MEMORANDUM

Agenda Item No. 7(A)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: February 6, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Ordinance creating an affordable housing trust fund; creating a board of trustees

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The accompanying ordinance was prepared and placed on the agenda at the request of Vice-Chairwoman Barbara J. Jordan.

Murray A. Greenberg
County Attorney

MAG/bw

Memorandum

MIAMI-DADE COUNTY

Date: February 6, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Ordinance creating an Affordable Housing Trust Fund and Board of Trustees

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The proposed ordinance provides for the creation of an Affordable Housing Trust Fund that will serve as a permanent, renewable source of revenue to assist with the housing needs of Miami-Dade County residents who meet the target income of up to 140 percent of the area median income and pay more than 30 percent of their gross income for housing costs, live in overcrowded conditions, or live in substandard housing units. The trust fund will be used solely for administrative support (up to five percent) and programs and will provide assistance through production, acquisition, rehabilitation and preservation of housing units. The trust fund provides for income tiering to ensure that affordable housing funded through the Trust is distributed equitably to extremely low income, very low income, low income and moderate income households using established guidelines from the United States Department of Housing and Urban Development (US HUD). Funds allocated to Miami-Dade County by HUD for the for the administration of federally subsidized housing programs such as the public housing and Section 8 Housing Choice Voucher programs and funding from the State Housing Initiatives Partnership (SHIP) Program and other funds received or budgeted for Miami-Dade County's Local Housing Assistance program and deposited into the Local Housing Assistance Trust Fund established pursuant to Section 17-104 of the County Code shall not be deposited in the Trust.

This ordinance also establishes a Board of Trustees comprised of nine members that are non-County employees who have expertise in affordable housing issues. Members of the Trust shall serve without compensation but be entitled for reimbursement for necessary expenses incurred in the discharge of their duties.

The ordinance allows for the Board of County Commissioners to appropriate funds into the trust fund, however, the ordinance does not designate any specific funding sources to be appropriated at this time. The County will use existing staff to provide support services to the Affordable Housing Trust Fund Board of Trustees. Reimbursements for expenses incurred by Trustee members are anticipated to be minimal. If additional staffing levels or resources are required, the Board will be informed.

Cynthia W. Curry
Senior Advisor to the County Manager

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MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: February 6, 2007

FROM: Murray A. Greenberg County Attorney

SUBJECT: Agenda Item No. 7(A)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)
2-6-07

ORDINANCE NO. _____

ORDINANCE CREATING AN AFFORDABLE HOUSING TRUST FUND; CREATING A BOARD OF TRUSTEES; PROVIDING LEGISLATIVE INTENT AND PURPOSE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Chapter 17, Article VIII of the Code of Miami-Dade County, Florida is hereby created to read as follows:

ARTICLE VIII.
AFFORDABLE HOUSING TRUST FUND OF MIAMI-DADE COUNTY, FLORIDA

Sec. 17-129. Short title.

This article shall be known as the "Affordable Housing Trust Fund of Miami-Dade County, Florida."

Sec. 17-130. Legislative intent and purpose.

It is the intent of the Board of County Commissioners to create an affordable housing trust fund as a permanent, renewable source of revenue to meet, in part, the housing needs of the residents of Miami-Dade County. Those households which are intended to benefit from the trust fund shall be income eligible and possess at least one of the following characteristics: (1) they

are cost-burdened by paying more than 30% of their gross income for housing costs, (2) they live in overcrowded conditions, or (3) they live in substandard housing units.

The affordable housing trust fund shall be used solely for programs and administrative support approved by the Board of County Commissioners to meet the housing needs of those households who meet the target income of up to 140% of the area median income for Miami-Dade County. These programs shall include, without limitation, those providing assistance through production, acquisition, rehabilitation and preservation of housing units.

All appropriated funds designated by the Board of County Commissioners shall be deposited into the affordable housing trust fund in an interest-bearing account. All interest earnings from the account shall be reinvested and dedicated to the trust fund. All appropriated funds in the affordable housing trust fund account shall be available for program expenditures.

