necessary governmental approvals, and hiring a general contractor or construction manager. Not less than thirty (30) calendar days prior to submission of any funding applications, the Developer shall submit to the County a complete draft development plan (each, a “**Phase Development Plan**”), including Scope of Work, Development Budget in Excel (in a format that includes formulas and cell inputs that the County can review and work with), Development Schedule and Unit Mix. If the Phase Development Plan incorporates Material Changes to the Redevelopment Plan, then the County shall approve any modifications to a Phase Development Plan within ten (10) calendar days after the County receives the Phase Development Plan.
- (2) providing financing to the project (other than financing which is the responsibility of the County, as such financing is identified in this Agreement) and identifying and securing additional financing, including completing funding applications for available local, state, and federal funding, as mutually agreed upon by the County and the Developer;
- (3) providing all required third-party guarantees, including investor and completion guarantees;
- (4) preparing the RAD Financing Plan; providing identification of all sources and uses of funding, cost estimates, and confirming the appropriateness of all budget line items, assisting in preparing or coordinating all documents necessary for closing of the financing in accordance with, as applicable, RAD Requirements; collaborating with the County to finalize documents and assist in the preparation of the evidentiary submission to HUD; and scheduling the Financial Closing; providing a copy of all Financial Closing documents to the County in searchable PDF format;
- (5) entering into contracts or agreements, consistent with the terms of this Agreement, necessary or convenient for Construction Completion of the Development, which contracts or agreements may be assigned, as appropriate, by the Developer to the related Owner Entity at or prior to the Financial Closings. Awards shall be made to the bidder or offeror whose bid or offer is most advantageous to the Development, taking into consideration price, quality and other factors deemed by the Developer to be relevant; the Developer shall make good faith efforts to contract with qualified

bidders and offerors that are HUD Section 3 businesses, Small and Minority firms, Women's Business Enterprise, and Labor Surplus Area firms. The Developer has partnered with LCN Group, Inc. a certified Section 3, DBE, CSBE, and MWBE firm, and is committed to award at a minimum a 35% of the construction subcontracts to certified Section 3, CBE, DBE, S/M/WBE, and Labor Surplus Area firms and the Developer shall not employ or contract with any third party contractor which has been debarred by HUD or the County and shall promptly terminate any contracts with any third party contractor that is subsequently debarred;

- (6) determining all necessary governmental approvals for such plans;
 - (7) carrying out pre-construction and construction activities, including demolition (as applicable), geotechnical testing, environmental testing and remediation (as applicable), design and engineering of the Development, guaranteeing Construction Completion of same without Material Changes to the Development Budget or Development Schedule, and ensuring compliance with all applicable laws, rules and regulations;
 - (8) carrying out property management of the Development pursuant to a Management Agreement, which the Developer will create and Developer and County will mutually agree on within one hundred eighty (180) days after the Effective Date, and will then be incorporated hereto as Exhibit H. If the County has not provided the Developer with written notice of its approval of the Management Agreement or with any written comments with respect thereto within the later of (i) thirty (30) days of submission, or (ii) ninety (90) days following the execution of this Agreement, the County shall be deemed to have consented to the Management Agreement attached hereto and made a part hereof as Exhibit H to this Agreement, following the Construction Completion of each Phase of the Development, including maintaining all applicable occupancy standards and maintaining all requisite reports, certifications and data in accordance with applicable VCA/UFAS unit reporting requirements; Developer shall assist the County with all reporting and coordination requirements, including, but not limited to, HUD-PIC coordination and submissions required for the project;
 - (9) maintaining regular communication and attending monthly progress meetings with the County and the Existing Residents regarding its development activities, establishing a public informational website for the project, and providing written monthly reports to include: (a) current month's activities; (b) next month's planned activities; (c) schedule narratives (including any changes); (d) subcontracting narrative, including, but not limited to: job training, employment, HUD Section 3 and small and minority firms, women-owned enterprises, and labor surplus firms, HUD Section 3 jobs created by trade, during construction and post construction; (e) financing summary of status; and (f) pending issues;
 - (10) establishing a detailed scope of work, in conjunction with the County, for the new construction work and submitting the same for County approval; and
 - (11) providing all records as may be required by the County, including, but not limited to, records pertaining to Davis-Bacon, job training, employment, HUD Section 3 and small and minority firms, women-owned enterprises, and labor surplus firms, HUD Section 3 jobs created by trade, during construction and post construction, etc.
- (b) Design, Construction, Relocation Plan, and Accessibility Requirements.

- (1) The Developer and County shall conduct value engineering reviews during design and construction document phases to minimize construction cost and maximize scope of work to be done with allocated funding. The County will have access to design drawings, may provide comments and requests to changes in design, finishes and all aspects of the design development process, and may, along with the Existing Residents, participate in the design decision making process for all material design and development programming decisions.
- (2) The Developer will provide the County with all cost certifications and reports from the investor and lender and the County will have the opportunity to review and comment on such certifications and reports.
- (3) The County will have the opportunity to approve all change orders that require the approval of the investor and the lender (i.e., in excess of those minimum thresholds per occurrence and in the aggregate that do not require the approval of the investor and lender), such approvals not to be unreasonably withheld or delayed.
- (4) The Developer shall meet or exceed federal accessibility requirements and other requirements as indicated herein. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 and 24 C.F.R. Parts 8 and 9, prohibits discrimination against persons with disabilities in any program or activity receiving Federal Financial assistance. 24 C.F.R. § 40.4 established the Uniform Federal Accessibility Standards (UFAS) as the standard design, construction, or alteration of residential structures. UFAS became effective July 11, 1988. The Developer shall provide at a minimum (unless more stringent requirements apply) not less than five percent (5%) of UFAS compliant units for mobility-impaired persons. An additional minimum of two percent (2%) is required for people with hearing or vision impairments. Not less than one unit each shall be provided for mobility-impaired and one unit for vision or hearing impaired if percentages indicate that less than one unit is required. UFAS compliance and certifications are required for all areas required by UFAS, including interior and exterior of units, common areas, site and parking, etc. The Developer shall retain an independent, experienced, and qualified third-party consultant (UFAS consultant) to certify UFAS compliance in a certification form provided by the County. The UFAS consultant shall provide the HUD UFAS Accessibility Checklist along with its certification form, attached hereto as Exhibit M, to the County. The UFAS consultant shall not be the architect of record. The UFAS consultant shall have experience in providing UFAS certification including design reviews, construction reviews, and certifications. Additionally, the UFAS consultant shall provide to the Developer, and copy to the County, comments at fifty percent (50%) and one hundred percent (100%) of construction documents. The Developer shall submit, through the County, its one hundred percent (100%) construction documents for UFAS units for review and approval by HUD. Any comments by HUD and/or the County and any other agencies having jurisdiction shall be incorporated in the construction documents. The UFAS consultant shall also conduct on-site inspections during construction at fifty percent (50%) and one hundred percent (100%) of Construction Completion to confirm UFAS compliance. The Developer, architect of record, the UFAS consultant, and the Developer's general contractor shall attend HUD's site inspections that may be conducted during construction and/or at Construction Completion. The Developer shall facilitate site access for HUD's site inspections. HUD will provide comments to the County and the Developer. The Developer shall address all HUD comments to receive HUD approval. If Developer fails to comply with UFAS, as may be identified by the County, HUD or any other entity having

jurisdiction, such noncompliance shall be deemed an Event of Default pursuant to Section 9 of this Agreement, and the Developer shall be provided an opportunity to cure said default, at the Developer's cost, as prescribed by Section 10 of this Agreement. On-going information concerning UFAS units and its occupants shall also be required by the County, which requirement shall survive this Agreement. The Developer shall provide required UFAS-related information as reasonably required by the County. In addition, developers are highly encouraged to provide units that are easily "adaptable" to UFAS units. The Developer shall assist with VCA/UFAS reports and any other reports or information required by County or HUD.

- (5) Davis-Bacon wage requirements: Davis-Bacon wages shall apply to all structures built or rehabilitated on the County owned or leased land regardless of whether these structures receive a federal subsidy or not. These structures may include, but are not limited to, RAD Units, affordable units, market-rate units, commercial and/or office buildings, and/or any other structure built on site. The Developer shall meet all applicable Davis-Bacon wage requirements and shall monitor and ensure Davis-Bacon wage compliance by general contractor(s), sub-contractors, sub-sub-contractors, etc., and shall ensure that all contracts and sub-contracts issued to any contractor on the project include Davis-Bacon requirements. The Developer shall carefully review Davis-Bacon requirements with all contractors and sub-contractors on site on an on-going basis, shall appoint an experienced and qualified Davis-Bacon compliance officer to ensure compliance during the entire construction duration, and shall provide Davis-Bacon compliance reporting to County as it may require. Any costs incurred by the County due to Davis-Bacon noncompliance by the Developer and/or any of its contractors, shall be reimbursable to the County by the Developer.
- (6) 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.
- (7) The Developer shall ensure that its contractors and their subcontractors are classifying workers properly for Davis-Bacon purposes and that they maintain proper documentation to support worker classification. In reviewing certified payrolls, the County will be alert to anomalies, and in such cases will consult with federal agencies, such as the Internal Revenue Service, Department of Labor, and HUD. Review of payroll records and/or similar documents by the County shall not relieve developers, contractors and subcontractors from ensuring Davis-Bacon Compliance and appropriate worker classification in accordance with all applicable requirements.
- (8) 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).

- (9) Notwithstanding the foregoing subsection (6) above, the Developer shall require all contractors and subcontractors to pay Davis-Bacon Wages.
- (10) The Developer shall provide a construction schedule using a Gantt chart format (or another format reasonably acceptable to the County) indicating all activities (e.g. event, task, and trade).
- (11) The Developer shall ensure unit design layout allocates proper circulation space and sustains suitable linear wall allocation for proper functioning and furniture layout.
- (12) The Developer shall provide as he committed to, an emergency generator that will power code-required emergency items in the building, in addition to providing power for ninety-six (96) hours of operation without refueling, at a community room and a community area kitchen, within the project sites. In addition, to all community benefits and public housing unit amenities enclosed in its proposal and preliminary described and summarized in Exhibits A-1 and A-2.
- (13) Appliances (only applies to buildings undergoing rehabilitation):
Existing appliances (such as refrigerators, ranges, ovens, washers, dryers, water heaters, etc.) shall be removed and replaced with new appliances. The Developer shall bear the cost of removal and relocating/moving the existing appliances to an offsite centralized location to be determined by the County. The Developer shall secure the site during any removal and/or replacement of appliances, equipment, furnishings, etc. This work shall be carefully coordinated between the Developer and the County.
- (14) Recycled and Salvaged items:
The Developer is responsible to collect and deliver to the County Store all items in a Development site that are to be recycled. Appliances or furnishings going to the County Store or back to the County for its use are “recycled” items.
Recycled items include but are not limited to equipment, telephones, televisions, vacuum cleaners, fax machines, copiers, tools, all types of appliances, all furniture, etc. as directed by the County. The Developer shall contact the County Store representative and follow the following process for items that are directed to be delivered to the County Store:
- a) The Developer shall call the County Store representative at 305-556-8106 at least a day in advance (preferably earlier) to notify them of the number of trucks and equipment/furnishings to be delivered, and provide them with an opportunity to prepare for the delivery. Deliveries of the equipment/furnishings by the Developer to the County Store (located at 980 West 84 Street, Hialeah, Florida) shall be scheduled between 7:30 and 10 am only, since they have to attend to walk-in customers the rest of the day. The County Store does not accept drop-offs on Fridays, weekends or legal holidays.
 - b) Developer shall complete all the information required on the attached Property Action Form. Please include the “Asset Tab # or Serial # of each equipment/furnishing, if available. If none can be found, indicate “N/A” in that column, and provide a detailed description of the equipment.

