

# MEMORANDUM

Agenda Item No. 8(K)(1)

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**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

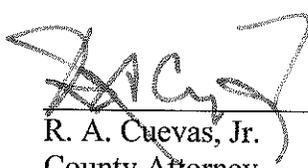
**DATE:** July 15, 2014

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

**SUBJECT:** Resolution authorizing the  
County Mayor to amend the  
Miami-Dade County Affordable  
Housing and Homeownership  
Program Affordable Housing  
restrictive covenant to enhance  
the sale potential of units in the  
Flagler First Condominium  
Development

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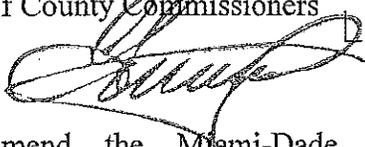
The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Commissioner Bruno A. Barreiro.

  
\_\_\_\_\_  
R. A. Cuevas, Jr.  
County Attorney

RAC/smm

**Date:** July 15, 2014

**To:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Authorization to Amend the Miami-Dade County Affordable Housing and Homeownership Program Affordable Housing Restrictive Covenant to Enhance the Sale Potential of Units in the Flagler First Condominium Development

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## **RECOMMENDATION**

It is recommended that the Board of County Commissioners (Board) authorize the County Mayor or the County Mayor's designee to amend the Miami-Dade County Affordable Housing and Homeownership Program Affordable Housing Restrictive Covenant to enhance the sale potential of units in the Flagler First Condominium development.

The main modifications to the current Flagler First Condominium Restrictive Covenant (Exhibit I) are as follows:

- Reduces the control period from 20 years with an automatic 20-year reset period, for a maximum of 60 years, to 15 years only with no reset provision;
- Eliminates the resale price multiplier;
- Changes the definition of maximum resale price to provide for greater flexibility; and

## **SCOPE**

Flagler First Condominium development's address is 101 East Flagler Street Miami, Florida 33132 in County Commission District 5, represented by Bruno Barreiro. Exhibit II incorporates modifications to the Restrictive Covenant that are proposed to relax and create greater flexibility in the Restrictive Covenant, thereby increasing interest in and sale potential of units.

## **FISCAL IMPACT/FUNDING SOURCE**

The County invested \$1,000,000.00 in 1999 HOME Investment Partnership (HOME) funds for the rehabilitation of the Flagler First Condominium, a 90 unit, affordable housing project in Downtown Miami; 11 of the 90 units are HOME assisted. As these are federally funded units, the United States Department of Housing and Urban Development (HUD) has demanded repayment by the County of the \$1,000,000.00 contributed to the project since the units have not been sold or rented to eligible beneficiaries since completion and have not been closed out in the HUD's Integrated Disbursement and Information System (IDIS). The letter from HUD dated May 29, 2014 demanding repayment is attached hereto as Exhibit A. The County is working on the response to HUD's demand, which is due by July 29, 2014.

## **TRACK RECORD/MONITORING**

Julie Edwards, Assistant Director, Public Housing and Community Development (PHCD) Department will monitor this initiative. Through on-going communication with the developer and review of monthly reports and required documentation submitted to the County, PHCD will continue to monitor this project and its progress toward achieving a positive outcome and compliance with federal regulations and guidelines.

**BACKGROUND**

The County awarded \$1,000,000.00 in 1999 HOME funds to the Downtown Miami Community Development Corporation in 2001 for the rehabilitation and development of the Flagler First Condominium project, a 90 unit affordable housing development project in Downtown Miami. Although the project was completed several years ago, the project was not closed out in HUD's IDIS as all 11 HOME units remain unsold despite the developer's efforts coupled with the County's assistance in recent years. The primary reason for the units not selling was noted by the developer as the requirements of the HOME program which restricts the sale and resale of the units to buyers who are at or below 80% of the Area Median Income (AMI) (as reflected in Exhibit B) and the County's Restrictive Covenant that restricts the use of the property as affordable housing for a period of up to 60 years and which affects sale/resale value.