The objective of creating an affordable housing trust fund is to foster a housing supply accessible to a range of family incomes in developments assisted by the trust fund and to disperse affordable housing units throughout the County, in accordance with objectives, goals, and policies of the housing element of the CDMP.

Sec. 17-131. Definitions

(1) *Adjusted for family size* means adjusted in a manner that results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility determined as provided in subsection (4), subsection (5), subsection (6), or subsection (9), based upon a formula established by the United States Department of Housing and Urban Development.

(2) *Affordable* means that monthly rents or monthly mortgage payments including taxes and insurance do not exceed 30 percent of that amount which represents the percentage of the

median annual gross income for the households as indicated in subsection (4), subsection (5), subsection (6), or subsection (9). However, it is not the intent to limit an individual household's ability to devote more than 30 percent of its income for housing, and housing for which a household devotes more than 30 percent of its income shall be deemed affordable if the first institutional mortgage lender is satisfied that the household can afford mortgage payments in excess of the 30 percent benchmark.

(3) *Affordable housing* means any real and personal property located within Miami-Dade County which is designed and intended for the primary purpose of providing decent, safe, and sanitary residential units that are designed for home ownership or rental for extremely low, very low, low, and moderate income persons.

(4) *Extremely-low-income persons* or *extremely low-income household* means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state.

(5) *Low-income person* or *low-income household* means one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the median annual income adjusted for family size for households within Miami-Dade County. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the area's median income adjusted for family size. While occupying the rental unit, a low-income household's annual income may increase to an amount not to exceed 140 percent of 80 percent of the area's median income adjusted for family size.

(6) *Moderate-income person* or *moderate-income household* means one or more natural persons or a family that has a total annual gross household income that does not exceed 120

percent of the median annual income adjusted for family size for households within Miami-Dade County. With respect to rental units, the moderate-income household's annual income at the time of initial occupancy may not exceed 120 percent of the area's median income adjusted for family size. While occupying the rental unit, a moderate-income household's annual income may increase to an amount not to exceed 140 percent of 120 percent of the area's median income adjusted for family size.

(7) *Rent* means ongoing monthly rental assistance. The term does not include initial assistance to tenants, such as grants or loans for security and utility deposits.

(8) *Sales price* or *value* means, in the case of acquisition of an existing or newly constructed unit, the amount on the executed sales contract. For eligible persons who are building a unit on land that they own, the sales price is determined by an appraisal performed by a state-certified appraiser. The appraisal must include the value of the land and the improvements using the after-construction value of the property and must be dated within 12 months of the date construction is to commence. The sales price of any unit must include the value of the land in order to qualify as affordable housing. In the case of rehabilitation or emergency repair of an existing unit that does not create additional living space, sales price or value means the value of the real property, as determined by an appraisal performed by a state-certified appraiser and dated within 12 months of the date construction is to commence or the assessed value of the real property as determined by the county property appraiser. In the case of rehabilitation of an existing unit that includes the addition of new living space, sales price or value means the value of the real property, as determined by an appraisal performed by a state-certified appraiser and dated within 12 months of the date construction is to commence or the assessed value of the real

property as determined by the county property appraiser, plus the cost of the improvements in either case.

(9) *Very-low-income person* or *very-low-income household* means one or more natural persons or a family that has a total annual gross household income that does not exceed 50 percent of the median annual income adjusted for family size for households within Miami-Dade County. With respect to rental units, the very-low-income household's annual income at the time of initial occupancy may not exceed 50 percent of the area's median income adjusted for family size. While occupying the rental unit, a very-low-income household's annual income may increase to an amount not to exceed 140 percent of 50 percent of the area's median income adjusted for family size.

Sec. 17-132 Affordable Housing Trust Fund

(1) There is hereby established the Affordable Housing Trust Fund (the "Trust"). Separate accounts within such Trust may be created from time to time to avoid commingling as required by law or as deemed appropriate to further the purposes of the Trust. Investment earnings, if any, from the moneys on deposit in the Trust shall be retained and shall be used for the purposes provided herein. The Trust shall be separately stated as a special revenue fund in the County's audited financial statements. Copies of such audited financial statements shall be forwarded to the Board of County Commissioners as part of the report required by Section 17-135 of this article.