- c) The County Store will not accept delivery of any chemicals; therefore if any item has a gas tank or other type of chemical container attached, the chemical container needs to be removed by the Developer prior to delivery.
- (15) The Developer shall closely coordinate with the County and attend meetings with the Existing Residents as reasonably required to inform and receive input from such residents on all aspects of the Development plans, and as required by RAD Requirements. The Developer shall give good faith consideration to incorporate input received from the Existing Residents, in coordination with the County, as feasible and consistent with applicable codes, zoning, federal requirements, etc. The County will coordinate and schedule meetings with the Existing Residents.
- (16) The Developer shall submit in writing a detailed relocation plan prepared by a third-party relocation professional (“**Relocation Plan**”), in compliance with the County’s Tenant Relocation Agreement standards set in Resolution No. R-1181-19, for any Existing Residents intending to relocate to the Development upon Construction Completion for review and approval by the County, which approval shall not be unreasonably withheld. The Relocation Plan shall include appropriate notification and minimum disruption/inconvenience for the Existing Residents and safety as major considerations. The Developer shall provide a “third party relocation coordinator” to plan, organize, implement and monitor all aspects of the Relocation Plan, closely coordinate all aspects required for relocation, including phasing and duration, temporary unit locations and rental costs, moving and storage of furnishings, transportation, meals, pets, mail, etc. The County shall cooperate to issue notices and convene meetings in accordance with the Relocation Plan. Relocation costs will be part of the project budgets by phase.
- (17) The Developer shall provide to the County supporting documentation, such as Notice to Proceed (NTP) to contractors/sub-contractor and Certificates of Occupancy or Completion, as applicable.
- (18) The Developer and its consultants shall carefully review all change orders, contingency adjustments and/or any other additional costs (herein change orders) to confirm that these are appropriate and to minimize said costs whenever possible. Such review shall include, but not be limited to, compliance with contract documents, the party requesting the change order, and the reason for such request (justification), hidden or unforeseen conditions, architect/engineer (“**A/E**”) error and/or omissions, critical path analysis for time extensions and other contract requirements.

When change orders involve time extensions, the Developer and its consultants shall also carefully review and confirm that these are appropriate and shall minimize wherever possible time extensions. Time extension reviews shall include an evaluation of the critical path analysis to confirm whether the time extension has impacted the critical path.

- (19) The Developer shall carefully review and coordinate the work of its consultants to minimize A/E errors and omissions, and minimize any change orders, including additional costs and time extensions on the project. The County shall not approve additional costs/fees for A/E errors and omissions or any other costs/fees related to conditions which could have reasonably been discovered or should have been discovered with appropriate due diligence by the Developer and/or its consultants, contractors or other vendors.

- (20) The County may back-charge the Developer up to \$500 Daily for reasonable administrative costs it incurs for non-compliance with the applicable regulations by the Developer and/or its consultants, contractors or vendors. This includes, but is not limited to, compliance with Davis-Bacon wages and HUD Section 3 requirements.
- (21) Award Letters. Upon receipt of any funding award, the Developer shall provide to the County all award letters, including from FHFC and commitment letters from financial institutions.
- (22) HUD RAD Requirements. The RAD evidentiary documents are subject to the review and approval by HUD and must contain the following provisions:
- RAD Units will continue to be operated as such (“**Use Restrictions**”) for a period of twenty (20) years with required renewals in accordance with the RAD Use Agreement as required by RAD Requirements (“**Use Period**”) from the date the use first commences;
 - Use Restrictions shall be in a first priority position against the property (e.g. prior to any financing documents or other encumbrances) during the Use Period; and
 - The approved Owner Entity shall maintain ownership and operation of the property during the Use Period. The Owner Entity shall not convey, sublease or transfer the Property without prior approval from the County at any point during the Use Period other than pursuant to customary transfer provisions.
- (23) The County is responsible for monitoring and enforcing the Use Restrictions during the Use Period.
- (24) The Developer will provide a community benefits program at the Development, referred to herein as the Community Benefits Program. A preliminary description of the Community Benefits Program is set forth at Exhibit A-2.
- (25) The various Phases of the Development will generate a number of financial benefits (“**Financial Benefits**”). Such Financial Benefits are further described in Exhibit B.
- (26) The Development is subject to the County’s Sustainable Buildings Program provisions in Chapter 9 of the Code of Miami-Dade County, Sections 9-71 through 9-75 together with Miami-Dade County Implementing Order IO 8-8, as managed by Miami-Dade County Office of Resilience within the Regulatory and Economic Resources Department. The Developer shall design and build the Development to be 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.

The LEED Silver certification or designation relative to the Development is outlined by the U.S. Green Building Council. The Developer 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.

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, Developer 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 Developer 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. Developer’s decision whether to incorporate or adopt any such additional steps or means shall be made in Developer’s sole and absolute discretion. Other specific requirements include:

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

Electric Vehicle (EV) charging stations.

- (27) Sea Level Rise and Heat Resilience: In accordance with Miami Dade Board of County Commissioners (BCC) 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.
- (28) 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.

The Developer’s obligations under this Section 4(b) of this Agreement shall survive the termination of this Agreement.

- (c) County’s Responsibilities. As more specifically described herein, the County is responsible for the following activities related to the Development (such list is not intended to be exhaustive):
 - i. Developing and submitting all necessary applications to HUD (provided that the Developer

shall have an opportunity to review and comment on the same prior to submission);

- ii. Approving Owner Entity admissions and occupancy criteria and related property management documents such as the RAD-Section 8 lease and house rules, which approvals shall not be unreasonably withheld, delayed or conditioned;
 - iii. Reviewing, approving, and submitting the RAD proposal and evidentiaries to HUD, with assistance and cooperation from the Developer as reasonably needed or requested;
 - iv. Providing public housing funds, Surtax Funds and General Obligation Bond Funds that are legally available and which may require a competitive application and selection process, and allowing the use of a portion of such funds as a loan for predevelopment activities in accordance with the RAD Requirements;
 - v. Entering into the RAD-PBV HAP Agreement for the RAD Units and providing the assistance due thereunder; work with the Developer and departments of the County to help facilitate off-site infrastructure improvements necessary for the Development;
 - vi. Cooperating with the Developer in the Developer's application for and executing, as needed, all zoning, permitting and similar governmental applications and permits necessary for the Development, as well as all documents related to each Financial Closing;
 - vii. Coordinating with the Existing Residents, other stakeholders in the County and other stakeholders on Development-related issues;
 - viii. Obtaining all necessary HUD approvals (including as related to RAD approvals, environmental approvals in accordance with 24 C.F.R. Part 50 or Part 58), providing reports and maintaining communications with HUD. Notwithstanding the foregoing, the County will provide copies of all items to Developer prior to submission to HUD in order to permit the Developer to provide input and comment with respect to the same;
 - ix. Cooperating with the Developer to assure the timely relocation of Existing Residents to the Development; and
 - x. Managing the relocation of the Existing Residents who will not relocate to the Development, including providing them with alternative relocation resources, such as available public housing unit or a tenant-based voucher. Additionally, the County will reasonably cooperate if the Developer determines to offer any Existing Resident an "Alternative Housing Option" in accordance with the RAD Fair Housing Notice.
- (d) Unit Management Software.
- i. The Developer must use the County's current system of record, Emphasys Elite (or successor system), for the purposes of entering re-certification data, HUD PIC submissions, and reporting. The Developer will be responsible for any associated software license, support, and training costs. The County will make the application available to the Developer and will be responsible for the user account management and security. The County will not provide any e-mail or telecommunications services and will not provide any technical support related to the Developer's information technology infrastructure, including, but not limited to, desktops, servers, routers, or related network connectivity. The Developer will also be responsible for any maintenance and development costs associated with any application or database interfaces to the County's current system of record.

5. Fees.

- (a) Developer Fee. The parties agree to seek approval from HUD, if required by RAD Requirements, of the maximum allowable developer fee (whether or not deferred) permitted by the Florida Housing Finance Corporation for the Development of eighteen percent (18%), with respect to four (4%) Low-Income Housing Tax Credit transactions, and sixteen percent (16%), with respect to nine percent (9%) Low-Income Housing Tax Credit transactions (the “**Developer Fee**”). The Developer agrees that the County shall earn a fee, , equal to 33% of the total Developer Fee described herein and as 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 Payment; Lessor Note.
- i. The Developer or its subsidiary or designee agrees to pay to the County an aggregate cash ground lease payment of \$3,000,000 (a “**Capitalized Payment**”), which will be paid to the County in lump sum(s) in the manner set forth on Exhibit B.
 - ii. An Owner Entity and the County will enter into a loan agreement in which the County provides such Owner Entity with a loan for the appraised value (as determined by the Florida Housing Finance Corporation, and agreed upon by County and Developer) of the portion of the Property leased to such Owner Entity, *minus* any cash payments made towards the Capitalized Payment), with upon Closing, provided, however, that, upon the Financial Closing of the last Phase, the County will have received, in the aggregate throughout all Phases, cash payments of \$3,000,000 (which constitutes the Capitalized Payment the Developer agreed to pay to the County pursuant to the competitive procurement of the Developer). For example, in a three Phase development, (x) if the fair market value for the first Phase is equal to \$3,000,000 and the applicable Owner Entity for such first Phase enters into a Lessor Note for \$1,500,000 and makes a cash payment to the County of \$1,500,000, and (ii) if the fair market value for the second Phase is equal to \$2,500,000 and the applicable Owner Entity for such second Phase enters into a Lessor Note for \$1,500,000 and makes a cash payment to the County of \$1,000,000, then (y) for the third and final Phase of development, if the fair market value of such third Phase equals \$3,000,000, then the applicable Owner Entity will enter into a Lessor Note for \$2,500,000 and *must* make a cash payment to the County of \$500,000.
 - iii. In connection with the foregoing, the Owner Entity will execute and deliver to the County a promissory note in the amount of such loan (“**Lessor Note**”). The terms of the Lessor Note are outlined in Exhibit B and the form of the Lessor Note shall be subject to the approval of the LIHTC investor.
- (c) Annual Lease Payment. The Phase Ground Lease for each Phase with Affordable Housing units will also include an annual lease payment in the amount set forth in Exhibit B (“**Annual Rent**”).
- (d) County Net Cash Flow Participation. On all Phases, the County will receive 33% of all net distributable operating receipts characterized as net cash flow (the “**Net Cash Flow Participation**”). The County may request, no more than once annually, and to be delivered to the County, a property and partnership audit, such audit shall be performed by a licensed certified public accountant CPA and shall be paid for by the property and/or partnership.
- (e) County Residual Participation. On all Phases, upon any sale, cash-out transaction, re-

syndication of the Low Income Housing Tax Credits (LIHTC) or any other cash-out or re-finance transaction whatsoever involving the Developer's or applicable entity leasehold interests or other property interests related to the Development, other than those in which the County is the purchasing entity, the County will receive 30% of the net proceeds from such transactions after debt, exit taxes and agreed upon and customary offsets, approved by the County operating loans to the project and other related costs.

For avoidance of doubt, the Developer shall not owe any amounts to the County in connection with the Phase Option Agreement or the applicable Phase Ground Lease until the Financial Closing for such Phase.