This project was one of a number of projects that have been identified by HUD in correspondence to the County (see attached) as being non-compliant. As these are federally funded units, HUD has demanded repayment by the County of the \$1,000,000.00 contributed to the project since the units have not been sold or rented to eligible beneficiaries since completion. A number of meetings have been held with the developer to discuss the status of the project and to explore options to resolve this matter. The most viable options at this time are amending the Restrictive Covenant to HUD's requirement of 15 years with no reset provision, eliminating the resale price multiplier, and changing the maximum resale price to provide greater flexibility. The developer has also agreed to reduce the sales price of the units in an effort to sell them.

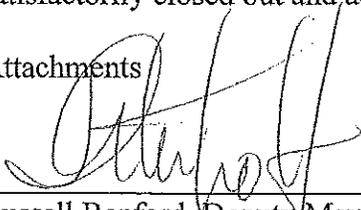
In light of the above, and to further assist the developer in its efforts to sell the units by July 28, 2014, thereby allowing the County to present HUD with a viable alternative to repaying \$1,000,000.00 from County resources or future HOME allocations, the Restrictive Covenant has been modified and presented for approval for use in the sale of units at Flagler First Condominium.

The Miami-Dade County Affordable Housing and Homeownership Program Affordable Housing Restrictive Covenant, attached hereto as Exhibit I (the current document), was approved by the Board as for use in the County's Infill Housing Program and has since been adopted and used in the First Time Homebuyer Program administered by PHCD. The revisions to the Restrictive Covenant comply with federal HOME regulations and maintain the 15-year minimum compliance and affordability period.

Continued dialogue will be held with all other organizations and notifications provided regarding the status of their projects that were also identified by HUD as non-compliant. Although the County is liable for all demands for repayment, Public Housing and Community Development has taken measures to obtain the necessary documentation from organizations to satisfy and closeout activities, thereby removing projects from non-compliance status. However, if documentation could not be obtained to remove a project from non-compliance status, organizations will be asked to repay the County.

It is our hope that the modifications presented in this item will result in improved sales of units in the Flagler First Condominium project to eligible purchasers, and that ultimately the project can be satisfactorily closed out and acknowledged as such by HUD.

Attachments



Russell Benford, Deputy Mayor



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**DATE:** July 15, 2014

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

**SUBJECT:** Agenda Item No. 8(K)(1)

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 Mayor'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. 8(K)(1)  
7-15-14

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO AMEND THE MIAMI-DADE COUNTY AFFORDABLE HOUSING AND HOMEOWNERSHIP PROGRAM AFFORDABLE HOUSING RESTRICTIVE COVENANT TO ENHANCE THE SALE POTENTIAL OF UNITS IN THE FLAGLER FIRST CONDOMINIUM DEVELOPMENT

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

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

Section 1. The Board ratifies and adopts the matters set forth in the accompanying memorandum as fully set forth herein.

Section 2. The Board approves the revised Miami-Dade County Affordable Housing and Homeownership Program Affordable Housing Restrictive Covenant for Homebuyers, attached hereto as Exhibit II, to enhance the sale potential of units in the Flagler First Condominium Development.

Section 3. The Board authorizes the County Mayor or the County Mayor's designee to execute all contracts, amendments, subordination agreements and other transactional documents necessary to accomplish the purposes set forth in this resolution and authorizes the County Mayor or the County Mayor's designee to exercise the enforcement, cancellation and other provisions contained therein.

The foregoing resolution 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:

Rebeca Sosa, Chairwoman  
Lynda Bell, Vice Chair

Bruno A. Barreiro  
Jose "Pepe" Diaz  
Sally A. Heyman  
Jean Monestime  
Sen. Javier D. Souto  
Juan C. Zapata

Esteban L. Bovo, Jr.  
Audrey M. Edmonson  
Barbara J. Jordan  
Dennis C. Moss  
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 15<sup>th</sup> day of July, 2014. 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.

BKN

Brenda Kuhns Neuman

Miami-Dade County  
Department of Public Housing and Community Development  
701 N.W. 1<sup>st</sup>, Court, 14<sup>th</sup> Floor  
Miami, Florida 33136  
Main Number: 786-469-2100  
Fax Number: 786-469-2236

Folio No. : \_\_\_\_\_

Loan No. : \_\_\_\_\_

----- {SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA} -----

**MIAMI – DADE COUNTY AFFORDABLE HOUSING AND HOMEOWNERSHIP PROGRAM  
AFFORDABLE HOUSING RESTRICTIVE COVENANT FOR HOMEBUYERS**

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT ("Covenant") is made this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ (hereinafter referred to as the "Owner"), in favor of Miami Dade County, a political subdivision of the State of Florida (hereinafter referred to as the "County").