(2) The Trust shall be administered by a board of trustees, which shall have the authority to govern the Trust Fund consistent with this article and to prescribe procedures for said purpose, subject to necessary approvals by the Board of County Commissioners.

(3) Monies deposited in the Trust along with any interest earnings on such monies shall be used solely to increase and improve the supply of affordable housing to households in the affordable target income group, including, but not limited to acquisition of property and property rights, cost of construction including costs associated with planning, administration, design, building or installation, as well as any other costs associated with the construction or financing of affordable housing, and reimbursement to the County for such costs if funds were advanced by the County from other sources. To the maximum extent possible, all monies should be used to provide for additional affordable housing and services.

(a) No more than five percent (5%) of the monies in the Trust may be used to cover reasonable administrative expenses not reimbursed through processing fees, including reasonable consultant and legal expenses related to the establishment and/or administration of the Trust and reasonable expenses for administering the process of calculating, collecting, and accounting for any deferred County fees authorized by this section. No portion of the Trust may be diverted to other purposes by way of loan or otherwise.

(b) Monies in the Trust shall be used to construct, acquire, rehabilitate or subsidize affordable housing and/or to assist other governmental entities, private organizations or individuals in the construction, acquisition, rehabilitation, reimbursement of County advanced funds, location or subsidy of affordable housing. Monies in the Trust may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the Board of County Commissioners determine is appropriate to accomplish the purposes of the Trust. These uses include, but are not limited to, assistance for equity participation loans,

grants, pre–home ownership co–investment, pre–development loan funds, participation leases, or other public/private partnership arrangements. The Trust shall recommend an appropriate annual allocation for the exercise by the County Manager of any and all rights of first refusal held by the County or all rights to pay off any senior lenders seeking to foreclose upon or take any other action against an affordable housing dwelling unit, and when the exercise of said rights is for the direct and exclusive purpose of providing affordable housing for those households which are intended to benefit from the Trust. The Trust monies may be extended for the benefit of rental or owner occupied housing.

(c) Except where Federal and State laws or regulations or the Miami-Dade Code mandate to the contrary, monies deposited in the Trust that are used to construct, acquire, rehabilitate or subsidize affordable housing and/or to assist other governmental entities, private organizations or individuals in the construction, acquisition, rehabilitation, reimbursement of County advanced funds, location or subsidy of affordable housing shall, whenever feasible, be disbursed in a manner to assure that the housing supply created with these monies is accessible to a range of family whose incomes do not exceed the U.S. Department of Housing and Urban Development's published standards for moderate income households, adjusted for family size.

(d) In accordance with the requirements of subsection (c) of this Section, the affordable rental housing units that are constructed, acquired rehabilitated or subsidized either by the County or other governmental entities, private organizations or individuals shall be offered at affordable rents exclusively to

households whose income does not exceed the U.S. Department of Housing and Urban Development's published standard for moderate income households, adjusted for family size. Of these affordable units in rental projects, (1) forty percent (40%) of the total units in the project shall be offered at an affordable rent to households whose income does not exceeds the published standard for extremely low income and very low income households, adjusted for family size; (2) thirty percent (30%) of the total units in the project shall be offered at an affordable rent to households whose income does not exceeds the published standard for low income households, adjusted for family size; and (3) thirty percent (30%) of the total units in the project shall be offered at an affordable rent to households whose income does not exceeds the published standard for moderate income households, adjusted for family size. In the event there are insufficient eligible households within an income target range to be offered affordable housing units within a project, then the percentage of the unused units within that target income range shall be added to the next target income range up to an additional ten percent (10%). Any amounts in excess of ten percent (10%) shall be equitably distributed among the remaining households in the remaining target income ranges.