6. Payment Provisions for County Funds (if applicable).

- (a) The Developer shall submit to the County, not more often than monthly, a payment (Draw) request for County funds in a form and format acceptable to the County, for expenditures for the work completed and incurred.
- (b) Each payment request shall be carefully reviewed and evaluated for accuracy, completeness and compliance with this agreement by the Developer prior to its submission to the County. Each payment request shall identify, by line item and by reference to the corresponding element of the Budget, (a) the total costs to date incurred, (b) the corresponding portion of the compensation due to developer, if applicable, (c) the amounts, if any, of previous payments, and (d) the portion, if any, of such costs and/or fee for which a payment is requested under the payment request and any other provisions reasonably required (with reasonable advance notice) by the County. Each payment request shall be accompanied by separate billing statements or invoices from each consultant, sub-consultant, contractor or sub-contractor (herein vendors) to which payment has been made or will be made. The County shall not be required to make advance payments or deposits.
- (c) Payment requests shall not be processed until a proper payment request (herein a "**Proper Invoice**") has been received by the County from the Developer. A Proper Invoice means an invoice which conforms to the payment requirements of the County. A Proper Invoice shall include a statement by the Developer waiving claims for extra direct and indirect costs or time associated with work preceding the date of the invoice, or a statement in sufficient detail containing all rights reserved for work already performed. All present requirements or future rules pertaining to the execution of a Proper Invoice will be made available to the Developer in a timely manner. The Developer shall make payments to all vendors included in each respective payment request within five (5) business days of receipt of funds from the County. The Developer shall include the provisions of this section in all sub-contracts, and require all vendors to include this provision in their contracts with other vendors.
- (d) The time at which payment for service is due from the County shall be calculated from the date on which a Proper Invoice is received by the County. The time at which payment shall be due from the County to the Developer shall be forty-five (45) days from receipt by the County of a Proper Invoice from the Developer. In any case in which an improper invoice is submitted by the Developer, the County shall, within ten (10) days after the improper invoice is received, notify the Developer that the invoice is improper and indicate what corrective action on the part of the Developer is needed to make the invoice proper. Notwithstanding this, the County reserves its right to review an improper invoice at any point in time and notify the Developer of corrective actions that are needed and must be taken.

- (e) Final payment shall not be made to the Developer until the Developer has resolved all pending Davis-Bacon wage rate compliance issues and restitution is made (or placed in escrow for unfound workers) to all workers determined by the County to be underpaid. At a minimum, an amount equal to the cost of all pending Davis-Bacon non-compliance issues shall be retained until such issues are resolved to the County's satisfaction. The Developer shall be assessed up to \$500 daily for all administrative costs it incurs in managing Davis-Bacon non-compliance issues.
- (f) For non-County funds, the Developer shall provide a report, in a form and format acceptable to County, indicating payment requests and approved amounts received by the Developer for all funding sources and percentage of Construction Completion. In addition, the Developer shall provide, on a monthly basis, a construction schedule and construction budget, with anticipated changes to the budget and schedule, along with a change order log, and the Developer will meet with the County at the County's request, at thirty day intervals, to review and discuss the monthly report. Any proposed changes will be subject to the approval provisions set forth in this Agreement.

7. Property Management Responsibilities.

- (a) Designation of Property Manager. The initial property manager for each Phase of the Development shall be Atlantic Pacific Community Management, LLC.. The Property Manager may or may not be an affiliate of the Developer. (the "**Management Agent**"), and the County, pursuant to the Management Agreement, to be attached hereto as Exhibit H. The Management Agent shall be responsible for the day-to-day operation of each Phase of the Development, including, but not limited to, compliance, collections, leasing, payment of invoices and maintenance. Specific duties shall be further detailed in the initial agreement between the Management Agent and the Owner Entity, and such agreements are subject to the County's reasonable approval. Notwithstanding the foregoing, the parties acknowledge and agree that the Developer shall have no responsibility, liability or obligation (other than those obligations set forth in this Agreement) with respect to the existing units or the Existing Residents, and that the Management Agent's responsibilities, as noted herein, shall commence upon the Construction Completion of each Phase of the Development.
- (b) Admissions Policies. The parties agree that the occupancy will be carried out with respect to the Development as follows:
 - i. The Existing Resident households shall have the right to return to occupy RAD Units in each Phase of the Development once the RAD Units are available for occupancy, and have a right to have access to a unit that is the right size for the Existing Resident's legally lease-compliant household size, based on unit availability within the project and coordination with the County to determine if a right-sized unit can be included in the project's design.
 - ii. Any vacancies to RAD Units not filled by Existing Residents (either at initial occupancy or thereafter) will be filled by applicants who are referred from the County's waiting list, subject to screening by the Management Agent for income and other LIHTC compliance matters. The parties agree that a site-based waiting list will be used, in accordance with the County's Section 8 Program Administrative Plan. The parties acknowledge and agree that the County's Section 8 Administrative Plan will be revised, as necessary, to reflect the foregoing and that a referral process will be formulated by the parties to ensure that lease-up occurs in a timely and equitable manner.

- iii. The parties agree that the occupancy will be carried out with respect to the Development following the Management Agent's tenant screening processes.
- (c) Property Management Fee. The Management Agent shall receive a management fee pursuant to the Management Agreement.

8. Termination.

- (a) Termination for Convenience. The County reserves the right to terminate this Agreement, in whole or in part, with respect to any Phase that has not yet reached a Financial Closing, at any time for the convenience of the County, if the County shall determine in good faith that it is in the County's best interest, or contrary to that interest to proceed with the Development. In the event of a termination for convenience under this Agreement, the County shall deliver to the Developer a Notice of Termination within thirty (30) days specifying the extent to which the performance of the work under this Agreement is terminated, and the date upon which such termination becomes effective. If the performance of the work under this Agreement is terminated in whole or in part, the County shall be liable to the Developer for all costs resulting from such termination, including, but not limited to, repayment of all fees paid upon execution of the respective Phase Ground Lease in accordance with Section 5(b) hereof, to the extent applicable. In addition, any predevelopment loans advanced to the Developer will be deemed satisfied in connection with the assignment of work product in accordance with subsection (f) below. Within thirty (30) days after receipt of the Notice of Termination, the Developer shall present a proper claim setting out in detail: (i) the total cost of all third-party costs incurred to date of termination, for work products that are included in the approved pre-development budget, including, but not limited to, architectural, engineering, and similar types of costs, and also including any loans from third parties; (ii) the cost of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until the County or its assignee takes possession thereof or assumes responsibility; Within ninety (90) days after receipt of the claim from the Developer, the County shall either respond to the Developer's claim or make a final payment to the Developer in the event there is no dispute relative to claim.
- (b) Termination for Infeasibility. The County or the Developer may terminate this Agreement for infeasibility, but only to the extent that the County and the Developer first made good faith efforts to pursue an alternative course of action that meets the program objectives for the redevelopment contemplated for this overall project(s). In the event that, prior to a Financial Closing, adverse contingencies occur, including but not limited to, the inability to obtain sources of funds in an amount sufficient to complete an applicable Phase, and the parties cannot, within one hundred twenty (120) days after either party providing written notice that an adverse contingency has occurred with respect to a Phase, agree to amend the Development Plan for the Phase, then this shall be deemed an "**Event of Infeasibility**." Upon the occurrence of an Event of Infeasibility, this Agreement may be terminated, in whole or in part, for a Phase that has not yet reached Financial Closing, if one party so agrees following receipt from the other party of written notice of the party's desire to terminate this Agreement for that Phase. In such event, the Developer shall be limited to reimbursement for those costs as set forth in (i), (ii), (iii), and (iv) of Section 8(a).
 - i. With respect to the rights of termination upon an Event of Infeasibility, either party's exercise of such rights of termination for infeasibility shall be specific to the Phase or Phases terminated pursuant thereto and shall not be deemed to terminate any unaffected Phase Option

Agreement, Phase Ground Lease, or this Agreement.

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

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

- (d) Fraud, Misrepresentation or Material Misstatement. The County may terminate this Agreement if Developer attempts to meet its contractual obligations hereunder with the County through fraud, misrepresentation or material misstatement.
- (e) Debarment. The foregoing notwithstanding, any individual, corporation or other entity that attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Developer may be subject to debarment for those reasons set forth in Section 10-38 of the County Code.
- (f) Remedies. In the event that the County exercises its right to terminate this Agreement following an Event of Default, the Developer shall, upon receipt of such notice, unless otherwise directed by the County:
- i. Stop work on the date specified in the notice (the “**Effective Termination Date**”);
 - ii. Take such actions as may be necessary for the protection and preservation of the County’s materials and property;
 - iii. Cancel orders;
 - iv. Upon payment by the County for such work product and payment of other amounts due in accordance with this Section 8, assign to the County and deliver to any location designated by the County any non-cancelable orders for deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services; and
 - v. Take no voluntary action (unless otherwise required by legal obligations) which will increase the amounts payable by the County under this Agreement.

- (g) Developer Shall Deliver Work Product in Event of Termination. In the event that this Agreement is terminated under this Section 8, Developer agrees that it shall promptly deliver to County, or cause to be delivered to County, any concrete, transferable, and useable third party work product generated in connection with the Development, and will assign to County all of its right, title, and interest to such work product, without reservation in exchange for

County's payment of funds paid by Developer (including funds borrowed from third parties) for such work product, along with amounts due to the Developer hereunder. Developer shall be under no obligation to deliver any work product in its possession unless the County shall have reimbursed it for the cost thereof (and paid to the Developer any other amounts due hereunder) or shall have agreed to offset the cost thereof against any indebtedness owing from the Developer to the County. No payment shall be due, however, if the Developer has committed fraud, misrepresentation, material misstatement, or in the event of termination for an Event of Default pursuant to Section 9, provided, however, that the County has a predevelopment loan in effect with respect to such work product.

(h) Partial Termination.

- i. The County may, in its discretion, terminate this Agreement (unless caused by the County's failure to timely perform the County's obligations hereunder) with respect to the respective individual Phases set forth below, at no cost to the County, if:
 1. As to the first Phase of the Development, the Developer is unable to commence construction for such Phase within twelve (12) months from firm commitment of the remaining gap financing required for such Phase, unless the Developer's inability to secure funding and financing is caused solely by the County's failure to timely perform the County's obligations hereunder; or
 2. As to the remaining Phases of the Development, the Developer is unable to secure financing from FHFC for a subsequent Phase within twelve (12) months after the completion of the prior Phase, unless the Developer's inability to secure funding and financing is caused solely by the County's failure to timely perform the County's obligations hereunder, provided, however, that the County may grant reasonable extensions thereof upon a showing by the Developer that it has diligently pursued such Phase in good faith or provided other reasonable justification for such delay.
- ii. Upon partial termination of this Agreement for an applicable Phase, the Developer shall have no further development or possessory rights to the undeveloped portion(s) of such Phase under this Agreement. The Developer and the County shall coordinate and execute appropriate agreements, contracts or other applicable documents to return the undeveloped portions of such Phase to the County, including, but not limited to, an amendment to the Phase Ground Lease to remove that portion of the demised premises that were to be used by Developer for the applicable terminated Phase.
- iii. With respect to the rights of partial termination set forth in subsection (h) above, the County's exercise of such rights of partial termination shall be specific to the Phase or Phases terminated pursuant thereto and shall not be deemed to terminate any unaffected Phase Option Agreement, Phase Ground Lease, or this Agreement.