WHEREAS, the Owner holds title to certain property located at \_\_\_\_\_, \_\_\_\_\_, Florida (Folio No.: \_\_\_\_\_), (address) and legally described in Exhibit "A," (the Property) attached hereto and made a part hereof by this reference; and

**LEGAL DESCRIPTION (EXHIBIT "A")**

WHEREAS, the Property was acquired, rehabilitated and partially financed with federal funding from the United States Department of Housing and Urban Development, State Home Initiative Program (SHIP) and SURTAX Program as affordable housing for low or moderate income households in accordance with the Miami–Dade County's Affordable Housing and Homeownership Program ("The Program") and

WHEREAS, pursuant to the Program, eligible homebuyers are given the opportunity to purchase residential property using zero- to low-interest financing provided by the County if the Owner agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and to convey the property for an amount not greater than the maximum resale price, all as more fully provided herein and

WHEREAS, in order to qualify for such participation in the Program and acquire the Property, the Owner hereby makes the following binding commitments to ensure that the Owner, any subsequent Eligible Household, and the Property complies with the requirements of the Program,

NOW, THEREFORE, as consideration for the conveyance of the Property using zero- to low-interest financing provided by the County, and other good and valuable consideration, which the Owner hereby acknowledges, the Owner, including his/her/their heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by and through its designated agency.

- 1. **Definitions** In this Covenant, in addition to the terms defined above, the following words and phrases shall have the following meanings:

**Affordable** means where the mortgage payment, including taxes and insurance, does not exceed thirty (30%) percent of the amount which represents the percentage of the median annual gross income for low and moderate income households. However, it is not the intent to limit an individual household's ability to devote more than thirty (35%) percent of its income for housing, and housing for which a household devotes more than thirty (35%) 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 thirty (35%) percent benchmark.

**Capital Improvements** means the documented commercially reasonable cost of structural improvements made to the Property by the Owner which increase the total square footage of the home.

**Certificate of Qualification** means a certificate issued by the County or a designated non-County agency that has been authorized by the County to qualify Eligible Households to purchase an affordable dwelling unit. Certificates of Qualification shall be valid for twelve (12) months.

**Compliance Certificate** shall have the meaning set forth in Section 6(a) hereof.

**Control Period or Term** means the 20-year period during which the eligible home must remain affordable. The control period begins on the initial sale date of the eligible home and resets automatically every twenty (20) years for a maximum of sixty (60) years, except that in the event the home is owned by the same owner for an entire 20-year period, said home shall be released from the affordability restrictions contained in this covenant

**Dwelling Unit** means a unit, whether detached, semi-attached or attached to another such unit, that houses a single family and that can be sold in fee simple ownership

**Eligible Housing or Eligible Home** means any dwelling unit that is: (i) purchased in accordance with the Program, and (ii) used as the primary residence of a Eligible Household.

**Eligible Household** means one or more natural persons or a family that has obtained a first-time homebuyer counseling certificate within the past twelve (12) months; has been determined by the County to meet the eligibility requirement(s) of a low income or moderate income household based upon the annual gross income of the household, and that said purchaser has received a Certificate of Qualification. For purposes of this Restrictive Covenant, the Owner has been determined to be an Eligible Household.

**Low- to Moderate-Income Household** means those households whose total annual adjusted gross income is equal to or less than one hundred forty (140%) percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA), or, if not within an MSA, then within Miami-Dade County, whichever is greater as defined by the United States Department of Housing and Urban Development (HUD).

**Maximum Resale Price** means the sum of (i) the current area median income for the Metropolitan Area of Miami-Dade County as published by the (HUD) multiplied by the resale price multiplier, as defined herein, including (ii) capital improvements, if any. However, in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Household earning one hundred forty (140%) of the Area Median Income, as required by the Program for an eligible household to obtain mortgage financing (as such purchase price is determined by the County), and further provided that the Resale Price shall not be less than the purchase price paid for the Property by the Eligible Household unless the Eligible Household agrees to accept a lesser price.

