



MEMORANDUM

Agenda Item No. 11(A)(10)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 24, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving allocation of
\$3,000,000 from Building Better
Communities General Obligation
Bond Program Project No. 320 –
“Economic Development in Targeted
Urban Areas”

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Audrey M. Edmonson.

A handwritten signature in black ink, appearing to read "RAC", written over a horizontal line.

R. A. Cuevas, Jr.
County Attorney

RAC/cp



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: January 24, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 11(A) (10)

Please note any items checked.

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

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(10)
1-24-12

RESOLUTION NO. _____

RESOLUTION APPROVING ALLOCATION OF \$3,000,000 FROM BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM PROJECT NO. 320 - "ECONOMIC DEVELOPMENT IN TARGETED URBAN AREAS" AS IDENTIFIED IN APPENDIX A TO RESOLUTION NO. R-914-04 TO FUND CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS OWNED BY NORTHSIDE CENTRE LLC, A FLORIDA FOR PROFIT CORPORATION; APPROVING FORM OF GRANT AGREEMENT; AND AUTHORIZING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AND DELIVER GRANT AGREEMENT

WHEREAS, Appendix A to Resolution No. R-914-04 (the "Public Infrastructure Resolution"), lists projects eligible for funding from the Building Better Communities General Obligation Bond Program (the "BBC Program") by project number, municipal project location, BCC district, project name, project description, street address, and project funding allocation; and

WHEREAS, one of the projects listed in Appendix A to the Public Infrastructure Resolution and approved by the voters for funding is Project No. 320 – "Economic Development in Targeted Urban Areas" with a project description that states "Provide infrastructure improvements to spur economic development and attract new businesses to the community and to create jobs" ("Project 320"); and

WHEREAS, Northside Centre, LLC., a Florida for-profit corporation ("Developer"), has applied for an allocation from Fund 320 in the amount of \$3,000,000 ("Allocation") to fund certain public infrastructure improvements in connection with the renovation and revitalization

of the Northside Centre shopping center located at 7900 NW 27 Avenue, Miami which it owns (“Northside Shopping Center”); and

WHEREAS, the public infrastructure improvements are essential elements in the renovation and revitalization of the Northside Shopping Center which will attract new businesses and spur development in the area; and

WHEREAS, the Allocation is conditioned upon certain employment and salary benchmarks being met at different intervals, among other conditions, as described in the Grant Agreement between the County and the Developer which is attached to this Resolution as Exhibit “A” (“Grant Agreement”); and

WHEREAS, this Board wishes to approve the Allocation and the form of the Grant Agreement and to authorize its execution and delivery,

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

Section 1. The foregoing recitals are incorporated in this resolution and are approved.

Section 2. An allocation in the amount of \$3,000,000 to the Developer from Project 320 for the purpose of funding certain public infrastructure is approved by this Board in accordance with the terms of the Grant Agreement. It is anticipated that the Allocation will be available in Fiscal Year 2013-14 from available general obligation bond proceeds.

Section 3. The Grant Agreement in substantially the form attached to this resolution is approved and the County Mayor or the County Mayor’s designee is authorized to execute the Grant Agreement and deliver it on behalf of the County with such changes or filling in of blanks that may be necessary after consultation with the Office of the Miami-Dade County Attorney.

The Prime Sponsor of the foregoing resolution is Vice Chairwoman Audrey M. Edmonson. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of January, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Gerald T. Heffernan

and revitalization of, that center will attract new businesses and result in the creation of at least 170 new permanent jobs at the Northside Shopping Center; and

WHEREAS, the County and the Grantee wish to enter into this Grant Agreement to set forth the terms pursuant to which the County will disburse the allocation of GOB funds to the Grantee; and

NOW THEREFORE, pursuant to a resolution of the Board which specifically authorizes the County Mayor or County Mayor's designee to execute this Grant Agreement and any other related agreements and certificates and in consideration of the mutual promises and covenants contained in this Grant Agreement and the mutual benefits to be derived from this Agreement, the County and the Grantee agree as follows:

Section 1. **Parties, Effective Date and Term.** The parties to this Agreement are the Grantee and the County. The County has delegated the responsibility of administering this Grant Agreement to the County Mayor or the County Mayor's designee, who shall be referred to as the "County Mayor."