(e) In accordance with the requirements of subsection (c) of this Section, the affordable housing units in for-sale projects that are constructed, acquired rehabilitated or subsidized either by the County or other governmental entities, private organizations or individuals shall be sold at affordable housing cost for owner occupancy to households whose income does not exceed one hundred and forty percent (140%) of the area median income. Of these affordable units to be

sold, (1) twenty percent (20%) of the total units in the project shall be offered at an affordable sales price to households whose income does not exceed the published standard for extremely low income and very low income households, adjusted for family size; (2) thirty percent (30%) of the total units in the project shall be offered at an affordable sales price to households whose income does not exceed the published standard for low income households, adjusted for family size; and (3) fifty percent (50%) of the total units in the project shall be offered at an affordable sales price to households whose income does not exceed the published standard for moderate income households, adjusted for family size. In the event there are insufficient eligible households within an income target range to be offered affordable housing units within a project, then the percentage of the unused units within that target income range shall be added to the next target income range up to an additional ten percent (10%). Any amounts in excess of ten percent (10%) shall be equitably distributed among the remaining households in the remaining target income ranges.

(4) Funds allocated to Miami-Dade County by the United States Department of Housing and Urban Development for the administration of federally subsidized housing programs, such as the public housing and the Section 8 Housing Choice Voucher programs, and the Surtax and SHIP program funds and other funds received or budgeted for Miami-Dade County's Local Housing Assistance program and deposited into the Local Housing Assistance Trust Fund established pursuant to Section 17-104 of the Code shall not be deposited into the Trust established herein.

Sec. 17-133. Membership

(1) *Members*. The governing body of the Trust shall be a Board of Trustees composed of nine (9) members, none of whom shall be employees of the Miami-Dade County. The members shall be the following:

(a) One (1) member representing the financial or investment banking community;
(b) One (1) member nominated by the Chairperson of the Board of County Commissioner's Committee which has jurisdiction over housing and community and economic development;
(c) One (1) member with a background in public sector budgeting and finance;
(d) One (1) member nominated by the Metro-Miami Action Plan Trust;
(e) One (1) member nominated by the Dade Affordable Housing Advisory Board;
(f) One (1) member nominated by Miami-Dade Housing Finance Authority;
(g) One (1) member representing the non-profit developer community;
(h) One (1) member representing the insurance community; and
(i) One (1) member from the private home builders community.

The Chair of the Board of the County Commissioners shall contact each of the entities referenced in Section 17-133 (1) to obtain the names of interested and eligible persons and their resumes. The Chair shall obtain a pool of no less than three (3) names of candidates per seat on the Trust. Upon receipt of the names all candidates, the Chair shall forward them by resolution to the Board of County Commissioners. From the pool of candidates for each seat, the Board of County Commissioners shall appoint one (1) eligible person to serve as a member of the Board of Trustees.

Individuals shall be appointed based on the following criteria:

(a) Knowledge of and demonstrable service to the affordable housing community;

(b) Representation of the diverse populations of the Miami-Dade County community; and
(c) Special expertise in affordable housing.

Members of the Trust shall serve without compensation but shall be entitled to reimbursement for necessary expenses incurred in the discharge of their duties.

(2) *Vacancies on Board of Trustees.* Vacancies on the Board of Trustees shall be filled in the same manner by which the original Trustees were appointed, with a special emphasis on choosing persons who represent the demographic composition of the entire community.

(3) *Qualifications of Members.* Each member of the Board of Trustees shall be a permanent resident and duly qualified elector of Miami-Dade County, unless the Board of County Commissioners waives the residency requirement by a two-thirds (2/3) vote of its membership, and shall be of an outstanding reputation of integrity, responsibility, and commitment to serving the community.

(4) *Tenure and Removal of Members.* All members shall serve staggered terms of three (3) years each, provided, however, of the original Board of Trustees, two (2) members shall serve for a term of one (1) year; two (2) members shall serve for a term of two (2) years; and three (3) members shall serve for a term of three (3) years. No trustee shall be permitted to serve more than two (2) consecutive and complete terms of three (3) years each unless so authorized by two-thirds (2/3) vote of the full membership of the Board of County Commissioners. Trustees may be removed in accordance with the provisions of Chapter 2-11.38 of the Code of Miami-Dade County.