**Owner** means the person or persons identified in the first paragraph of this Restrictive Covenant and who has or have been determined to be an Eligible Household that has been qualified to purchase the Property.

**Resale Price Multiplier** means the number calculated by dividing the Property's initial sale price from the County to the Owner by the HUD Area Median Income for the Metropolitan Area of Miami-Dade County at the time of sale. A resale price multiplier of \_\_\_\_ is hereby assigned to this Property.

Resale Price Multiplier Calculation:

Original Purchase Price \$ _____:	\$ _____
Current HUD Area Median Income	\$ _____
<b>Resale Price Multiplier</b>	_____

**Term.** The Term of this Covenant shall be for a period of twenty (20) years, commencing on the date the Owner takes title ownership to the Property. The Term of this Covenant shall remain uninterrupted with the Property for twenty (20) years. Should the Owner elect to sell, convey or otherwise transfer the Property to another person or Eligible Household, prior to the expiration of the Term, then the Term of this Covenant shall begin anew automatically for another twenty (20) year period, and such subsequent Eligible Household shall be responsible for complying with any and all restrictions found in this Covenant for an entire twenty (20) year period. Also, any and all subsequent or successive owners shall be likewise responsible for complying with all of the terms and conditions of this Covenant until either an Eligible Household has occupied the Property for an entire Term, or a period of sixty (60) years has expired.

2. **Occupancy/Principal Residence.** The Property shall be occupied and shall be used by the Owner exclusively as their principal residence. Any use of the Property or activity thereon which is inconsistent with such exclusive residential use is expressly prohibited.

3. **Restrictions against Leasing, Refinancing and Junior Encumbrances.** The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the County; except, however, this provision shall not apply to a first mortgage granted on the date of the delivery of the deed in connection with the conveyance of the Property from the County to the Owner securing indebtedness not greater than one hundred (100%) percent of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of the County shall be paid upon demand by the Owner to the County and treated as program income in accordance with "The Program" guidelines. The County may institute proceedings to terminate such lease or rental agreement and to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees and costs of litigation. Upon recovery, after payment of costs, the balance of any profits or proceeds shall be paid to the County for its appropriate use, and deposited in an account in accordance with "The Program" guidelines. The County may institute proceedings to terminate any type of refinancing encumbrance and/or mortgage placed on the Property without the County's prior written permission to do so. In the event that the County consents for good cause to any lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceeds the actual carrying costs of the Property, as determined by County, shall be paid to the County for deposit in accordance with "The Program" guidelines.

4. **Notice of Sale.** Whenever the Owner desires or elects to sell, convey or transfer the Property the following steps must be followed by the Owner and the County.

(a) When the Owner or any successor in title to the Owner shall desire to sell, convey or otherwise transfer the Property, or any portion thereof, the Owner shall notify the County in writing of the Owner's intent to sell, convey or transfer the Property (the "Notice of Sale"). The Owner shall send the Notice of Sale to the County by either mailing it certified or registered mail, postage pre-paid, or by a nationally recognized courier service (such as FedEx or DHL), to the following address: Director, Department of Public Housing and Community Development or successor department, 701 1<sup>st</sup> Court, 14<sup>th</sup> Floor, Miami, Florida 33136, with a copy to the County Attorney's Office, 111 N.W. 1<sup>st</sup> Street, 28<sup>th</sup> Floor, Miami, Florida 33128. Upon the County's receipt of the Notice of Sale, the County shall notify the Owner of the date the Notice of Sale was received. Afterwards, the County shall calculate the Maximum Resale Price which the Owner may receive for the sale of the Property based upon the average rate of real property appreciation for the Metropolitan Statistical Area (MSA) during the period the home was owned by the Owner plus any documented capital improvements as defined herein.

(b) The County shall have sixty (60) days from receiving the Notice of Sale from the Owner to exercise the County's right of first refusal and enter into a purchase and sale agreement for the Property at or below the Maximum Resale Price or provide the Owner with written notification of the County's intent to waive its right of first refusal.