9. Event of Default.

- (a) An Event of Default shall mean a breach of this Agreement by the Developer after expiration of any applicable notice and cure period without such cure. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include, but not limited to, the following:
 - i. the Developer has made a Material Change to the Development Schedule without the County's approval;

- ii. the Developer has refused or failed to supply commercially reasonably sufficient skilled staff personnel;
 - iii. the Developer has failed to make prompt payment to subcontractors or suppliers for any Services in violation of applicable law;
 - iv. the Developer has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Developer's creditors, or the Developer has taken advantage of any insolvency statute or debtor/creditor law or if the Developer's affairs have been put in the hands of a receiver;
 - v. the Developer has commenced construction of a Phase without obtaining the approval of the County with respect to the approvals required under Sections 3 and 4 of this Agreement;
 - vi. the Developer has failed in any material respect with respect to any representation or warranty stated under Section 17 of this Agreement;
 - vii. the Developer has failed to comply with the public records disclosure requirements set forth in Section 119.0701 of the Florida Statutes and Section 26 of this Agreement;
 - viii. the Developer has failed to comply with any and all UFAS requirements and obligations; and
 - ix. the Developer has made a Material Change to the Development Budget without the County's approval; and
 - xi. the Developer fails to pay any Liquidated Damages due and payable under this Section 9.
- (b) If the County shall terminate this Agreement for default, subject to applicable cure periods set forth herein, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, and reports after payment, if applicable.
- (c) Notwithstanding the foregoing, this Agreement shall not be terminated for default if the delay in fulfilling or inability to fulfill Developer's obligations hereunder arises from (i) unforeseeable causes beyond the reasonable control of the Developer; (ii) an Economic Unavoidable Delay; or (iii) failure of any governmental entity, including, but not limited to, HUD, to provide approvals (e.g., zoning, interlocal agreements, RAD applications, leases, operating agreements, etc.) necessary to complete the work so long as the failure is not a result of Developer errors or omissions in an application seeking approval (any such failure or other cause or event being referred to herein as a "**Force Majeure Event**"). Examples of such causes include (a) acts of God or the public enemy, (b) material acts or failure to act, or delays in action, of the County, HUD, or other governmental entity in either their sovereign or contractual capacity, if the Developer can demonstrate that it has taken reasonable steps to provide for circumstances that facilitate a timely approval in accordance with conventional timeframes typical of such government agency, (c) material acts or failure to act of another contractor (other than a contractor or subcontractor to the Developer or the Owner Entity) in the performance of a contract with the County, (d) fires, (e) floods, (f) strikes or labor disputes, (g) freight embargoes, (h) unavailability of materials, (i) unusually severe weather, (j) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without fault or negligence of both the Developer and the subcontractors or suppliers, (k) delay caused by litigation that is not between the County and the Developer, and (l) infectious disease occurring over a wide area and affecting a large number of people that materially and negatively impacts the Redevelopment Plan.

- (d) The Developer agrees to comply fully with its obligations to provide the Community Benefits Program. The parties understand and agree that the damages to the County, the community, and the public resulting from the Developer's failure to provide the Community Benefits Program may not be subject to exact calculation. For this reason, the parties have agreed to require the Developer to pay the County Liquidated Damages, which shall be due and payable at project completion or at the completion of a phase of the project if the completion of a component of the Community Benefits Program can be measured at a per-Phase completion level, for any such failure which is impossible to quantify with accuracy. In the event the Developer fails to provide any material portion of any item of the Community Benefits Programs, the Developer shall be liable to the County for Liquidated Damages. The amount of Liquidated Damages for each of the Community Benefits Program shall be as set forth in Section 9(e) of this Agreement.
- (e) If the Developer fails to provide the Community Benefits Program related to Small Business Hiring and Job Training and Job Placement, as more particularly set forth in Exhibit A-2, the Developer shall be liable to the County for Liquidated Damages, which Liquidated Damages shall be evaluated and assessed at the end of each Phase and shall be due and payable at the completion of each Phase and shall constitute the sole remedy of the County related thereto. The Liquidated Damages relating to those benefits shall be calculated as follows:
- With respect to Developer's commitment to provide a minimum of 35% of the value of the construction subcontracts to Section 3 certified, or CBE, DBE, S/M/WBE, and Labor Surplus Area firms, Developer shall pay Liquidated Damages in the amount of \$5,000 for each percentage point by which Developer fails to meet the 35% commitment.
- (f) Within ten (10) days after the end of each quarter, Developer shall provide a detailed report to the County, in a format that the County has reviewed and agreed to, setting forth the Developer's progress toward satisfying their obligations to provide the Community Benefits Program, which report shall request the County's acknowledgement that such items have been satisfied. If the Developer is not meeting the commitments set forth above upon the completion of any Phase, such report shall set forth the Developer's plans for meeting such commitments in subsequent Phases. Within fourteen (14) days after the County's receipt of such report, the County shall (i) execute an acknowledgement of the satisfied items, or (ii) provide a detailed written explanation to Developer setting forth the County's reasons for not executing such acknowledgement. If the County fails to so respond within thirty (30) days, the County shall be deemed to have acknowledged that such items have been satisfied.

10. Notice of Default – Opportunity to Cure. Notwithstanding anything in this Agreement to the contrary, if an Event of Default occurs in the determination of the County and the County wishes to declare an Event of Default or otherwise terminate this Agreement for cause to the extent, as provided under this Agreement, the County shall notify the Developer (the "**Default Notice**"), specifying the basis for such Event of Default and the extent to which performance of work under this Agreement is terminated, and advising the Developer that such default must be cured immediately or this Agreement with the County may be terminated. The Default Notice thereof shall specify the nature of the claimed Event of Default, the Phase(s) to which such Event of Default relates, and, if such Event of Default shall be reasonably subject to adequate cure, the Default Notice shall state (i) the actions required to be taken by the Developer to cure the Event of Default, and (ii) the reasonable time (up to sixty (60) days but no less than thirty (30) days (the "**Cure Period**")) within which Developer shall respond with a showing that all required actions have been taken, provided that the Developer shall have such additional time as is reasonably necessary to cure such Event of Default so long as the Developer has diligently commenced and is proceeding in a reasonable diligent manner toward curing such Event of Default. The Cure Period can be extended at the County's sole discretion. During any cure period so provided, the Developer shall proceed diligently with performance of any work required by this Agreement for any Phase(s) which is not the subject of the

claimed Event of Default. Following expiration of the stated cure period (unless the Developer has diligently commenced and is proceeding in a reasonable diligent manner toward curing such Event of Default, as provided hereinabove), the County shall deliver a second notice stating either that the Event of Default has been adequately cured or that the Agreement is terminated with respect to the Phase(s) to which such Event of Default relates.

11. Remedies in the Event of Default.

If an Event of Default occurs and remains uncured pursuant to Section 9 herein, the County may, as its sole remedy, terminate this Agreement with respect to the Phase(s) to which such Event of Default relates in accordance with Section 10 hereof. In addition, the Developer shall be liable for all direct (but not consequential) damages to the County resulting from such Event of Default. In no event shall the County be entitled to bring any suit or proceeding for specific performance.

12. Lien Waivers.

Developer agrees that it will not permit any mechanic's, materialmen's or other liens to stand against the property for work or materials furnished to Developer; it being provided, however, that Developer shall have the right to contest the validity thereof. Developer shall not have any right, authority or power to bind the County, the property or any other interest of the County in the property 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 property, 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 Development or any change, alteration or addition thereto. IF ANY MECHANIC'S LIEN SHALL BE FILED, DEVELOPER SHALL BOND OVER, PROCURE THE RELEASE OR DISCHARGE THEREOF WITHIN NINETY (90) DAYS EITHER BY PAYMENT OR IN SUCH OTHER MANNER AS MAY BE PRESCRIBED BY LAW. NOTICE IS HEREBY GIVEN THAT THE COUNTY SHALL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO THE DEVELOPER OR TO ANYONE HOLDING ANY OF THE PROPERTY THROUGH OR UNDER THE DEVELOPER, AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF THE COUNTY IN AND TO ANY OF THE PROPERTY. THE COUNTY SHALL BE PERMITTED TO POST ANY NOTICES ON THE PROPERTY REGARDING SUCH NON-LIABILITY OF THE COUNTY.

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

13. Indemnification.

- (a) Developer Indemnity. The Developer shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses, or damages, including reasonable attorney fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Developer or its employees, agents, servants, partners, principals or subcontractors, subject to the following sentence. The Developer shall pay all of the County's direct (but not consequential, punitive or special) losses in connection therewith, provided Developer is adjudicated liable, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the County, where applicable, including appellate

proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Developer expressly understands and agrees that any insurance protection required by the Agreement or otherwise provided by the Developer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. Notwithstanding anything to the contrary herein, such indemnification by the Developer shall not cover claims or losses to the extent caused solely by the negligence, gross negligence or intentional wrongful acts or omissions of the County or its officers, employees, agents or instrumentalities.

- (b) County Responsibility. The County shall indemnify and hold harmless the Developer and its affiliates, subsidiaries, officers, agents, employees, representatives, successors and assigns from any and all liability, losses, or damages, including reasonable attorney fees and costs of defense, which the Developer or its affiliates, subsidiaries, officers, agents, employees, representatives, successors and assigns may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the County or officers, employees, agents and instrumentalities. The County shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits, or actions of any kind or nature in the name of the Developer, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The County's indemnification obligations in this Section 13(b) shall be subject to the provisions of Section 768.28, Fla. Stat., whereby the County shall not be liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00), or any claim or judgments or portion thereof, which when totaled with all other occurrence, exceeds the sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00), but only to the extent the limitations set forth in that Statute are applicable. Notwithstanding anything to the contrary herein, such indemnification by Miami-Dade County shall not cover claims or losses to the extent caused solely by the negligence, gross negligence or intentional wrongful acts or omissions of the Developer or its affiliates, subsidiaries, officers, agents, employees, representatives, successors and assigns.
- (c) The obligations of the parties under this Section 13 of this Agreement to indemnify and hold harmless the other party shall survive the termination of this Agreement.

14. Insurance.

The Developer shall maintain coverage as required in A through C below throughout the term of this Agreement. If any portions of this Agreement are assigned, insurance must be provided in the name of the assignee. If material changes are made to the scope, it may be necessary to amend the insurance requirements. The Developer shall furnish to Miami-Dade County, Public Housing and Community Development Department, 701 NW 1 CT. 16th floor, Miami, Florida 33136-3914, Certificate(s) of Insurance or applicable cover note(s) evidencing insurance coverage that meets the requirements outlined below:

- A. Worker's Compensation Insurance as required by Chapter 440, Florida Statutes.
- B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 per occurrence, \$4,000,000 aggregate. 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 this agreement in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined.

Design Stage

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

- D. Professional Liability Insurance in the name of the Developer or the licensed design professional employed by the Developer in an amount not less than \$5,000,000 per claim. This insurance shall be maintained for a period of two (2) years after the County's acceptance of the applicable Improvements from the Developer.

Construction Phase

In addition to the insurance required in A – D above, the Developer shall provide or cause its contractors to provide a certificate of insurance or cover note indicating the following type of insurance coverage prior to commencement of construction:

- E. Completed Value Builders' Risk Insurance on an "all risk" basis, including Windstorm, in an amount not less than one hundred (100%) percent of the insurable value of the building(s) or structure(s). To include site preparation, excavations, under-ground pipes, foundations, temporary structures, scaffolding, construction forms, etc. Off-site materials that will be part of the structure must be covered. Business interruption, extra expense, expediting expense and soft costs are to be included. Coverage shall remain in place until substantial completion of construction has been reached as determined by Miami Dade County, Public Housing and Community Development Department. The policy shall be in the name of Miami Dade County and the Selected Proposer, or the Contractor.

Operation Phase

In addition to the insurance required in A – C above, the following coverage may be required:

- F. Property Insurance Coverage on a "Special Perils" basis to include Windstorm & Hail with a 2% deductible per building, and Flood in an amount not less than one hundred (100%) percent of the replacement cost of the building(s) or structure(s). Miami-Dade County must be named as a Loss Payee with respect to this coverage.

Continuity of Coverage

The Developer shall be responsible for assuring that the insurance documentation required in conjunction with this subsection remain in force for the duration of the agreement period, including any and all option years. The Developer will be responsible for submitting renewal insurance documentation prior to expiration.

All insurance policies required above shall be issued in companies authorized to do business under the laws of the State of Florida, with the following qualifications as to management and financial strength:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to strength, by A.M. Best Company, Oldwick, New Jersey.

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.