This Agreement shall take effect upon execution by the County and the Grantee and shall terminate upon the satisfaction and completion of all the terms and conditions by the County and the Grantee.

Section 2. **Amount of Funding Allocation and Payment Schedule.** The County shall provide the Funding Allocation solely from legally available GOB bond and/or note proceeds. Grantee understands and agrees that payment to the Grantee will be made in accordance with the Internal Revenue Code of 1986, as amended, . By making this grant, the County assumes no obligation to provide financial support of any type whatever in excess of the Funding Allocation. Cost overruns are the responsibility of the Grantee. The Funding Allocation shall be made as a onetime reimbursement in accordance with Section 4 no later than eighteen months after the Project {defined below} is completed and placed into service, provided the Project commences no earlier than October 1, 2012 and is completed no later than September 30 2013. Any delay in the completion may impact reimbursement eligibility of certain expenditures because of Federal tax rules which generally provide that reimbursements can be made no later than eighteen (18) months after the later of (a) the date the original expenditure is paid by the Grantee, or (b) the date the project is placed in service or abandoned, but in no event more than three (3) years after the original expenditure is paid by the Grantee.

The County shall only be obligated to reimburse the Grantee provided the Grantee is not in breach of this Agreement and has met the employment

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and salary performance benchmarks set forth in Section 4. Any and all reimbursement obligations of the County shall be fully subject to and contingent upon the availability of funding solely from BBC GOB Program funds. The Grantee shall be solely responsible for submitting all documentation, as required by this Agreement and by the Administrative Rules of the County pertaining to the BBC GOB Program ("Administrative Rules"), to the County Mayor.

Section 3. Development Description. The Grantee shall renovate a 72,000 square foot area and complete other capital improvements located at the Northside Shopping Center at a cost of not less than \$3,150,000 to be funded by the Grantee from funds other than the Funding Allocation. The renovations and improvements will consist of an out parcel building, façade upgrades, building renovations and exterior escalators and elevators.

In connection with such renovations, the Grantee shall also provide related public infrastructure improvements consisting of paving, striping, electrical work, new lighting and landscaping for the parking and pedestrian areas; pedestrian walkways and areas related to parking new turn-ins and entrances for access; and eligible design and consultant fees and interest expense in connection with the interim financing of such public infrastructure (collectively "Project"). The Funding Allocation shall be used to reimburse the Grantee for Project costs. It is expressly understood and agreed, that the Project which is supported by the Funding Allocation must be open and accessible to the public, provide public exposure, and benefit the public.

The Grantee agrees to: a) maintain the Project; b) keep the Project open to all Miami-Dade County residents; and c) allow all Miami-Dade County residents equal access and use of the Project at no less favorable terms than those extended to tenants and business patrons of the Northside Shopping Center.

If the Grantee wishes to revise the Project for the purpose of completing the Project and such revisions substantially alter the original Project, the Grantee must request in writing that the County Mayor review and approve such revisions. Grantee's request must be given at least fourteen (14) days prior to implementation of revisions. The County Mayor will make the final determination on revisions within fourteen (14) business days of the date of receipt of the request in the County's Executive Offices.

Section 4. Special Conditions. The County has no obligation to pay the Funding Allocation to the Grantee except in accordance with the terms and conditions set forth in this Section 4.

4.1 Employment and Salary Performance Benchmarks

4.1.1 "New Jobs" are defined as full-time equivalent positions (36hrs/week) but do not include construction workers or jobs resulting from the relocation of businesses from within the West Little River TUA or the Model City/Brownsville TUA to the Northside Shopping Center.

4.1.2 New Jobs related to the Project must result from: (i) the operation of start-up companies, (ii) businesses relocating to the West Little River TUA, Model City/Brownsville TUA or Miami-Dade County, and/or (iii) local business expansions. New Jobs created after August 1, 2011 shall be applied toward the minimum number of jobs required pursuant to the performance benchmarks set forth below.

4.1.3 Performance benchmarks:

4.1.3.1 Creation of 166 New Jobs in retail and four (4) New Jobs in financial services no later than six (6) months after completion of public infrastructure, provided, however, only New Jobs created after August 1, 2011 will be considered towards meeting this benchmark.