(c) Should the County elect not to acquire the Property by exercising its right of first refusal, the County shall assist the Owner in identifying an Eligible Household, who is ready, willing and able to purchase the Property at or below the Maximum Resale Price. The Owner shall fully cooperate with the County's efforts in assisting the Owner to locate an Eligible Household, and, if requested by the County, the Owner shall hire a broker acceptable to the County to assist in locating an Eligible Household.

(d) Nothing in this Covenant constitutes a promise, commitment or guarantee by the County that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other specific or pre-determined price for the Property.

(e) The holder of the first mortgage on the Property is not obligated to forbear from exercising the rights and remedies under its mortgage, at law or in equity, after delivery of the Notice of Sale.

5. **Delivery of Deed.** In connection with any conveyance pursuant to an option to purchase as set forth in Section 4 above, the Property shall be conveyed by the Owner to the Eligible Household by a valid and sufficient deed conveying a good and clear record and marketable title to the Property free from any and all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Notice of Sale, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements or record specified in the deed from the Owner to the Eligible Household, (v) such additional easements, restrictions, covenants and agreements of record, including, but not limited to this Covenant. The deed shall specifically provide that the Property is subject to this Covenant and shall reference the Official Record Book and Page number of this recorded Covenant. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the subsequent purchaser or the enforceability of the restrictions herein.

6. **Resale and Transfer Restrictions:** (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold, transferred or conveyed by the Owner, or the Owner's successors, and no attempted sale, conveyance or transfer shall be valid, unless: (1) the Owner has delivered its Notice of Sale to the County; (2) the aggregate value of all consideration and payments of every kind given or paid by the Eligible Household of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property; (3) unless a certificate (the "Compliance Certificate") is

obtained and recorded, signed and acknowledged by the County, which Compliance Certificate refers to the Property, the Owner, the Eligible Household thereof, and the Maximum Resale Price therefore, and states that the proposed conveyance, sale or transfer of the Property to the subsequent purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant.

(b) The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, sale or transfer of the Property to the Eligible Household is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant, and may record such Compliance Certificate in connection with the conveyance of the Property.

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to an Eligible Household, the Owner shall deliver to the County a copy of the deed of the Property, a copy of the Declaration of Restriction signed by the Eligible Household, together with the recording information. Failure of the Owner, or the Owner's successors to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

7. **Discrimination.** The Owner shall not discriminate against any person in the exercise of its obligations under this Covenant and all such actions shall be taken without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, disability, political affiliation, or source of income, any other factor which cannot be lawfully, used.

8. **Survival of Restriction Upon Exercise of Remedies by Mortgagees.**

(a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the County and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the County as set forth in this Covenant. Such notice shall be sent to the County by either mailing it certified or registered mail, postage pre-paid, or by a nationally recognized courier service (such as FedEx or DHL), to the following address: Director, Department of Public Housing and Community Development or successor department, 701 1<sup>st</sup> Court, 14<sup>th</sup> Floor, Miami, Florida 33136, with a copy to the County Attorney's Office, 111 N.W. 1<sup>st</sup> Street, 28<sup>th</sup> Floor, Miami, Florida 33128. and, if applicable, to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the institution of any foreclosure action or before the acceptance of a deed in lieu of foreclosure. In addition, the Owner expressly agrees to immediately deliver to the County any type of Foreclosure Notice and/or documents relating to the institution of any foreclosure proceeding and/or any other communications and disclosures made by any Mortgagee regarding the Property pursuant to this Covenant.

(b) The Owner grants to the County the right and option to purchase the Property upon receipt by the County of any Foreclosure Notice. In the event that the County intends to exercise its option, the County or its designee shall acquire the Property within one hundred twenty (120) days of receipt of such foreclosure notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgages senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred (100%) percent of the Maximum Resale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Property by the Owner) (the greater of (i) and (ii) above herein

referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, building code violations, public assessments, any and all unpaid federal or state or local taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a declaration of restrictions identical in form and substance to this Covenant which the Owner hereby agrees to execute, to secure execution by the County or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the County or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Household), and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by the County or its designee, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to this Covenant and shall reference the Official Record Book and Page number of this recorded Covenant. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the County or its designee or the enforceability of the restrictions herein.

