

## AMENDED AND RESTATED COOPERATION AGREEMENT

This Amended and Restated Cooperation Agreement (this "**Agreement**") is entered as of September 3, 2015 (the "**Effective Date**"), between the Housing Authority of the City of Fort Lauderdale, Florida, a public body corporate and politic organized under the laws of the State of Florida (the "**Authority**") and the City of Fort Lauderdale, a Florida municipal corporation (the "**City**").

### RECITALS

A. In 1938, the City adopted a Resolution Declaring the Need for a Housing Authority in the City of Fort Lauderdale, Florida. The Authority and the City entered into a Cooperation Agreement, dated as of May 15, 1979, as amended (the "**Original Agreement**").

B. The Authority and the City desire to amend and restate the Original Agreement as of the Effective Date to set forth the parties' agreement with respect to (i) the exemption of the Authority's Developments (as subsequently defined) from all real and personal property taxes, special assessments, and to the extent provided herein, fees, charges or assessments, without regard to nomenclature, assessed by or payable to the City or any political subdivision or taxing unit thereof, including without limitation any dependent special district or municipal services taxing unit created by the City, (ii) the specific payments that the Authority shall make in satisfaction of 42 U.S.C. § 1437d(d)(ii), and (iii) the public services and facilities furnished from time to time without cost or charge by the City.

C. The City and the Authority have the power to enter into agreements with each other.

D. The City desires to act cooperatively with the Authority to provide adequate low income housing opportunities within the City.

### AGREEMENT

In consideration of the promises and mutual covenants set forth herein, the parties hereto, with the intent to be legally bound hereby, agree as follows:

**1. Definitions.** Whenever used in this Agreement:

(a) The term "**Development**" shall mean any housing currently owned or operated or hereafter developed, created, acquired, owned or operated by the Authority, an affiliate thereof or a co-developer procured by the Authority or an affiliate thereof or a partnership or limited liability company in which the Authority or an affiliate thereof has an ownership interest (collectively, the "**Owner Entity**") with the financial assistance of the United States of America either (i) acting through the Secretary of the United States Department of Housing and Urban Development or any successor governmental agency (herein called "**HUD**"), or (ii) pursuant to the Low-Income Housing Tax Credit Program set forth in Section 42 of the Internal Revenue Code of 1986, as amended, which is rented to persons and families with incomes at or below 80% of the area median income ("**low-rent**").

(b) The term "**Assessing Body**" shall mean the City, or any dependent special district or municipal services taxing unit created by the City and in which a Development is situated and which would have authority to assess or levy real or personal property taxes or special assessments (collectively, "**Assessments**"), or to certify such Assessments to an Assessing Body or public officer to be levied for its use and benefit with respect to a Development if it were not otherwise exempt from the levy of such Assessments.

## **2. Exemption from Assessments; Payment of PILOT.**

(a) Under the constitution and statutes of the State of Florida, including without limitation Section 423.02, Florida Statutes, all Developments are exempt from all real and personal property taxes and special assessments levied or imposed by any Assessing Body ("**Taxes**"). With respect to any Development, so long as either (i) such Development is owned by a public body, affiliate thereof, a governmental agency or an Owner Entity, and is used for low-rent housing purposes; or (ii) any contract between the Authority or the Owner Entity and HUD for loans or annual contributions, or both, in connection with such Development remains in force and effect, or (iii) any bonds issued in connection with such Development or any monies due to HUD in connection with such Development remain unpaid, whichever period is the longest, the City agrees that neither it nor any Assessing Body subject to its control with respect to the imposition of Assessments will levy or impose any Assessments upon such Development or upon the Authority or Owner Entity with respect thereto. During such period, the Authority shall make annual payments in lieu of taxes ("**PILOT**") and special assessments and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Development.