4.1.3.2 Average Salary in retail, \$22,880 per year (\$11.00/hr); and Average Salary in financial services, \$27,910 per year (\$13.42/hr)

4.1.3.3 170 New Jobs must be retained for 12 months, after meeting benchmark in 4.1.3.1 at no less than the average salaries noted above.

4.1.3.4 170 New Jobs must also be retained for 12 months after the disbursement of the grant award.

4.1.3.5 For purposes of this agreement "completion of the public infrastructure" shall mean the date of issuance of a temporary certificate of occupancy or use for the public infrastructure.

4.2 Failure to Meet Employment Creation and Salary Benchmarks

4.2.1 The final and only disbursement shall be contingent upon satisfaction of all of the following conditions: (a) no later than the deadline set forth in Section 4.1.3.1, attaining at least 80% of the employment benchmarks (133 retail New Jobs and 3 financial services New Jobs, or a combination of retail and financial jobs equal to at least 136 New Jobs) at the salaries set forth in Section 4.1.3.2; and (b) meeting the performance benchmark set forth in Section 4.1.3.3.

4.2.2 The County shall have no obligation to disburse funds if less than 136 New Jobs are created as of the deadline set forth in Section 4.1.3.1 or if the performance benchmark in Section 4.1.3.3 is not met.

4.2.3 When the (i) actual number of New Jobs is within 81% and 100% of the benchmark; or (ii) salary benchmarks set forth in Section

4.1.3.2 are not met by the deadline in Section 4.1.3.1, there shall be a reduction in the disbursement ("set-off") according to the following formulas:

4.2.3.1 Employment: (166 minus the number of New Jobs created in the retail industry) x \$11,440; and (4 minus the number of New Jobs created in the financial industry) x \$13,955.

4.2.3.2 Salary: (\$22,880 minus the actual Average Retail Salary) x actual number of Retail New Jobs created, and (\$27,910 minus the actual Average Financial Salary) x actual number of New Financial Jobs created.

4.3 Disbursement Schedule

4.3.1 Disbursements must comply with applicable Federal IRS rules, as well as State law, governing use of tax exempt BBC GOB Program bonds.

4.3.2 The request for reimbursement must be submitted 60 days prior the scheduled date of the disbursement and accompanied by proper documentation substantiating the requested disbursement.

4.3.3 The final and only disbursement representing 100% of the grant, less any amount set-off for failing to meet benchmarks, will be issued 18 months from the date of completion of the public infrastructure.

4.3.4 The final and only disbursement is subject to the following conditions:

4.3.4.1 The request for reimbursement must be accompanied by proper documentation substantiating compliance with employment and salary benchmarks set forth in Sections 4.1.3.1, 4.1.3.2, and 4.1.3.3.

4.3.4.2 The creation of at least 80% of the New Jobs at the Average Salaries set forth in Sections 4.1.3.1 and 4.1.3.2, and retention for the period indicated in Section 4.1.3.3;

4.3.4.3 Submission of official documentation confirming the completion of the Project and paid invoices substantiating approved purchases associated with the Project.

4.3.4.4 Additional private capital improvements, in real and/or personal tangible property, at a cost equal to at least \$3,150,000 must have been completed by the Grantee, as evidenced by a certificate of completion and paid invoices or other documentation acceptable to the County. Any expenditure for the private capital improvements completed on or after August 1, 2011 shall be considered as a part of the \$3,150,000 private investment to be made by the Grantee. If the additional private capital investment is less than \$3,150,000, then, in addition to any other applicable set off amounts, a dollar-for-dollar reduction in the grant equal to the

difference between \$3,150,000 and the actual amount of the additional private investment will apply.