(c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the County and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state or local taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee's mortgage, and further subject to a Restriction, as set forth above.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the County for deposit in accordance with "The Program" guidelines after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the County is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the County. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the County under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the County.

(e) If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to this Covenant, except that (i) during the term of ownership of the Property by such Mortgagee the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such Mortgagee at the foreclosure sale, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to this Covenant and shall reference the Official Record Book and Page number of the recorded covenant. Failure to comply with the preceding

sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the restrictions herein.

(f) If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to this Covenant except that (i) if the purchaser at such foreclosure sale or assignee of a deed in lieu of foreclosure is not an Eligible Household, then during the term of ownership of the Property by such purchaser, the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such third party purchaser at the foreclosure sale, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to this Covenant and shall reference the Official Record Book and Page number of this recorded Covenant. Failure to comply with the preceding sentence shall not affect the validity of the conveyance to such third party purchaser or the enforceability of the restrictions herein.

(g) Upon satisfaction of the requirements contained in this Section 8, the County shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 6(b) hereof as conclusive evidence that the conveyance of the Property pursuant to this Section 8 is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant.

(h) The Owner understands and agrees that nothing in this Covenant constitutes a promise or guarantee by the County that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

(i) If a Foreclosure Notice is delivered after the delivery of a Conveyance Notice as provided in Section 4(a) hereof, the procedures set forth in this Section 8 shall supersede the provisions of Section 4 hereof.

9. The County is the beneficiary of this Covenant, and as such, the County may enforce these restrictions, conditions and/or restrictive covenants by action at law or in equity, including without limitation, a decree of specific performance or mandatory or prohibitory injunction, as well as civil and criminal penalties as provided in the Miami-Dade County Code.

10. If any covenant, restriction, condition or provision contained in this document is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, restriction, condition or provision herein contained, all of which shall remain in full force and effect. This Covenant shall be construed in accordance with the laws of the State of Florida and venue shall be in Miami Dade County, Florida.

11. This Covenant shall survive any proceedings in foreclosure, bankruptcy, probate or any other proceedings at law or in equity.

12. It shall be at the sole discretion of the County, through its Board of County Commissioners (the "Board"), to amend or terminate any portion of this Covenant through the adoption of a Resolution. Any such amendment or termination shall be by a majority vote of the Board.

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, this Covenant has been executed by the Owner hereto on the day and year first above-written.

Witness:  
\_\_\_\_\_

Owner:  
\_\_\_\_\_

Print Name  
\_\_\_\_\_

\_\_\_\_\_

Witness:  
\_\_\_\_\_

Owner:  
\_\_\_\_\_

Print Name:  
\_\_\_\_\_

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, by  
\_\_\_\_\_, who [ ] is  
personally known to me or [ ] produced \_\_\_\_\_ as identification.

My commission expires:

\_\_\_\_\_  
Notary Public

Print name: \_\_\_\_\_

DO NOT EDIT, ADD, ALTER OR CHANGE THIS RESTRICTIVE COVENANT

Instrument prepared by and returned to:  
Department of Public Housing and Community Development  
701 N.W. 1<sup>st</sup>, Court, 14<sup>th</sup> Floor  
Miami, Florida 33136  
Main Number: 786-469-2100  
Fax Number: 786-469-2236

Folio No. : \_\_\_\_\_  
Loan No. : \_\_\_\_\_

----- {SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA} -----

**MIAMI – DADE COUNTY AFFORDABLE HOUSING AND HOMEOWNERSHIP PROGRAM  
AFFORDABLE HOUSING RESTRICTIVE COVENANT FOR HOMEBUYERS**

**THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT** ("Covenant") is made this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ (hereinafter referred to as the "Owner"), in favor of Miami Dade County, a political subdivision of the State of Florida (hereinafter referred to as the "County").