(b) Beginning at the end of fiscal year 2015, each annual PILOT shall be made after the end of the fiscal year of the Authority, and shall be in an amount equal to (i) \$54.87 per unit, per year (currently 1,458 units totaling eighty thousand dollars (\$80,000) annually); or (ii) the amount permitted to be paid by applicable state law in effect on the date such payment is made, whichever amount is the lower. In other words, no payment for any year shall be made in excess of the Taxes which would have been due if the Developments were not exempt from taxation. The annual PILOT shall be adjusted on January 1 of each year, commencing on January 1, 2017 by the same percentage as any percentage increase or decrease in the Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment, with 2009 serving as the base year (100); provided that in no event shall the increase or decrease in any one year exceed three (3%) percent. The foregoing PILOT payments shall be subject to the annual approval by Authority's Board of Commissioners at a regularly scheduled meeting.

(c) Upon failure of the Authority to make any PILOT, no lien against any Development or assets of the Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof; provided that the City shall not be obligated to perform its responsibilities under this Agreement until such PILOT is made.

**3. Responsibilities of the City.** During the period commencing with the date of the acquisition of any part of the site or sites of any Development and continuing so long as either (i) such Development is owned by a public body, affiliate thereof, a governmental agency or

Owner Entity and is used for low-rent housing purposes, or (ii) any contract between the Authority and HUD for loans or annual contributions, or both, in connection with such Development remains in force and effect, or (iii) any bonds issued in connection with such Development or any monies due to HUD in connection with such Development remain unpaid, whichever period is the longest, the City, without cost or charge to the Authority or the tenants of such Development (other than the PILOT) shall in so far as the City may lawfully do so and subject to the limitations set forth in Paragraph 5:

(a) Furnish or cause to be furnished without cost or charge to the Authority and the tenants of such Development public services and facilities of the same character and to the same extent as are furnished from time to time to other dwellings and inhabitants in the City as such dwellings and inhabitants are entitled by virtue of payment of Assessments;

(b) Vacate such streets, roads and alleys within the area of such Development as may be necessary in the development thereof, and convey to the Authority such interest as the City may have in such vacated areas; and, without cost to the City, cause to be removed from such vacated areas, in so far as it may be necessary, all public or private utility lines and equipment;

(c) (i) grant such deviations from the building code of the City as are reasonable and necessary to promote economy and efficiency in the development and administration of such Development, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Development as are reasonable and necessary for the development and protection of such Development and the surrounding territory;

(d) Accept grants of easements, at the Owner Entity's cost and expense, necessary for the development of such Development; and

(e) Cooperate with the Authority by such other lawful action or ways as the City and the Authority may find necessary in connection with the development and administration of such Development.

**4. Additional Responsibilities of the City.** With respect to any Development, the City further agrees that within a reasonable time after receipt of a written request therefor from the Authority in so far as the City may lawfully do so and subject to the limitations set forth in Paragraph 5:

(a) It will accept the dedication of all interior streets, roads, alleys, and adjacent sidewalks within the area of such Development, together with all storm and sanitary sewer mains in such dedicated areas, after the Authority or Owner Entity, at its own expense, has completed the grading, improvement, paving, and installation thereof in accordance with specifications acceptable to the City. Notwithstanding the foregoing, the Owner Entity shall be responsible for maintaining the sidewalks;

(b) It will accept necessary dedications of land for, and will grade, improve, pave and provide sidewalks for, all streets bounding such Development or necessary to provide adequate access thereto in consideration whereof the Authority shall pay to the City such amount

as would be assessed against the Development site for such work if such site were privately owned. Notwithstanding this provision, the cost to pave and maintain sidewalks shall be borne by the Owner Entity; and

(c) It will provide, or cause to be provided, water mains, and storm and sanitary sewer mains, leading to such Development and serving the bounding streets thereof in consideration whereof the Authority or Owner Entity shall pay to the City such amount as would be assessed against the Development site for such work if such site were privately owned.