4.4 Clawback Provision

Prior to the final and only disbursement, the Grantee must provide an irrevocable letter of credit (or other collateral) in a form acceptable to the County equal to \$500,000. If on the date that is twelve months from the disbursement date ("Anniversary Date") the Grantee fails to meet the employment requirement of 170 New Jobs but is able to retain at least 136 New Jobs, then the County will draw immediately upon the irrevocable letter of credit (or other collateral) in an amount equal to ((166 minus the number of New Jobs in the retail industry as of the Anniversary Date) x \$11,440) plus ((4 minus the number of New Jobs in the financial industry as of the Anniversary Date) x \$13,955). If the Grantee is unable to retain at least 136 New Jobs on the Anniversary Date, then the County will draw on the full amount of the Letter of Credit (or other collateral) which sum shall represent the entire sum Grantee shall be obligated to return to the County if the Benchmarks in Section 4.1 are not achieved. If the Grantee has retained 170 New Jobs on the Anniversary Date, the County shall return the letter of credit (or other collateral) to the Grantee.

4.5 Efforts to Hire from TUAs

Grantee shall commit to develop and implement a plan/program to hire individuals from the West Little River, Model City/Brownsville neighborhoods during the entire renovation and construction and operational phases of the Project.

4.6 Green Business Certification

Businesses occupying space at the Northside Shopping Center will be encouraged to meet the requirements to receive certification under the County's "green certified business" program.

4.7 Monitoring Performance Benchmarks and Compliance with Terms of Grant Agreement

The Grantee shall provide documentation the County needs to monitor compliance in a timely manner, etc.

4.8 County Administrative Fee

The Grantee agrees that with each request for disbursement it shall remit to the County a \$7,500.00 processing fee.

4.9 County Code

As a condition of grant award for the Project, the Grantee agrees as a matter of contract to the application of the requirements of Section 2-11.16 of the Code of Miami-Dade County to the Project.

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Section 5. Report Deadline. To demonstrate that the Grantee has met and fulfilled all requirements as outlined in this Agreement, exhibits, and/or other substantive materials as may be attached or included as a condition to the County's obligation to pay the Funding Allocation, the Grantee must submit to the County Mayor, a written report documenting that the Grantee is meeting or has fulfilled all Project and financial requirements and is meeting the employment and salary performance benchmarks set forth in Section 4. This report is to be received by the County Mayor four months after the commencement of construction of the Project and quarterly, thereafter. The Grantee shall also submit a written report to the County Mayor on or prior to September 30th of each year from the time of the execution of this Agreement through the termination of this Agreement demonstrating that the Grantee is fulfilling, or has fulfilled, its purpose, and has complied with all applicable municipal, Miami-Dade County, state and federal requirements. The County Mayor may also request that a compilation statement or independent financial audit and accounting for the expenditure of Funding Allocation funds be prepared by an independent certified public accountant selected by, and at the expense of, the Grantee.

In the event that the Grantee fails to submit the required reports as required above, the County Mayor may terminate this Agreement in accordance with Section 14. Further, the County Mayor must approve these reports for the Grantee to be deemed to have met all conditions of the grant award. The County Mayor shall approve or reject all reports received from the Grantee within forty-five (45) days of receipt. Grantee shall have thirty (30) days to re-submit any reports that are rejected by the County Mayor.

Section 6. Program Monitoring and Evaluation. The County Mayor may monitor and conduct an evaluation of the Grantee's operations related to the Project and the Project, which may include visits by County representatives to: observe the Project or Grantee's operations; discuss the Grantee's programs with the Grantee's personnel; and/or evaluate the public impact of the Project. Upon request, the Grantee shall provide the County Mayor with notice of all meetings of its Board of Directors or governing board, general activities and Project-related events. In the event the County Mayor concludes, as a result of such monitoring and/or evaluation, that the Grantee is not in compliance with the terms of this Agreement or the Administrative Rules or for other reasons which significantly impact on the Grantee's ability to fulfill the conditions of this Funding Allocation award, then the County Mayor must provide in writing to the Grantee, within thirty (30) days of the date of said monitoring/evaluation, notice of the inadequacy or deficiencies noted which may significantly impact on the Grantee's ability to complete the Project or fulfill the terms of this Agreement within a reasonable time frame. If Grantee refuses or is unable to address the areas of concern within thirty (30) days of receipt of such notice from the County Mayor, then the County Mayor, at his discretion, may take other actions which may

include reduction or rescission of the Funding Allocation award, or withholding Funding Allocation funds until such time as the Grantee can demonstrate that such issues have been corrected. Further, in the event that the Grantee does not expend the Funding Allocation for the Project or uses any portion of the Funding Allocation for costs not associated with the Project and the Grantee refuses or is unable to address the areas of concern, then the County Mayor may request the return of the full or partial Funding Allocation award. The County Mayor may also institute a moratorium on applications from the Grantee to County grants programs for a period of up to one (1) year or until the deficient areas have been addressed to the satisfaction of the County Mayor, whichever occurs first.