15. Agreement Security.

The Developer shall be required to execute, record in the public records of Miami-Dade County, and furnish to the County before commencing any and all construction work on the property in connection with the Development, a payment and performance bond, and/or alternate form of security satisfactory to the County and in compliance with the requirements of Section 255.05 of the Florida Statutes, in the amount of the price for each Phase of the Development then to be undertaken, to assure completion of the work and payment of the costs, free and clear of all claims of subcontractors, laborers, mechanics, suppliers and materialmen. In the event that in partial satisfaction of this requirement the Developer furnishes a payment and performance bond not by the Developer, but by the Developer's construction contractor or construction manager, then the payment and performance bond shall name the County and the Developer as dual obligees. Furnishing a payment and performance bond by the Developer's construction contractor or construction manager naming the County as a joint obligee in no way abrogates the Developer's obligation to directly furnish to the County a payment and performance bond or alternative form of security in compliance with Section 255.05, Florida Statutes. The payment and performance bonds shall have as the surety thereon only such surety company or companies as are acceptable to the County and are authorized to write bonds of such character and amount in accordance with the following qualifications:

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

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

- (b) On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:
- Providing evidence that the Surety has twice the minimum surplus and capital required by the Florida Insurance Code at the time the invitation to bid is issued.
 - Certifying that the Surety is otherwise in compliance with the Florida Insurance Code, and;
 - Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury under ss. 31 U.S.C. §§ 9304-9308.

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

- (c) For contracts in excess of \$500,000 the provision of Section (b) will be adhered to plus the company must have been listed for at least three consecutive years, or holding a valid Certificate of Authority of at least 1.5 million dollars and on the Treasury List.
- (d) Surety Bonds guaranteed through U.S. Government Small Business Administration or

Developers Training and Development Inc. will also be acceptable.

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

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

16. Compliance with RAD Requirements.

- (a) The parties acknowledge and agree that all RAD Units must be developed, operated, and managed in compliance with RAD Requirements and implementing decisions made by the County. By way of example and not limitation:

- i. Under RAD, the public housing capital and operating assistance provided by HUD to a public housing authority is converted by HUD into project-based vouchers under 24 CFR 983 ("PBVs") or project-based rental assistance under 24 CFR 880 ("PBRA") that permit the property owner to support construction or rehabilitation debt.
- ii. A private for-profit entity may be the assignee of a RAD Conversion Commitment and own and operate RAD Units to facilitate the use of LIHTC if and only if the public housing agency or a non-profit entity preserves its interest in the property in a manner approved by HUD. The parties believe that the arrangements described in this Agreement will be so approved, but the parties will not unreasonably withhold approval of such different or additional arrangements as HUD may require.
- iii. Any Existing Residents have a right to return or be relocated to an on-site RAD Unit, that is the right size for the Existing Resident's legally lease-compliant household size, in the Development upon Construction Completion, without re-screening based on income eligibility, credit status, or any other factor. All relocation undertaken in connection with the RAD conversion must comply with RAD Requirements, including compliance with applicable fair housing and civil rights laws and with requirements relating to tenant notices and meetings.
- iv. Leases for RAD Units will comply with, and tenants of RAD Units will be accorded, all rights required by RAD Requirements and any allowable modifications required by the County, including all temporary relocation assistance to be provided by Developer as is required by the RAD Requirements and by the County.

17. Warranties.

- (a) Developer's Warranties. Developer represents and warrants to the County that (a) Developer is and will continue to be duly organized, and is in good standing under the laws of and qualified to do business in the State of Florida, (b) Developer has and will have all necessary power, authority, licenses and staff resources for the undertaking of its obligations under this Agreement, (c) this Agreement has been duly entered into and is the legally binding obligation

of Developer, (d) this Agreement will not violate any judgment, law, or agreement to which Developer is a party or is subject, and € there is no claim pending, or to the best knowledge of Developer, threatened, that would impede Developer's ability to perform its obligation hereunto. Developer shall not hereafter enter into any agreement which would, or modify any existing agreement in a manner that would, impair its ability to perform its obligations hereunder, and will notify the County if any suit is threatened or law proposed which would impair its ability to perform its obligations hereunder.

- (b) County's Warranties. The County represents and warrants to Developer that (a) the County has and will have all necessary power and authority under Florida law for the undertaking of its obligations under this Agreement, (b) this Agreement has been duly entered into and is the legally binding obligation of the County, (c) this Agreement will not violate any judgment, law, consent decree, or agreement to which the County is a party or is subject to and will not violate any law or ordinance under which the County is organized, (d) there is no claim pending, or to the best knowledge of the County, threatened, that is likely to materially impede the County's ability to perform its obligation hereunto. The County shall not hereafter enter into any agreement or consent decree which would, or modify any existing agreement or consent decree in a manner that would impair its ability to perform its obligations hereunder, and will notify Developer if any suit is threatened or law proposed which would materially impair its ability to perform its obligations hereunder.

18. Term.

This Agreement shall begin upon execution hereof, and shall expire upon the completion of all the activities described herein, unless sooner terminated in accordance with the terms provided herein or, with respect to any Phase, by the Financial Closing on that Phase. With respect to items set forth in the Financial Closing documents for each Phase, the Financial Closing documents for such Phase will govern the relationship between the parties to the extent described in such Financial Closing documents. Notwithstanding the foregoing, any provision contained in this Agreement that is not specifically addressed, modified or overridden in the Financial Closing documents will survive the termination of this Agreement as it relates to the Financial Closing of a Phase. The parties acknowledge that certain subject matter of this Agreement relates to activities that are intended to survive the term hereof, and so the parties acknowledge and agree to effectuate such matters in the Financial Closing documents with respect to each Phase.

19. County's Sovereignty.

It is expressly understood that, subject to the other provisions of this Agreement:

- (a) The County retains all of its sovereign prerogatives and rights as a county under Florida laws and shall in no way be estopped from reasonably withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Development or the operation thereof, or be liable for the same; and
- (b) The County shall not by virtue of this Agreement be obligated to grant the Developer any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Development.

20. No Liability for Exercise of Police Power.

Subject to any contrary provision in this Agreement, or any County covenant or obligation that may be contained in this Agreement, the County shall have no obligation, including but not limited to the following:

- (a) To assist the Developer in applying for any county, city or third party permit or needed approval; or
- (b) To contest, defend against, or assist the Developer in contesting or defending against any challenge of any nature; and, except as otherwise set forth in this Agreement, this Agreement shall not bind the County Board, the Permitting, Environment and Regulatory Affairs Department, other applicable County departments, or their successor departments, or any other county, city, federal or state department or authority, committee or agency to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld or revoked in the discretion of the County or any other applicable governmental agencies in the exercise of its police power; and, except as otherwise set forth in this Agreement, the County shall be released and held harmless, by the Developer from and against any liability, responsibility, claims, consequential or other damages, or losses to the Developer or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the parties recognize that the approval of any building permit and/or certificate of occupancy will require the County to exercise its quasi-judicial or police powers. Without limiting any other provision of this Agreement, the County shall have no obligation to approve, in whole or in part, any application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver. The County's obligation to use reasonable good faith efforts in the permitting of the use of County owned property related to the Development shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any requests or inquiries by the Developer as authorized by this Agreement. Moreover, in no event shall a failure of the County to adopt any of the Developer or Owner Entity's request or application for any type of permit, license, zoning or any other type of matter requiring government approval or waiver be construed a breach or default of this Agreement, unless such failure was unreasonable or untimely or in direct contravention to another provision of this Agreement.

21. Vendor Registration and Forms/Conflict of Interest.

- (a) Vendor Registration. The Developer shall be a registered vendor with the County's Internal Services Department Procurement Management Division, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Developer confirms its knowledge of and commitment to comply with the following:
 - i. *Miami-Dade County Ownership Disclosure Affidavit (Section 2-8.1 of the County Code)*
 - ii. *Miami-Dade County Employment Disclosure Affidavit (Section 2-8-1(d)(2) of the County Code)*
 - iii. *Miami-Dade County Employment Drug-free Workplace Certification (Section 2-8.1.2(b) of the County Code)*
 - iv. *Miami-Dade Disability and Nondiscrimination Affidavit (Section 2-8.1.5 of the County Code)*
 - v. *Miami-Dade County Debarment Disclosure Affidavit (Section 10.38 of the County Code)*

- vi. *Miami-Dade County Vendor Obligation to County Affidavit (Section 2-8.1 of the County Code)*
 - vii. *Miami-Dade County Code of Business Ethics Affidavit (Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)*
 - viii. *Miami-Dade County Family Leave Affidavit (Article V of Chapter 11 of the County Code)*
 - ix. *Miami-Dade County Living Wage Affidavit (Section 2-8.9 of the County Code)*
 - x. *Miami-Dade County Domestic Leave and Reporting Affidavit (Article 8, Section 11A-60 11A-67 of the County Code)*
 - xi. *Subcontracting Practices (Ordinance 97-35)*
 - xii. *Subcontractor /Supplier Listing (Section 2-8.8 of the County Code)*
 - xiii. *Environmentally Acceptable Packaging (Resolution R-738-92)*
 - xiv. *W-9 and 8109 Forms (as required by the Internal Revenue Service)*
 - xv. *FEIN Number or Social Security Number.* In order to establish a file, the Developer's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Developer's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
 - (1) Identification of individual account records
 - (2) To make payments to individual/Developer for goods and services provided to Miami-Dade County
 - (3) Tax reporting purposes
 - (4) To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
 - xvi. *Office of the Inspector General (Section 2-1076 of the County Code)*
 - xvii. *Small Business Enterprises.* The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
 - xviii. *Antitrust Laws.* By acceptance of any contract, the Developer agrees to comply with all antitrust laws of the United States and the State of Florida.
- (b) Conflict of Interest. 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 Commission on Ethics and Public Trust ("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. For additional information, please contact the Ethics Commission hotline at (305) 579-2593. Further the Developer shall comply with Section 1352 of Title 31 of the United States Code, which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, loan, or cooperative agreement. The Developer further agrees to comply with the requirement of such legislation to furnish a disclosure (OMB Standard Form LLQ) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, in connection with a Federal contract, grant, loan, or cooperative agreement, which payment would be prohibited if made from Federal appropriated funds. The Developer represents that:

- No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- There are no undisclosed persons or entities interested with the Developer in this Agreement. This Agreement is entered into by the Developer without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - is interested on behalf of or through the Developer directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - is an employee, agent, advisor, or consultant to the Developer or to the best of the Developer's knowledge any subcontractor or supplier to the Developer.
- Neither the Developer nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Developer shall have an interest which is in conflict with the Developer's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Developer provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- The provisions of this Section are supplemental to, not in lieu of, all applicable laws

with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

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

- (c) Non-Discrimination. Developer will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, or actual or perceived status as a victim of domestic violence, dating violence or stalking. Developer shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment, without regard to their race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, or actual or perceived status as a victim of domestic violence, dating violence or stalking. Such actions shall include, but not be limited to, the following: employment; upgrading; transfer or demotion; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the County setting forth the provisions of this Equal Opportunity clause.
- (d) Chapter 11A of the Code of Miami-Dade County. Developer does hereby covenant and agree (1) that no person on the grounds of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, actual or perceived status as a victim of domestic violence, dating violence or stalking, or source of income shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing services thereon, no person on the grounds of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, gender identity, gender expression, sexual orientation, actual or perceived status as a victim of domestic violence, dating violence or stalking, or source of income shall be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination.

22. Interest of Members of Congress.

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

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

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

24. Upon Written Notice to the Developer from the Inspector General or IPSIG Retained by the Inspector Employee of the County.

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

25. Inspector General Reviews.

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

- (a) *Miami-Dade County Inspector General Review.* According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Developer. The audit cost shall also be included in all change orders and all contract renewals and extensions.
- i. *Exception:* The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans,

specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Agreement. The Inspector General is empowered to retain the services of an IPSIG to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Developer, its officers, agents and employees, lobbyists, County General, the Developer shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Developer's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to, original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

The terms set forth in this Section 25 shall survive the termination of this Agreement.