WHEREAS, the Owner holds title to certain property located at \_\_\_\_\_, \_\_\_\_\_, Florida (Folio No.: \_\_\_\_\_), (address)), and which is legally described below (or where space does not allow in Exhibit "A" attached hereto and made a part hereof by this reference) (hereinafter the "Property"); and

**LEGAL DESCRIPTION**

WHEREAS, the Property was acquired, rehabilitated and partially financed with federal HOME Investment Partnerships ("HOME") funding from the United States Department of Housing and Urban Development as affordable housing for low or moderate income households in accordance with the Miami–Dade County's Affordable Housing and Homeownership Program ("The Program") and

WHEREAS, pursuant to the Program, eligible homebuyers are given the opportunity to purchase residential property which is sold for less than fair market value due to the County's development subsidy funding and/or using zero- to low-interest financing provided by the County if the Owner agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and to convey the property for an amount not greater than the maximum resale price, all as more fully provided herein and

WHEREAS, in order to qualify for such participation in the Program and acquire the Property, the Owner hereby makes the following binding commitments to ensure that the Owner, any subsequent Eligible Household, and the Property complies with the requirements of the Program,

NOW, THEREFORE, as consideration for the conveyance of the Property using zero- to low-interest financing provided by the County, and other good and valuable consideration, which the Owner hereby acknowledges, the Owner, including his/her/their heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by and through its designated agency.

**Definitions.** In this Covenant, in addition to the terms defined above, the following words and phrases shall have the following meanings:

**Affordable** means where the mortgage payment, including taxes, insurance and association fees, does not exceed (at the time of purchase) thirty (30%) percent of the annual gross income for Low- to Moderate-Income Households. Household income shall be determined in accordance with the Program and in consultation with the County.

**Capital Improvements** means the documented commercially reasonable cost of structural improvements made to the Property by the Owner which increase the total square footage of the home.

**Certificate of Qualification** means a certificate issued by the County or a designated non-County agency that has been authorized by the County to qualify Eligible Households, establishing that a household is qualified to purchase an affordable dwelling unit. Certificates of Qualification shall be valid for twelve (12) months.

**Compliance Certificate** shall have the meaning set forth in Section 6(a) hereof.

**Control Period or Term** means the fifteen (15) year period during which the Eligible Home must remain Affordable. The Control Period begins on the initial sale date of the Eligible Home, from the Developer to the Owner, and continues for fifteen (15) years, even if the Property is sold or otherwise conveyed or transferred, for a maximum of fifteen (15) years. Following the fifteen (15) year Control Period, said home shall be released from the affordability restrictions contained in this Covenant.

**Developer** means the person or entity which received HOME funds in order to construct, rehabilitate or otherwise improve the Eligible Home and who/which is the seller in the initial sale following construction, rehabilitation or improvement of the Eligible Home.

**Dwelling Unit** means a unit, whether detached, semi-attached or attached to another such unit, that houses a single family and that can be sold in fee simple ownership.

**Eligible Housing or Eligible Home** means any dwelling unit that is: (i) purchased in accordance with the Program, and (ii) used as the primary residence by a Eligible Household.

**Eligible Household or Purchaser** means one or more natural persons or a family that has obtained a first-time homebuyer counseling certificate within the past twelve (12) months; has been determined by the County to meet the eligibility requirement(s) of a low income or moderate income household based upon the annual gross income of the household, and that said purchaser has received a Certificate of Qualification.

**Low- to Moderate-Income Household** means those households whose total annual adjusted gross income is equal to or less than eighty (80%) percent of the Area Median Income (AMI) for households within the metropolitan statistical area (MSA), or, if not within an MSA, then within Miami-Dade County, whichever is greater as defined by the United States Department of Housing and Urban Development (HUD).

**Maximum Resale Price** means the price which is Affordable, as defined herein, to the Eligible Purchaser who has standard long-term mortgage financing (i.e., 30-year Promissory Note and Mortgage at fixed interest rate which does not exceed the industry standard for similarly situated purchasers; no balloon mortgages; no variable interest rates or other financing mechanism which could lead to significant increases in the cost of the home over time or otherwise make the home not Affordable). In no event shall the Resale Price be less than the purchase price paid for the Property by the Eligible Household unless the Eligible Household agrees to accept a lesser price. Capital Improvements shall be taken into consideration when calculating the Maximum Resale Price.

**Owner** means the person or persons identified in the first paragraph of this Restrictive Covenant and who has or have been determined to be an Eligible Household that has been qualified to purchase the Property.