Section 7. **Bank Accounts and Bonding.** Monies received pursuant to this Agreement shall be kept in accounts in established Florida banks, credit unions or savings and loan associations whose identity shall be disclosed in writing, with the identity and title of individuals whom the Grantee authorizes to withdraw or write checks on Funding Allocation funds from the banking institution identified on the "Bank Account Disclosure", Exhibit Form K, submitted by the Grantee. These accounts must be segregated from other accounts maintained by the Grantee. All persons authorized to withdraw funds from the Funding Allocation account must be bonded by a reputable licensed firm.

Section 8. **Accounting, Financial Review, Access to Records and Audits.** The Grantee shall maintain accurate and complete books and records for all receipts and expenditures of this Funding Allocation award and the private expenditure of \$3,150,000 in conformance with reasonable general accounting standards. These books and records, as well as all documents pertaining to payments received and made in conjunction with the Funding Allocation, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained in a secure place and in an orderly fashion in a location within Miami-Dade County by the Grantee for at least three (3) years after the later of: the Expenditure Deadline specified in Section 5; the extended Expenditure Deadline, as approved by the County Mayor, if any; the completion of a County requested or mandated audit or compliance review; or the conclusion of a legal action involving the Funding Allocation award, the Grantee and/or Project or activities related to the Funding Allocation award.

The County Mayor may examine these books, records and documents at the Grantee's offices or other Grantee approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice. Furthermore, the County Mayor may, upon reasonable notice and at the County's expense, audit or have audited all financial records of the Grantee, related to this grant, the Project and the private expenditure of \$3,150,000.

Pursuant to Section 2-1076 of the Miami-Dade County Code, the County shall have the right to engage the services of an independent private sector inspector general ("IPSIG") to monitor and investigate compliance with the terms of this Agreement. The MIAMI-DADE COUNTY OFFICE OF THE INSPECTOR GENERAL (OIG) shall have the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions, and contracts such as this Agreement for improvements some cost of which is funded with County funds.

As such, the OIG may, on a random basis, perform audits on this Agreement throughout the duration of said Agreement (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County.

The OIG shall have the power to retain and coordinate the services of an IPSIG who may be engaged to perform said random audits, as well as audit, investigate, monitor, oversee, inspect, and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the Grantee and contractor and their respective officers, agents and employees, lobbyists, subcontractors, materialmen, staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The OIG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the Grantee (and any affected contractor and materialman) from OIG, the Grantee (and any affected contractor and materialman) shall make all requested records and documents available to the OIG for inspection and copying.

The OIG shall have the power to report and/or recommend to the Board whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The OIG shall have the power to analyze the need for, and reasonableness of, proposed change orders.

The OIG is authorized to investigate any alleged violation by a contractor of its Code of Business Ethics, pursuant Miami-Dade County Code Section 2-8.1.

The provisions in this section shall apply to the Grantee, its contractors and their respective officers, agents and employees. The Grantee shall incorporate the provisions in this section in all contracts and all

other agreements executed by its contractors in connection with the performance of this Agreement. Any rights that the County has under this Section shall not be the basis for any liability to accrue to the County from the Grantee, its contractors or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation and the County shall have no obligation to exercise any of its rights for the benefit of the Grantee.

Section 9. Publicity and Credits. The Grantee must include the following credit line in all promotional marketing materials related to this funding including web sites, news and press releases, public service announcements, broadcast media, programs, and publications: "THIS PROJECT IS SUPPORTED BY THE BUILDING BETTER COMMUNITIES BOND PROGRAM AND THE MAYOR AND BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY."