(5) *Organization of the Board of Trustees.*

(a) *Officers.* The Trust shall organize after the members thereof have qualified to serve and shall, each fiscal year, elect one (1) of its voting

members as chairperson and one (1) of its voting members as vice-chairperson and shall designate a secretary who may or may not be a member of the Board, and such other officers as the Trust may determine to be necessary. In addition, the Trust shall make, adopt and amend by-laws, rules and regulations for its own governance and for the operation, governance, restoration, preservation and maintenance of designated facilities.

(b) *Meetings.* The Trust shall hold regular meetings, no less then six (6) times per year, and such other meetings, as it deems necessary. Five (5) members shall constitute a quorum. Minutes shall be kept of all meetings of the Trust and all meetings shall be duly noticed to the public.

(c) *Committees.* The chairperson shall nominate and the Trust shall appoint the chairperson and members of such committees as the Trust shall find helpful to their mission, however, no authority to act or speak in the name of the Trust shall be delegated to a committee. Each committee shall be chaired by a duly appointed member of the Trust, however, committee membership may include persons who are not members of the Trust. The Trust may establish or eliminate committees at its discretion.

(d) *Applicability of County rules and procedures.* The Trust shall at all times operate under the Florida Open Government laws, including the "Sunshine Law," public meeting laws and public records laws and shall be governed by all State and County conflict of interest laws, as applicable, including the Miami-Dade County Conflict of Interest and Code of Ethics

Ordinance, Sec. 1112-11.1 of the Code of Miami-Dade County.

(e) *Voting Requirements.* Trustees may not designate alternates to vote on their behalf or vote by proxy.

(f) *Attendance requirement.* Notwithstanding any other provision of this Code, any board member shall be automatically removed if, in a given fiscal year:

(i) He or she is absent from two (2) consecutive meetings without an acceptable excuse;

(ii) He or she is absent from three (3) of the Trust's meetings without an acceptable excuse; or

(iii) Whether excused or not, he or she misses two-thirds (2/3) of the Trust's meetings in a given fiscal year. A member shall be deemed absent from a meeting when he or she is not present at the meeting at least seventy-five (75) percent of the time. An "acceptable excuse" is defined as an absence for medical reasons, business reasons, personal reasons, or any other reason which the Trust, by a two-thirds (2/3) vote of the membership, deems appropriate. By a two-thirds (2/3) vote of the members of the full Board of Trustees, the provisions of this section may be waived.

(g) The County Manager shall provide to the Trust adequate staff and support services to enable it to carry out its purposes.

Sec. 17-134. Powers.

The Trust shall have the power to invite individuals to address it, to hold public hearings, workshops and seminars. The Trust shall have all the powers necessary to carry out its purposes. The Trust cannot commit itself or the County to any expenditure of funds without the specific approval of the Board of County Commissioners, or of the County Manager, under circumstances when the Board of County Commissioners has delegated that authority to him or her.

Expenditures by the Trustees from the Trust shall be controlled, authorized and paid in accordance with County policy and upon approval of the Board of County Commissioners. Execution of contracts related to the use or administration of Trust monies shall be in accordance with standard County policy.

Sec. 17-135. Financial audit of fund.

The County shall provide for an independent financial audit of the Trust each fiscal year and report of such audit. Such report shall describe the amount and source of deposits into, and amount and purpose of withdrawals from the Trust during such fiscal year and the amount and principal and interest paid during such year or any indebtedness to which is pledged and the remaining amount of such indebtedness.

Sec. 17-136. Reports to the Board of County Commissioners.

The Trustees shall submit regular reports to the Board of County Commissioners concerning compliance with the provisions of this article. This report shall be provided on a semi-annual basis for the first two years after the effective date of this ordinance, and annually thereafter, to include but not be limited to an evaluation of the affordable housing needs in Miami-Dade County and the uses and expenditures of the Trust.

Sec. 17-137. Liberal construction to effectuate public purpose.

This article, being for the public purpose and for the long-term welfare of the present and future citizens of Miami-Dade County, Florida, shall be liberally construed to effect the purposes hereof.

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be re-numbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Terrence A. Smith

Sponsored by Vice-Chairwoman Barbara J. Jordan