

## ATTACHMENT "A"

### OPTION TO GROUND LEASE

This Option to Ground Lease (this "**Option**") is made and entered into as of \_\_\_\_\_, 2023 by and between Miami-Dade County, a political subdivision of the State of Florida, and a "public housing agency" as defined in accordance with the provisions of the United States Housing Act of 1937, as amended, (42 U.S.C. § 1437, *et seq.*) (the "**Authority**"), and XYZ, LLC a Florida Limited Liability Company, and its affiliates (the "**Optionee**").

### WITNESSETH

WHEREAS, the Authority has selected XYZ, LLC (the "**Developer**"), to redevelop (Site Name) (FLA 005).

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

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

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

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

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

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

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

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

2. Term. Unless exercised by execution of the Lease or extended in writing by the parties hereto, this Option shall terminate without notice on December 30, 2023 (the “**Termination Date**”).

3. Terms and Conditions of Lease. The material terms of the Lease shall be as follows:
- a. The Lease term shall be seventy-five (75) years.
  - b. The lease will contain such reasonable terms and conditions as are required by the Authority, lenders, investors, and HUD.
  - c. The Lease rent shall be as follows:
    - i. An annual share of 20% the revenue/net cash flow payable, commencing after the stabilization period, about one year after issuance of Certificate of Occupancy of the Project through the end of the Lease term, payable out of the available net cash flow distributable by Optionee; and
    - ii. a one-time capitalized lease payment, to be paid upon Commencement Date, in the amount of \$400,000.00, which amount is calculated by the number of units (i.e., 160) times \$2,500.00. If greater or fewer than 160 units are constructed, the Capitalized Payment shall be adjusted on a unit-for-unit basis.
  - d. Title to the Property shall be “as is” and subject to of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements including, but not limited to, use restrictions placed on the Property in conformance with HUD or FHFC requirements, and any other permitted exceptions agreed to by the Authority and Optionee. The Authority and Optionee acknowledge and agree that Optionee will rely on title insurance with respect to its leasehold interest in the Property and its ownership interest in the Project.
  - e. The Optionee will be responsible for all operating expenses of the Property, including insurance and all real estate taxes or payments in lieu of real estate taxes.
  - f. Except as expressly set forth in the Lease, neither the Authority nor the Optionee will have the right to transfer or assign its rights under the Lease, except with the

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

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

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

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

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

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

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

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

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

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

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

set at a future date based on an appraisal of fair market value that will be made available to the Authority.

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

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

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

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

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

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

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

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

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

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

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

If to the Developer: XYZ, LLC.  
XXX West Xst Street,  
Miami Beach, FL 33140  
Attn: John Salley

With a copy to: XYZ  
Meadowbrook St. Suite 100  
Miami, FL 33130  
Attn: Jane Doe

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

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

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

[signature page follow]

SAMPLE

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

**AUTHORITY:**

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

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

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

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:**  
**XYZ, LLC**, a Florida Limited Liability Company

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 [\_\_\_\_\_, \_\_\_\_\_] of [\_\_\_\_\_, \_\_\_\_\_], a [\_\_\_\_\_].

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print, Type or Stamp Name

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