26. Florida Public Records Act.

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

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the service;
- (b) Upon request of from the County's custodian of public records identified herein, provide the County with a copy of the requested records or allow the public with access to public records on the same terms and conditions that the County 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 Agreement's term and following completion of the work under this Agreement if the Developer does not transfer the records to the County; and
- (d) Meet all requirements for retaining public records and transfer to the County, at no cost to County, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of the Developer upon termination of this Agreement. Upon termination of this Agreement, the Developer 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 the County in a format that is compatible with the information technology systems of the County.

For purposes of this Section, 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 the County.

In the event the Developer does not comply with the public records disclosure requirements set forth in Section 119.0701 of the Florida Statutes and this Section of this Agreement, the County shall avail itself

of the remedies set forth in Sections 10 and 11 of this Agreement.

The Developer's obligations under this Section of this Agreement shall survive the termination of this Agreement.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

Miami-Dade County
Miami-Dade Public Housing and Community Development
701 N.W. 1st Court, 14th Floor
Miami, Florida 33136
Attention: Lizette Capote
Email: LCAPOTE@miamidade.gov

27. 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>
<http://www.miamidade.gov/ao/home.asp?Process=alphalist>
<http://intra.miamidade.gov/managementandbudget/library/procedures/358.pdf>

28. Option and Right of First Refusal.

The County shall have the option and right of first refusal to assume the Developer's and/or the applicable Owner Entity's leasehold interest in any Phase in the Development, before and after the end of its tax compliance period, if the Developer or the applicable Owner Entity desires to assign or transfer such Phase to a third party (other than an affiliate of the Developer or applicable Owner Entity) ("Applicable Transfer"). If the Developer or applicable Owner Entity desire to undertake an Applicable Transfer, then the Developer or applicable Owner Entity shall provide written notice to the County thereof and the County shall have one hundred and twenty (120) days to provide written notification to Developer and the applicable Owner Entity of the County's intent to exercise its option to assume the Developer's and/or applicable Owner Entity's leasehold interest for such Phase. The purchase price payable by the County for such assignment or transfer shall be an amount equal to all transfer fees, costs, expenses and taxes related to the purchase plus the lesser of: (i) the fair market value of the leasehold interest (including the improvements thereupon) and (ii) the lowest price that is permitted under Section 42(i)(7) of the Internal Revenue Code of 1986, as amended. Delivery of written notice by the County of its intent to exercise the option shall obligate the County to complete the transaction to assume the leasehold interest in the applicable Phase on the date no later than one-hundred and twenty (120) days after the delivery of such notice to the Developer and applicable Owner Entity. In the event the County shall fail to timely provide written notice or complete the transaction within the time periods set forth herein, the County shall

conclusively be deemed to have waived its rights set forth in this Section 28. However, notwithstanding the above, the County reserves the explicit right to approve the transfer of the applicable Owner Entity's leasehold interest in the Development. Such approval shall be conditioned upon the subject transferred entity has equal or greater experience and equal or greater financial capability and capacity as the original applicable Owner Entity. Such approval shall not be unreasonably withheld.

29. Reports to the Board.

The Developer shall deliver quarterly reports to the Board during all Phases of the Development process.

30. Notices.

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

If to County: Miami-Dade County
c/o Miami-Dade Public Housing and Community Development
701 N.W. 1st Court, 16th Floor
Miami, Florida 33136
Attn: Michael Liu, Director

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

If to the Developer: XYZ, LLC.
161 NW 6th Street, Suite 1020
Miami, FL 33136
Attn: Ken Naylor

With a copy to: XYZ LLP
123 Meadow Brook Avenue
Miami, FL 33127
Attn: John Salley, Esq.

31. Further Assurances.

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

32. Designation of County's Representatives.

The Miami-Dade County Mayor, or designee, at the request of the County staff, shall have the power, authority and right, on behalf of the County, and without any further resolution or action of the Board of County Commissioners, to:

(a) Review and approve documents, plans, and other requests required of, or allowed by, Developer

(or, for purposes of this Section 32, Owner Entities or assignees) to be submitted to County pursuant to this Agreement;

(b) Consent to actions, events, and undertakings by Developer 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 hereunder;

(c) Execute any and all documents on behalf of County necessary or convenient to the foregoing approvals, consents, and appointments and execute any Phase Option Agreement or Phase Lease Agreement in substantially the form attached hereto as Exhibit K;

(d) Execute 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;

(e) Assist Developer with and execute on behalf of 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 refurbishments of the Property; and

(f) Amend this Agreement 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 Agreement; and

(g) Amend this Agreement as may be required by HUD.

33. Rights of Third Parties.

Except as provided herein, all conditions of the County, the Developer and their successors and assigns hereunder are imposed solely and exclusively for the benefit of the County, the Developer and HUD, and their successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that the County, the Developer or HUD will make advances in the absence of strict compliance with any or all conditions of County, the Developer or HUD. No other person shall under any circumstances, be deemed to be a beneficiary of this Agreement or any other documents associated with this Agreement, or any provisions of this Agreement which may be freely waived in whole or in part by the County, the Developer or HUD at any time if, in their sole discretion, they deem it desirable to do so. In particular, the County and the Developer make no representations and assume no duties or obligations as to third parties concerning the quality of the construction by the Developer, its successors and assigns, of the Development or the absence thereof of defects.

34. Assignment.

This Agreement may be assigned by either party only with the express written consent of the other party, which in the case of the County shall require the approval of the Board. By exception, the Developer shall be authorized to assign this Agreement to the Owner Entities in the manner specifically set forth in this Agreement.

35. Counterparts.

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

36. Interpretation, Governing Law and Forum Selection.

This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by both Parties. This Agreement shall be construed, interpreted, and governed by the laws of the State of Florida. Any dispute arising under or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Miami-Dade County, Florida.

37. Severability.

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

38. Parties Bound.

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

39. Final Agreement.

Unless otherwise provided herein, this Agreement constitutes the final understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties, and except for those agreements contemplated herein. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby. Notwithstanding the foregoing, the parties acknowledge that any then existing Phase Option Agreement or Phase Ground Lease expressly survive the expiration or sooner termination of this Agreement.

40. Modification of Agreement.

This Agreement may be amended by mutual agreement of the County and Developer, not to be unreasonably withheld, subject to prior written approval by HUD (if required) and provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of the County or Developer to develop and operate the RAD Units in accordance with all applicable RAD Requirements and the ground leases, as applicable. This Agreement may not be altered, modified, rescinded, or extended orally.

41. Waivers.

The failure of any party to insist in any one or more cases upon the strict performance of any of the obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver by any party of any provision of this Agreement shall be deemed to have been made unless set forth in writing and signed by the party to be charged.

42. Successors.

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

43. Certain Approvals and Reasonableness Standard.

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

44. Headings.

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

45. Construction.

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

[SIGNATURES ON NEXT PAGE]

SAMPLE

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

XYZ, LLC.

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____
Authorized Person OR Notary
Public

Print
Name: _____

Title: _____

Date: _____

Corporate Seal OR Notary Seal/Stamp

MIAMI-DADE COUNTY

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____
Board of County Commissioners

By: _____

Name: _____
Deputy Clerk

Date: _____

Approved for form and legal sufficiency:

Terrence A. Smith
Assistant County Attorney

Exhibit A-1

Preliminary Unit Amenities

SAMPLE

Exhibit A-2

Community Benefits Program

Exhibit B

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 33% of the total Developer Fee described herein 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 Payment; Lessor Note
- i. Upon Financial Closing for each Phase, the Owner Entity will pay to the County the appraised value (as determined by the Florida Housing Finance Corporation and agreed upon by County and Developer) for the portion of the Property subject to the applicable Phase Lease, which amount will be paid through a cash payment, a Lessor Note, or a combination thereof.
 - ii. Notwithstanding the foregoing, the aggregate amount of cash payments received by the County upon the Financial Closing of all Phases will equal \$3,000,000. Upon Financial Closing for the final Phase, (x) the sum of all Capitalized Payments *minus* (y) the sum of the principal of all Lessor Notes will equal \$3,000,000 (which is the net cash land proceeds to the County as agreed to by the parties following the competitive procurement of the Developer). If the sum thereof is less than \$3,000,000, then the County will be entitled to a Capitalized Payment for such final Phase at Financial Closing that includes a cash

payment in the amount of such difference and a Lessor Note for the remaining amount, if any, of the applicable Capitalized Payment. For example, in a three Phase development, (x) if the fair market value for the first Phase is equal to \$3,000,000 and the applicable Owner Entity for such first Phase enters into a Lessor Note for \$1,500,000 and makes a cash payment to the County of \$1,500,000, and (ii) if the fair market value for the second Phase is equal to \$2,500,000 and the applicable Owner Entity for such second Phase enters into a Lessor Note for \$1,500,000 and makes a cash payment to the County of \$1,000,000, then (y) for the third and final Phase of development, if the fair market value of such third Phase equals \$3,000,000, then the applicable Owner Entity will enter into a Lessor Note for \$2,500,000 and *must* make a cash payment to the County of \$500,000.

iii. The terms of the Lessor Note are as follows:

- (1) *Principal Value:* Equal to an amount up to the appraised value of the portion of the Property subject of the applicable Phase Lease.
 - (2) *Interest Rate:* The Applicable Federal Rate for Annual Compounding Long Term Debt as of the date of the issuance of the Lessor Note.
 - (3) *Term:* Commencing as of Financial Closing of the applicable Phase subject to the Lessor Note, and terminating on the later of (a) forty-five (45) years following Construction Completion of such applicable Phase, or (b) the maturity date of any first-priority lien on the Phase.
 - (4) *Payment:* The principal and interest payable with respect to the Lessor Note shall be due and payable at the end of the Term
 - (5) *HUD Subordination:* Notwithstanding any other provision herein, the Lessor Note shall contain such terms as comply with HUD requirements for a loan subordinate in lien priority to a HUD-insured first loan, and the County will execute the HUD-required subordination agreement form HUD-92420M.
- (c) Annual Lease Payment. The Phase Ground Lease for each Phase with Affordable, Workforce and Market Rate Units (if applicable) Housing units will also include an annual lease payment in the amount \$20,000.00 per site per year with an annual increase of 3%, for a total amount of \$16,357,851.00 throughout the 75 year period.
- (d) Share of Revenues/Net Cash Flow. The Developer agrees that the County shall receive a share of revenue/net cash flow of 33%. This shall apply to revenues from all components of a project, including the non-RAD, affordable and market rate 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 applicable Phase Ground Lease.
- (e) Other Payments. On all Phases, the Developer agrees to pay the County 30% of other net revenue and income streams participation, including a percent of revenues from any cash-out refinance, re-syndication of Low-Income Housing Tax Credits (LIHTC) or any other sale event whatsoever, in the manner set forth in Section 5(e).

SAMPLE

Exhibit C

Site Plan, Renderings and Perspectives

SAMPLE

Exhibit D

Development Budget/Pro Forma

SAMPLE

Exhibit E

Development Schedule

SAMPLE

Exhibit F

Unit Mix

SAMPLE

Exhibit G

Summary of Key Development Team Members

SAMPLE

Exhibit H

Management Agreement Form

SAMPLE

Exhibit I

HUD UFAS Accessibility Checklist

SAMPLE

Exhibit J

Legal Description

SAMPLE

Exhibit K

Phase Option Agreement

SAMPLE

OPTION TO ENTER INTO A PHASE GROUND LEASE

THIS OPTION TO ENTER INTO A PHASE GROUND LEASE (the “Option”) is made and entered into as of [REDACTED], 202[REDACTED], 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, as amended (the “County”), and [REDACTED], a [REDACTED] (“Optionee”).