**5. No Waiver.** Nothing in Paragraph 3 or 4 hereof shall be construed as a waiver or abrogation of the City's regulatory or discretionary powers or a waiver of the process and procedure under the City's Uniform Land Development Regulations or other laws related to development of property. The Authority and Owner Entity acknowledge that the terms of this Agreement cannot be used to compel the City to violate its laws, rules, ordinances or regulations. Notwithstanding this Agreement, the Authority or Owner Entity is liable and responsible for all fees, costs and expenses arising under the City's laws, regulations, ordinances and resolutions related to the development of property. Nothing herein shall be deemed a waiver of the Authority and/or Owner Entity obligation to comply with all development and land use regulations, ordinances, laws and resolutions of the City.

**6. Breach.** If by reason of the City's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or to cause to be furnished to the Authority or to the tenants of any Development, the Authority incurs any expense to obtain such services or facilities then the Authority may deduct the amount of such expense from any PILOT due or to become due to the City in respect to any Development or any other low-rent housing Developments owned or operated by the Authority.

**7. Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes all prior written and oral agreements between the parties with respect thereto, including but not limited to the Original Agreement.

**8. HUD Approval.** So long as any contract between the Authority and HUD for loans (including preliminary loans) or annual contributions, or both, in connection with any Development remains in force and effect, or so long as any bonds issued in connection with any Development or any monies due to HUD in connection with any Development remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of HUD.

**9. Enforcement.** The privileges and obligations of the City hereunder shall remain in full force and effect with respect to each Development so long as the beneficial title to such Development is held by the Authority or by any other public body, governmental agency, any affiliate thereof, including HUD, or Owner Entity, authorized by law to engage in the development or administration of low-rent housing Developments. If at any time the beneficial title to, or possession of, any Development is held by such other public body, governmental agency, any affiliate thereof, including HUD, or Owner Entity, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body, governmental agency, any

affiliate thereof, including HUD, or Owner Entity provided such entity would qualify for exemption under the Florida Statutes.

**10. No Conflicts.** No member of the governing body of the City or any other public official of the City who exercises any responsibilities or functions with respect to any Development during his tenure or for one year thereafter shall have any interest, direct or indirect, in any Development or any property included or planned to be included in any Development, or any contracts in connection with such Developments or property. If any such governing body member or such other public official of the City involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, he shall immediately disclose such interest to the Authority.

**11. Notices.** All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed received three days after being sent by registered or certified mail, return receipt requested, postage prepaid; or one day after being sent by a nationally recognized, receipted overnight delivery service, addressed as follows:

**If to the City:**

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Attn: City Manager

**If to the Authority:**

Housing Authority of the City of Fort  
Lauderdale  
437 SW 4th Avenue  
Fort Lauderdale, FL 33315  
Attn: Executive Director

**With a copy to:**

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Attn: City Attorney

**With a copy to:**

Cohen & Grigsby, P.C.  
625 Liberty Avenue, 5<sup>th</sup> Floor  
Pittsburgh, PA 15222-3152  
Attn: Michael H. Syme

**12. Miscellaneous.**

(a) Amendment. This Agreement may be amended or waived only by a writing signed by each of the parties and, if required, with the approval of HUD.

(b) Assignment. This Agreement may not be assigned, pledged or otherwise transferred, whether by operation of law or otherwise, without the prior written consent of the other party.

(c) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(d) Governing Law. This Agreement has been made and entered into and shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without giving effect to any conflict of laws rules.

(e) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

(f) Headings. The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

WITNESSES:

Jeanette A. Johnson  
Jeanette A. Johnson  
Alex D. Penedo  
Alex D. Penedo

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By: [Signature]  
Mayor-Commissioner  
By: [Signature]  
City Manager

ATTEST:

[Signature]  
City Clerk

APPROVED:

[Signature]  
~~Assistant~~ City Attorney

WITNESSES:

Gloria P. Lowe  
GLORIA LOWE

(CORPORATE SEAL)

THE HOUSING AUTHORITY OF THE  
CITY OF FORT LAUDERDALE, FLORIDA

By: [Signature]  
Tam English, Executive Director

ATTEST:

[Signature] SECRETARY