Section 10. Naming Rights, Publicity and Advertisements. It is understood and agreed that the Grantee is funded by Miami-Dade County. Further, by acceptance of these funds, the Grantee agrees that Project(s) funded by this Agreement shall recognize and adequately reference the County as a funding source. In the event that any naming rights or advertisement space is offered on a facility constructed or improved with BBC GOB Program funds, then Miami-Dade County's name, logo, and slogan shall appear on the facility not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. Lettering used for Miami-Dade County will be no less than 75% of the size of the largest lettering used for any sponsor or advertiser unless waived by the Board. Grantee shall ensure that all publicity, public relations, advertisements and signs recognize and reference the County for the support of all Project(s). This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions and stationery. The use of the official County logo is permissible for the publicity purposes stated herein. The Grantee shall submit sample of mock up of such publicity or materials to the County for review and approval. The Grantee shall ensure that all media representatives, when inquiring about the Project(s) funded by the Agreement, are informed that the County is its funding source.

Section 11. Relationship of the Parties, Liability and Indemnification. It is expressly understood and intended that the Grantee, as the recipient of BBC GOB Program funds, is not an officer, employee or agent of Miami-Dade County, its Board of County Commissioners, its Mayor, nor the Miami-Dade County department administering the Funding Allocation award. Further, for purposes of this Agreement, the Project or activity, the

parties agree that the Grantee, its officers, agents and employees are independent contractors and solely responsible for the Project.

The Grantee shall take all actions as may be necessary to ensure that its officers, agents, employees, assignees and/or subcontractors shall not act as nor give the appearance of that of an agent, servant, joint venturer, collaborator or partner of the department administering this Grant, the Miami-Dade County Mayor, the Miami-Dade County Board of County Commissioners, or its employees. No party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other party, nor to have been authorized to incur any expense on behalf of any other party, nor to act for or to bind any other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to complete the Project, including entering into subcontracts with vendors for services and commodities, provided that it is understood by the Grantee that the County shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.

The Grantee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' 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 Grantee or its employees, agents, servants, partners, principals, subconsultants or subcontractors. Grantee 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 County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorneys' fees which may issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Grantee 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.

Section 12. **Assignment.** The Grantee is not permitted to assign this Agreement in full or in part. Any purported assignment will render this

Agreement null and void and subject to immediate rescission of the full amount of the Funding Allocation award and reimbursement by the Grantee of its full value to the County.

Section 13. Compliance with Laws. It shall be a contractual obligation of the Grantee under this Agreement and the Grantee agrees to abide by and be governed by all Applicable Laws necessary for the development and completion of the Project. "Applicable Law" means any applicable law (including, without limitation, any environmental law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, "Applicable Laws" and "applicable laws" shall expressly include, without limitation, all applicable zoning, land use, DRI and Florida Building Code requirements and regulations, all applicable impact fee requirements, all requirements of Florida Statutes, specifically including, but not limited to, Section 255.05 related to payment and performance bonds, Section 255.20 related to contractor selection and Section 287.055 related to competitive selection of architects and engineers, all requirements of Chapters 119 and 286 of the Florida Statutes, all disclosure requirements imposed by Section 2-8.1 of the Miami-Dade County Code, all requirements of Miami-Dade County Ordinance No. 90-133 (amending Section 2-8.1), County Resolution No. R-754-93 (Insurance Affidavit), County Ordinance No. 92-15 (Drug-Free Workplace), and County Ordinance No. 91-142 (Family Leave Affidavit), execution of public entity crimes disclosure statement, Miami-Dade County disability non-discrimination affidavit, and Miami-Dade County criminal record affidavit, all applicable requirements of Miami-Dade County Ordinance No. 90-90 as amended by Ordinance No. 90-133 (Fair Wage Ordinance), Section 2-11.15 of the Code (Art in Public Places), the requirements of Section 2-1701 of the Code and all other applicable requirements contained in this Agreement.

The Grantee shall comply with Miami-Dade County Resolution No. R-385-98 which creates a policy prohibiting contracts with firms violating the Americans with Disabilities Act of 1990 and other laws prohibiting discrimination on the basis of disability and shall execute a Miami-Dade County Disability Non-Discrimination Affidavit confirming such compliance.

The Grantee covenants and agrees with the County to comply with Miami-Dade County Ordinance No. 72-82 (Conflict of Interest), Resolution No. R-1049 93 (Affirmative Action Plan Furtherance and Compliance), and Resolution No. R-185-00 (Domestic Leave Ordinance).