WITNESSETH:

WHEREAS, County is the fee owner of that certain parcel of land more particularly described on Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, the Property is encumbered by a Declaration of Trust and subject to Public Housing requirements administered by the U.S. Department of Housing and Urban Development (“HUD”); and

WHEREAS, in connection with a financing application issued by Florida Housing Finance Corporation, as modified from time to time (the “RFA”), Optionee must demonstrate that it has site control over the Property where the development proposed in the RFA (the “Development”) will be located; and

WHEREAS, if this Option is exercised by Optionee, County and Optionee will enter into a ground lease for the Property in the form attached hereto as Exhibit B (the “Ground Lease”); and

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Optionee agree as follows:

1. **Option.** At any time on or before the later of [REDACTED], 202[REDACTED], or the one (1) year anniversary of the “Application Deadline” as described in the RFA (the “Option Period”), Optionee will have the right and option to enter into the Ground Lease. Optionee may exercise the option granted herein at any time during the Option Period by notifying County in writing at least thirty (30) days prior to the end of the Option Period that Optionee elects to exercise this Option.
2. **Terms and Conditions of Ground Lease.** Upon Optionee exercising this Option, the parties hereto will enter into the Ground Lease within fifteen (15) days thereafter or such later time as mutually agreed to by the parties hereto, in substantially the form attached hereto as Exhibit B.

1.

3. **Recording.** This Option shall not be recorded.

4. **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, sent by registered or certified mail or by overnight delivery, to the other party hereto, and addressed as set forth below. 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.

If to County: Miami-Dade County
c/o Miami-Dade Public Housing and Community
Development
701 N.W. 1st Court, 16th Floor
Miami, Florida 33136
Attn: Michael Liu, Director

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

If to the Developer: XYZ, LLC.
123 NW 5th Street
Miami, FL 33137
Attn: Jane Doe

With a copy to: XYZ, LLP
123 Brook Avenue
Miami, FL 33127
Attn: John Doe, Esq.

5. **Choice of Law.** This Option shall be governed by and construed in accordance with the laws of the State of Florida.
6. **No Assignment.** Optionee shall not assign its interest in this Option without the prior written consent of County.
7. **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.
8. **Authority to Sign.** County hereby represents and warrants to Optionee that the person signing this Option on behalf of County is authorized duly and validly to so sign. Optionee hereby warrants and represents to County that the person signing this Option on behalf of Optionee is authorized duly and validly to so sign.

9. **HUD Approval.** Notwithstanding any other provision of this Option, prior to execution of the Ground Lease, HUD's disposition approval under Section 18 or other pertinent statute must be obtained, and any residents residing in dwelling units on the Property, if any, must be relocated, as necessary and consistent with applicable relocation requirements, if required by HUD, and any HUD approved demolition actions on the Property must be completed. Further, notwithstanding any other provision of this Option, neither County nor Optionee shall have any obligation to lease the Property, and no transfer of a leasehold 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.

[SIGNATURE PAGES FOLLOW]

SAMPLE

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: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, by _____, _____ of Miami-Dade County, a political subdivision of the State of Florida.

Notary Public, State of Florida

Print, Type or Stamp Name

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

OPTIONEE:

[REDACTED]

By: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this ____ day of _____, 202__, by [REDACTED],
[REDACTED] of [REDACTED], a [REDACTED].

Notary Public, State of Florida

Print, Type or Stamp Name

Personally Known____ or Produced Identification____
Type of Identification Produced _____

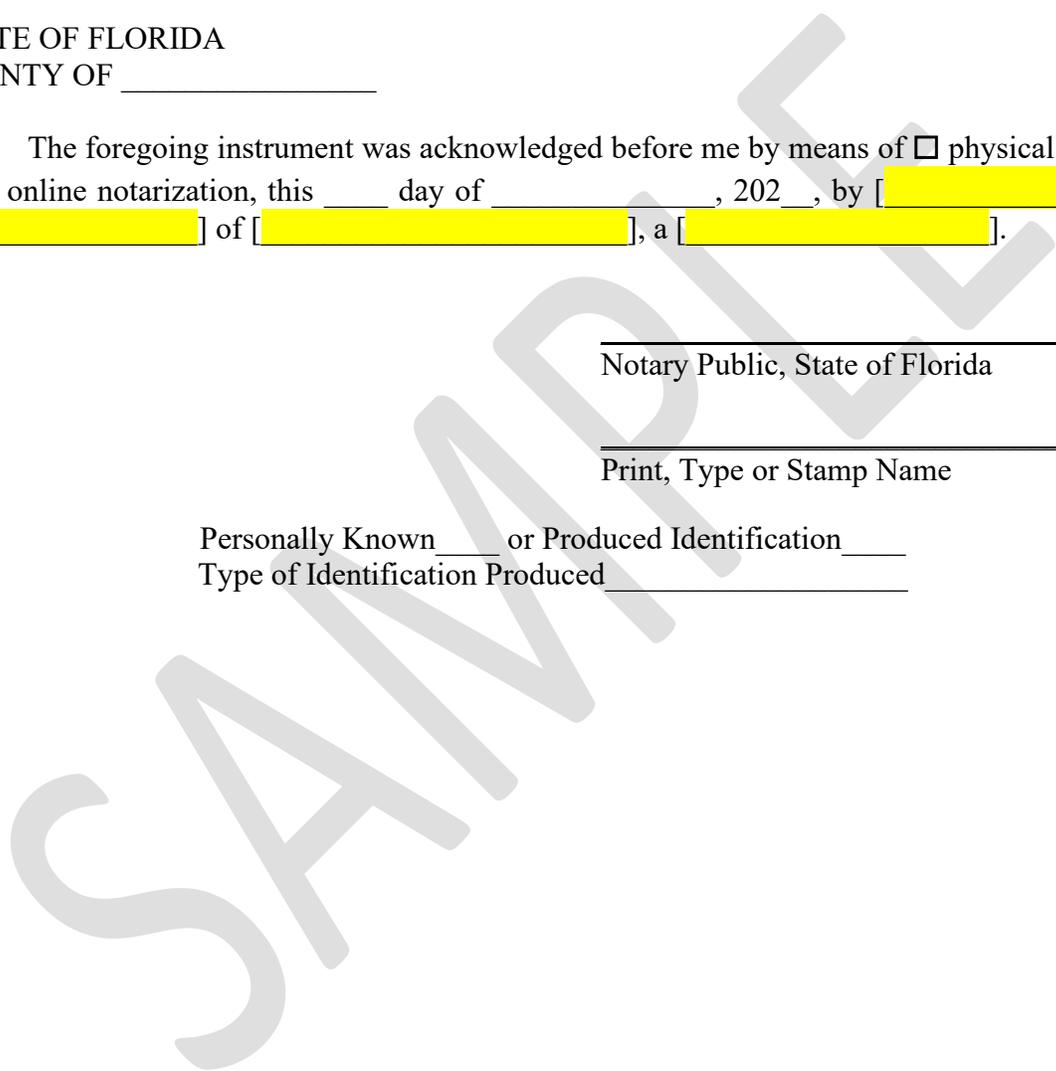


Exhibit A

Legal Description

SAMPLE

Exhibit B

Ground Lease

SAMPLE

Exhibit L
Form of Estoppel

SAMPLE

RECORDING REQUESTED BY AND
WHEN RECORDING MAIL TO:

**ESTOPPEL CERTIFICATE AND
LEASEHOLD MORTGAGE RECOGNITION AGREEMENT**

THIS ESTOPPEL CERTIFICATE AND LEASEHOLD MORTGAGE RECOGNITION AGREEMENT (this "**Agreement**") is entered into this [] day of [], 20[] by and among (i) [] (together with its successors and/or assigns, the "**Senior Lender**"), (ii) MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, through the Department of Housing and Community Development (the "**Landlord**"), (iii) [], a [] ("**Tenant**" or "**Borrower**"), and (iv) [], a [] (the "**Permanent Lender**").

Recitals

A. The Landlord and Tenant entered into that certain Phase Ground Lease, dated as of [] (the "**Ground Lease**"), with respect to such property as more fully described in Exhibit A attached hereto (the "**Premises**").

B. Pursuant to that certain [] ("**Loan Agreement**"), the Senior Lender has agreed to make a construction loan to Tenant in the principal amount of approximately [] (the "**First Mortgage Loan**").

C. The proceeds of the First Mortgage Loan will be used by the Borrower to finance, in part, the development, construction and operation of [] located on the Premises.

D. The First Mortgage Loan is or will be secured by the First Mortgage (as defined herein) on the Premises.

E. The Senior Lender has agreed to make the First Mortgage Loan so long as (a) the Landlord agrees not to disturb the tenancy of the Tenant in and to the Premises and the interest of Senior Lender in the Premises pursuant to the First Mortgage and this Agreement and (b) the rights of Landlord with respect to the Ground Lease are subject in all respects to the terms and conditions contained in this Agreement.

J. Upon satisfaction of all conditions set forth in the loan commitment letter dated March 26, 2018 (the "**Commitment Letter**") from Permanent Lender to the Tenant, the Permanent Loan, as defined in the Commitment Letter (the "**Permanent Loan**"), will be originated and all the terms and covenants of this Agreement shall inure to the benefit of the Permanent Lender, as the lender of the Permanent Loan and any assignee of the Permanent Loan, all references to the First Mortgage Loan, the First Mortgage Note, the First Mortgage and the First Mortgage Loan Documents shall mean, respectively, the Permanent Loan, the Permanent Note, the Permanent Mortgage and the Permanent Loan Documents, and all references herein to Senior Lender shall thereafter mean and refer to the Permanent Lender.

NOW, THEREFORE, in consideration thereof, the parties hereto hereby agree as follows:

1. Definitions.

For purposes of this Agreement the following terms have the respective meanings set forth below. The parties hereto agree that each of the Recitals to this Agreement shall be incorporated by this reference and form a part of this Agreement. Each capitalized term used herein and not otherwise defined shall have the meaning provided therefor in the Loan Agreement, unless the context otherwise requires. Each document referred to in this Agreement shall mean each such document as it may be amended, restated, modified or supplemented from time to time.

"Agreement" shall have the meaning ascribed in the preamble to this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Commitment Letter" has the meaning set forth in the recitals to this Agreement.

"First Mortgage" means the [REDACTED], dated as of the date of closing of the First Mortgage Loan (the **"Closing Date"**), executed by the Borrower, as grantor, to the Senior Lender; and following origination of the Permanent Loan, means the Permanent Mortgage.

"First Mortgage Loan" has the meaning set forth in the recitals to this Agreement.

"First Mortgage Loan Default" means the occurrence of a "Default" or an "Event of Default" as that term is defined in any of the First Mortgage Loan Documents.

"First Mortgage Loan Documents" initially means the Loan Documents, as defined in the Loan Agreement; and following the origination of the Permanent Loan, means the Permanent Loan Documents.

"First Mortgage Note" means the Promissory Note Secured by Mortgage (Construction Loan), dated as of the Closing Date, from Borrower to the Senior Lender; and following the origination of the Permanent Loan, means the Permanent Note.

"Ground Lease" has the meaning set forth in the recitals to this Agreement.

"Investor" means [REDACTED], a [REDACTED], and its successors and assigns, as the investor limited partner of Tenant.

"Landlord" shall have the meaning ascribed in the preamble to this Agreement.

"Loan Agreement" has the meaning set forth in the recitals to this Agreement.

"New Tenant" shall have the meaning ascribed in Section 4 of this Agreement.

"Permanent Lender" shall have the meaning ascribed in the preamble of this Agreement.

"Permanent Loan" has the meaning set forth in the recitals to this Agreement.

"Permanent Mortgage" means that certain [REDACTED] delivered by Borrower to Senior Lender and encumbering the Premises to secure the obligations of Borrower under the Permanent Note and the Permanent Loan Documents.

"Permanent Loan Documents" means the Commitment Letter, Permanent Mortgage, Permanent Note and all other documents evidencing, security or otherwise executed and delivered in connection with the Permanent Loan.

"Permanent Note" means the Note, from Borrower to Permanent Lender, to evidence the Permanent Loan.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Premises" shall have the meaning assigned in the recitals.