All records of the Grantee and its contractors pertaining to the Project shall be maintained in Miami-Dade County and, upon reasonable notice shall be made available to representatives of the County. In addition, the Office of The Inspector General of Miami-Dade County shall have access thereto for any of the purposes provided in Section 2-1076 of the Code of Miami-Dade County.

The Grantee shall cause each contract to include a provision that contractor shall comply with all requirements of Section 2-1076 as provided in Section 9 herein, and that contractor will maintain all files, records, accounts of expenditures for contractor's portion of the work and that such records shall be maintained within Miami-Dade County's geographical area and the County shall have access thereto as provided in this Agreement.

The Grantee has certifiably indicated compliance to certain Applicable Laws by properly executing the affidavits attached hereto. See affidavits for specific provisions and declarations described.

Section 14. Breach, Opportunity to Cure and Termination.

(a) Each of the following shall constitute a default by the Grantee:

(1) If the Grantee uses the Funding Allocation for costs not associated with the Project (i.e., ineligible costs), and the Grantee fails to cure its default within forty-five (45) days after written notice of the default is given to the Grantee by the County; provided, however, that if not reasonably possible to cure such default within the forty-five (45) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within forty-five (45) days after such written notice the Grantee commences diligently and thereafter continues to cure.

(2) If the Grantee shall breach any of the other covenants or provisions in this Agreement other than as referred to in Section 15(a)(1) and the Grantee fails to cure its default within forty-five (45) days after written notice of the default is given to the Grantee by the County; provided, however, that if not reasonably possible to cure such default within the forty-five (45) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within forty-five (45) days after such written notice the Grantee commences diligently and thereafter continues to cure.

(b) If the County shall breach any of the covenants or provisions in this Agreement and the County fails to cure its default within forty-five (45) days after written notice of the default is given to the County by the Grantee; provided, however, that if not reasonably possible to cure such default within the forty-five (45) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within forty-five (45) days after such written notice the County commences diligently and thereafter continues to cure.

(c) Remedies:

(1) Upon the occurrence of a default as provided in Section 14(a)(1) and such default is not cured within the applicable grace period, in addition to all other remedies conferred by this Agreement, the Grantee shall reimburse the County, in whole or in part as the County shall determine, all funds provided by the County hereunder.

(2) Either party may institute litigation to recover damages for any default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy).

(3) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

(4) Any failure of a party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that party of any claim for damages it may have by reason of the default.

(d) Termination:

(1) Notwithstanding anything herein to the contrary, either party shall have the right to terminate this Agreement, by giving written notice of termination to the other party, in the event that the other party is in material breach of this Agreement.

(2) Termination of this Agreement by any Party is not effective until five (5) business days following receipt of the written notice of termination.

(3) Upon termination of this Agreement pursuant to Section 14(d)(1) above, no party shall have any further liability or obligation to the other party except as expressly set forth in this Agreement; provided that no party shall be relieved of any liability for breach of this Agreement for events or obligations arising prior to such termination.

In the event this grant is canceled or the Grantee is requested to repay Funding Allocation funds because of a breach of this Agreement, the Grantee will not be eligible to apply to the County for another grant for a period of one (1) year, commencing on the date the Grantee receives the notice in writing of the breach of this Agreement. Further, the Grantee will be liable to reimburse Miami-Dade County for all unauthorized expenditures discovered after the expiration or termination of this Agreement. The Grantee will also be liable to reimburse the County for all lost or stolen Funding Allocation funds.

Funding Allocation funds which are to be repaid to the County pursuant to this Section or other sections in this Agreement, are to be repaid

by delivering to the County Mayor a certified check for the total amount due payable to Miami-Dade County Board of County Commissioners.

These provisions do not waive or preclude the County from pursuing any other remedy, which may be available to it under the law.