"Project" shall have the meaning assigned in the Ground Lease.

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the First Mortgage Note, such other Person shall automatically become the Senior Lender.

"Tenant" or **"Borrower"** shall have the meaning ascribed in the preamble.

2. Notice, Agreements, Events of Default and Cure Rights.

(a) This Agreement shall constitute notice to Landlord pursuant to the Ground Lease of (i) the First Mortgage and the other First Mortgage Loan Documents and (ii) the Permanent Mortgage and the other Permanent Loan Mortgage Documents.

(b) By execution of this Agreement, Landlord (i) acknowledges and reaffirms the terms and conditions of the Ground Lease relating to the granting by Tenant of a Permitted Leasehold Mortgage (as defined in the Ground Lease), (ii) acknowledges and agrees that the First Mortgage and Permanent Mortgage each constitute a Permitted Leasehold Mortgage pursuant to and as defined in the Ground Lease and that Senior Lender constitutes the Permitted Leasehold Mortgagee (as defined in the Ground Lease) thereunder, (iii) hereby approves the First Mortgage and the Permanent Mortgage and the terms and conditions contained therein, and (iv) agrees to not amend the Ground Lease in any way that would adversely affect the rights or interests of Tenant in the Premises or Senior Lender with respect to the First Mortgage or the Permanent Mortgage.

(c) The parties hereto acknowledge and agree that the terms and conditions of Section 8.9 of the Ground Lease apply to the First Mortgage and the other First Mortgage Loan Documents and the Permanent Mortgage and the other Permanent Mortgage Loan Documents.

(d) The parties hereto agree that Investor (i) shall receive copies of any default or other notices sent to Tenant under the Ground Lease or sent under this Agreement; and (ii) shall have the right, but not the obligation, to cure any default by Tenant under the Ground Lease in the same manner that such right is granted to Tenant.

3. Scope of Tenant's Obligations; Acknowledgments

(a) The Landlord and Tenant agree that the obligations of the Tenant under the Ground Lease to perform obligations thereunder are limited to performance of those obligations under the Ground Lease related to the possession, control, development, use and description of the portion of the Project that will be located on the Premises and no others. The Tenant shall have no obligation to construct, maintain or share in the cost of any aspect of the Project which is not located on the Premises. The provisions of this Section 3(a) shall remain in effect throughout the term of this Agreement and the Ground Lease.

(b) Landlord hereby certifies and agrees, to the best of Landlord's knowledge, as follows:

(i) The Tenant is the tenant under the Ground Lease. The Landlord is the owner, in fee simple, of the Premises and has the full authority to enter into the Ground Lease with Tenant.

(ii) As of the date hereof: (a) the Ground Lease is in full force and effect and has not been terminated, amended, modified, supplemented, superseded or assigned by the Landlord, and Landlord has received no notice of any such assignment by Tenant; (b) the Ground Lease contains all of the agreements between the Landlord and the Tenant relating to the Premises; (c) the Landlord has not delivered or received any notices of default under the Ground Lease that has not been cured or settled; (d) to the Landlord's knowledge, there are no violations of, or defaults under, the Ground Lease; and (e) to the knowledge of the Landlord, no event has occurred which with the giving of notice or the lapse of time, or both, would constitute a default under the Ground Lease.

(iii) The Term of the Lease is [REDACTED] commencing on [REDACTED];

(iv) As of the date hereof, there are no charges which the Landlord, its successors or assigns, claim to be additional liens upon the Premises; and

(v) All approvals by the Landlord required for the execution and delivery of this Estoppel Certificate and Leasehold Mortgage Recognition Agreement have been obtained.

4. Attornment.

(a) Landlord covenants and agrees that in the event of foreclosure of the First Mortgage or the Permanent Mortgage, whether by power of sale or by court action, or upon a transfer of the Premises by conveyance in lieu of foreclosure (the purchaser at foreclosure or the transferee in lieu of foreclosure, including Senior Lender if it is such purchaser or transferee, being herein called “**New Tenant**”), Landlord shall attorn to the New Tenant, and shall agree that the Ground Lease shall continue in full force and effect as a direct lease between Landlord and New Tenant upon all of the terms, covenants, conditions and agreements set forth in the Ground Lease and this Agreement, except for provisions which are impossible for New Tenant to perform; provided, however, that in no event shall the New Tenant be:

(i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Premises;

(ii) subject to any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord);

(iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance;

(iv) bound by any amendment, or modification of the Ground Lease hereafter made, or consent by any previous landlord (including Landlord) under the Ground Lease to any assignment or sublease hereafter granted, without the written consent of Senior Lender; or

(v) bound by any option to purchase or right of first refusal with respect to the Premises.

(b) The provisions of this Agreement regarding attornment by Landlord shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party hereto or the respective heirs, legal representatives, successors or assigns of any such party. Landlord agrees, however, to execute and deliver at any time and from time to time, upon the request of Senior Lender or of any holder(s) of any of the indebtedness or other obligations secured by the First Mortgage or the Permanent Mortgage, any instrument or certificate which, in the reasonable judgment of Senior Lender or of such holder(s), may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, including, if requested, a new lease of the Premises on the same terms and conditions as the Ground Lease for the then unexpired term of the Ground Lease.

5. Affordable Housing Units; Capitalized Payment; Plans and Specifications. Landlord hereby agrees that, notwithstanding any inconsistency with the Ground Lease or any

other agreements related to the Development of the Project, Tenant shall be obligated to undertaking the following obligations:

- (a) construct [REDACTED] affordable housing units;
- (b) pay a Capitalized Payment of [REDACTED]; and
- (c) complete the following community benefits:

[REDACTED]
[REDACTED]
[REDACTED]

Landlord hereby acknowledges that all necessary approvals of the plans and specification for the construction contemplated for the Premises have been reviewed and approved by the Landlord in the manner required pursuant to the Ground Lease.

6. Commencement Date.

[Landlord agrees that, notwithstanding the provisions of Section 8(h)(i)1 of the Ground Lease, the Tenant must commence construction of the development contemplated for the Premises by [REDACTED], as may be extended by any reasonable period necessary for such completion. Landlord agrees that the provisions of Section 8(h)(i)2 requiring the Tenant to complete the development on the Premises within twenty four (24) months after completion of the prior Phase shall be of no force and effect.]¹

[Landlord agrees that, notwithstanding the provisions of Section 8(h) of the Ground Lease, the Tenant must commence construction of the development contemplated for the Premises [REDACTED], as may be extended by any reasonable period necessary for such completion. Landlord agrees that the provisions of Section 8(h)(i) the Tenant to complete the development of the first Phase of development on the Premises within twelve (12) months after securing gap financing shall be of no force and effect.]²

7. Ownership.

Landlord agrees that, subject to the requirement for the Tenant to pay rent to the Landlord in accordance with the Ground Lease, with respect to Premises, (i) Tenant shall have the exclusive right to deduct, claim, retain and enjoy any and all rental income, appreciation gain, depreciation, amortization and tax credits for federal and state tax purposes relating to all Improvements (as defined in the Ground Lease) on the Premises and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto and (ii) Landlord shall treat Tenant as the tax owner of all Improvements on the Premises for federal income tax purposes and neither shall file any tax returns inconsistent with this treatment.

¹ Note to Draft: This provision applies only to the first Phase of development on the Premises.

² Note to Draft: This provision applies only to any subsequent Phase of development on the Premises.

8. Transfer of Interests.

Landlord and Tenant confirm that no prior consent of either Landlord or Tenant shall be required for (i) Investor’s transfer of limited partner interest in the Ground Lease or (ii) the Investor’s removal and substitution of Tenant’s general partner in accordance with the Operating Agreement.

9. Condemnation.

Landlord and Tenant agree not to consent to a Taking (as defined in the Ground Lease) without the prior written consent of the Investor.

10. Termination of Ground Lease.

(a) Landlord acknowledges receipt of Tenant’s full payment of the Capitalized Payment due under Section 3.2 of the Ground Lease.

(b) Without the prior written consent of Investor and Senior Lender, Tenant agrees not to exercise its right to terminate the Ground Lease.

11. Conflict.

The parties hereto each hereby agree that, in the event of any conflict or inconsistency between the terms of the Ground Lease and this Agreement, the terms of this Agreement shall govern and control. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to extend Borrower’s time to cure any First Mortgage Loan Default; give the Borrower the right to notice of any First Mortgage Loan Default other than that, if any, provided, under the First Mortgage Loan Documents; or create any other right or benefit for Borrower as against Senior Lender.

12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as “notices” and referred to singly as a “notice”) required or permitted pursuant to or contemplated by this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

[REDACTED]
[REDACTED]
[REDACTED]

With a copy to (which shall not constitute notice hereunder):

[REDACTED]
[REDACTED]
[REDACTED]

LANDLORD:

Miami-Dade County, Florida
111 N.W. First Street
Miami, FL 33128
Attention: County Mayor

With a copy to (which shall not constitute notice hereunder):

Office of the County Attorney
111 NW First Street, Suite 2810
Miami, FL 33128
Attention: [REDACTED]

With a copy to (which shall not constitute notice hereunder):

Public Housing and Community Development
701 NW 1st Court, 16th Floor
Miami, FL 33136
Attention: Department Director

And a copy to:

Department of Transportation & Public Works
701 NW 1st Court, 17th Floor
Miami, FL 33136

BORROWER:

[REDACTED]
123 S.W. 45th Avenue
Suite 200
Miami, FL 33123
Attention: John Salley

With a copy to:

[REDACTED]

[REDACTED]
[REDACTED]

and

INVESTOR:

[REDACTED]
[REDACTED]
[REDACTED]

PERMANENT LENDER:

[REDACTED]
[REDACTED]
[REDACTED]

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

13. General.

(a) **Assignment/Successors.** This Agreement shall be binding upon the parties hereto and shall inure to the benefit of their respective successors and assigns.

(b) **No Partnership or Joint Venture.** None of the parties hereto shall hold itself out as a partner, agent or affiliate of any other party hereto.

(c) **Senior Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) **Further Assurances.** The parties hereto each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to further evidence the intent of this Agreement.

(e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) **Governing Law.** This Agreement shall be governed by the laws of the State in which the Premises is located. Any dispute arising under, in connection with or related to this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Miami-Dade County, Florida.

(g) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) **Term.** Except as otherwise provided herein, this Agreement shall remain in full force and effect for so long as any amounts remain owing under or any obligation is outstanding under any of the First Mortgage Loan Documents or any Permanent Loan Documents.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

14. No Liability of Senior Lender. The execution and delivery of the First Mortgage and the First Mortgage Loan Documents and/or the Permanent Mortgage and the Permanent Mortgage Loan Documents shall not operate to make Senior Lender liable for the performance of the covenants or obligations of Tenant under the Ground Lease, except if Senior Lender owns or is in possession of the Premises due to the exercise of its rights under the First Mortgage or the Permanent Mortgage and only during its period of such ownership or possession.

15. Third Party Beneficiary. The parties hereto agree that this Agreement shall inure to the benefit of the Investor. There are no other third-party beneficiaries under this Agreement.

[Signature page follows]

[Signature Page to Estoppel Certificate and Leasehold Mortgage Recognition Agreement]

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

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Assistant County Attorney

ATTEST:

HARVEY RUVIN, CLERK

By: _____
DEPUTY CLERK

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by _____, the _____ of Miami-Dade County, a political subdivision of the State of Florida. He/she is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public
My commission expires:

[Signature Page to Estoppel Certificate]

TENANT AND BORROWER:

[REDACTED]

By: [REDACTED], as manager

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)

) ss.

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by [REDACTED], [REDACTED] of [REDACTED], the manager of [REDACTED]. He is personally known to me or has produced _____ as identification.

(SEAL)

Notary Public

My commission expires:

EXHIBIT A

DESCRIPTION OF PREMISES