Section 15. **Waiver.** There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

Section 16. **Written Notices.** Any notice, consent or other communication required to be given under this Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one (1) business day after being sent by reputable overnight carrier or three (3) business days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The County:

County Mayor

Miami-Dade County
111 NW 1 Street, Suite 2910
Miami, Florida 33128

Grantee:

Melvin Wolfe, Manager ,
Northside Centre, LLC.
Managed by:
Northside Investment Properties, LLC
696 NE 125th Street
North Miami Beach, Florida 33161
and
N.S. Northside, LLC,
PO Box 2399,
TOA BAJA, Puerto Rico 00951

With a copy to:

Director, Office of Management and Budget
111 NW 1 Street, Suite 2210
Miami, Florida 33128

With a copy to:

_____, Sustainability, Planning and Economic Enhancement Dept.

111 NW 1 Street, Suite 2200

Miami, Florida 33128

Section 17. **Captions.** Captions as used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section 18. **Contract Represents Total Agreement.** This Agreement, and the attachments thereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained in this Agreement. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties or their authorized representatives. In the event of a conflict between this Agreement and any of its attachments or exhibits, this Agreement shall prevail.

Section 19. **Litigation Costs/Venue.** In the event that the Grantee or the County institutes any action or suit to enforce the provisions of this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and the Grantee agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

Section 20. **Representation of the Grantee.** The Grantee represents that this Agreement has been duly authorized, executed and delivered by the governing body of the Grantee, it has granted its President, or designee, the required power and authority to execute this Agreement and that it owns the land on which the Project will be built. The Grantee agrees to a) maintain the Project or cause it to be maintained for a minimum of twenty-five (25) years, provided, such requirement may be waived by the County; b) keep the Project open safely and properly maintained for all Miami-Dade County residents; and c) allow all Miami-Dade County residents equal access and

use of the Project and not discriminate when charging use fees. The Grantee also agrees to accept and comply with the Administrative Rules with respect to the grant and the Project. The Grantee shall be solely responsible for submitting all documentation required by the Administrative Rules with respect to the grant and the Project to the County Mayor or County Mayor's designee.

Section 21. Representation of the County. The County represents that this Agreement has been duly approved, executed and delivered by the Board, as the governing body of the County, and it has granted the Miami-Dade County Mayor or the County Mayor's designee, the required power and authority to execute this Agreement. The County agrees to provide the Funding Allocation to the Grantee for the purpose of developing and improving the Project. Miami-Dade County shall only be obligated to reimburse the Grantee provided the Grantee is not in breach of this Agreement and the Grantee has met the Conditions set forth in Section 4 . The County shall administer, in accordance with the appropriate regulations, the funds available from the BBC GOB Program as authorized by Board Resolutions. Any and all reimbursement obligations of the County shall be fully subject to and contingent upon the availability of funding from the BBC GOB Program.

Section 22. Invalidity of Provisions, Severability. Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

Section 23. Insurance. The Grantee must maintain and shall furnish upon request to the County Mayor, certificates of insurance indicating that insurance has been obtained in accordance with the provisions of this section which meets the requirements as determined by the County's Risk Management. Grantee shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' 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 Grantee or its employees, agents, servants, partners principals or subcontractors. Grantee 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 County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Grantee 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.

The Grantee, and/or the Grantee's Contractor shall furnish to The Office of Management and Budget, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

A. Worker's Compensation Insurance for all employees of the Grantee and the Contractor as required by Florida Statute 440.

B. Commercial General Liability Insurance on a comprehensive basis, including Explosion, Collapse and Underground Liability coverage in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage.

D. Professional Liability Insurance in the name of the licensed design professional employed by the contractor in an amount of not less than \$1,000,000.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

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

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

Compliance with the foregoing requirements shall not relieve the Grantee of its liability and obligation under this section or under any other section of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

ATTEST:

MIAMI-DADE COUNTY, FLORIDA
By Its BOARD OF
COUNTY COMMISSIONERS on
the

HARVEY RUVIN, CLERK

____ day of _____, 2011

By: _____
Deputy Clerk

By: _____
County Mayor
Date

GRANTEE: Northside Centre, LLC.

on the ____ day of _____, 2011

(Grantee's Corporate Seal)

Federal Identification # 27-2962818

By _____

Manager

Type or Print Above
Signature

ATTEST:

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By _____

Secretary

Type or Print Above
Signature

Approved by County Attorney as
to form and legal sufficiency. _____

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