1. **Term.** The Term of this Covenant shall be for a period of fifteen (15) years, commencing on the date the Owner takes title ownership to the Property. The Term of this Covenant shall remain uninterrupted with the Property for fifteen (15) years. Should the Owner elect to sell, convey or otherwise transfer the Property to another person or Eligible Household, prior to the expiration of the Term, then the Term of this Covenant shall continue, and such subsequent Eligible Household shall be responsible for complying with any and all restrictions found in this Covenant for the duration of the fifteen (15) year period. Also, any and all subsequent or successive owners shall be likewise responsible for complying with all of the terms and conditions of this Covenant until Term has expired.

2. **Occupancy/Principal Residence.** The Property shall be occupied and shall be used by the Owner exclusively as Owner's principal residence. Any use of the Property or activity thereon which is inconsistent with such exclusive residential use is expressly prohibited.

3. **Restrictions against Leasing, Refinancing and Junior Encumbrances.** The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the County; except, however, this provision shall not apply to a first mortgage granted on the date of the delivery of the deed in connection with the conveyance of the Property from the Developer to the Owner securing indebtedness not greater than one hundred (100%) percent of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of the County shall be paid upon demand by the Owner to the County and treated as program income in accordance with "The Program" guidelines. The County may institute proceedings to terminate such lease or rental agreement and to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees and costs of litigation. Upon recovery, after payment of costs, the balance of any profits or proceeds shall be paid to the County for its appropriate use, and deposited in an account in accordance with "The Program" guidelines. The County may institute proceedings to terminate any type of refinancing encumbrance and/or mortgage placed on the Property without the County's prior written permission to do so. In the event that the County consents for good cause to any lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceeds the actual carrying costs of the Property, as determined by County, shall be paid to the County for deposit in accordance with "The Program" guidelines.

4. **Notice of Sale.** Whenever the Owner desires or elects to sell, convey or transfer the Property the following steps must be followed by the Owner and the County.

## Exhibit II

(a) When the Owner or any successor in title to the Owner shall desire to sell, convey or otherwise transfer the Property, or any portion thereof, the Owner shall notify the County in writing of the Owner's intent to sell, convey or transfer the Property (the "Notice of Sale"). The Owner shall send the Notice of Sale to the County by either mailing it certified or registered mail, postage pre-paid, or by a nationally recognized courier service (such as FedEx or DHL), to the following address: Director, Department of Public Housing and Community Development or successor department, 701 1<sup>st</sup> Court, 14<sup>th</sup> Floor, Miami, Florida 33136, with a copy to the County Attorney's Office, 111 N.W. 1<sup>st</sup> Street, 28<sup>th</sup> Floor, Miami, Florida 33128. Upon the County's receipt of the Notice of Sale, the County shall notify the Owner of the date the Notice of Sale was received. Afterwards, the County shall calculate the Maximum Resale Price which the Owner may receive for the sale of the Property based upon what is Affordable to the Eligible Purchaser and any documented Capital Improvements as defined herein. In the event that Owner and the County disagree as to what the Maximum Resale Price should be, the County shall make the ultimate determination based upon the HOME Regulations and guidance from U.S. HUD which determination shall be binding upon the Owner.

(b) The County shall have sixty (60) days from receiving the Notice of Sale from the Owner to exercise the County's right of first refusal and enter into a purchase and sale agreement for the Property at or below the Maximum Resale Price or provide the Owner with written notification of the County's intent to waive its right of first refusal.

(c) Should the County elect not to acquire the Property by exercising its right of first refusal, the County shall assist the Owner in identifying an Eligible Household, who is ready, willing and able to purchase the Property at or below the Maximum Resale Price. The Owner shall fully cooperate with the County's efforts in assisting the Owner to locate an Eligible Household, and, if requested by the County, the Owner shall hire a broker acceptable to the County to assist in locating an Eligible Household.

(d) Nothing in this Covenant constitutes a promise, commitment or guarantee by the County that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other specific or pre-determined price for the Property.

(e) The holder of the first mortgage on the Property is not obligated to forbear from exercising the rights and remedies under its mortgage, at law or in equity, after delivery of the Notice of Sale.

5. **Delivery of Deed.** In connection with any conveyance pursuant to an option to purchase as set forth in Section 4 above, the Property shall be conveyed by the Owner to the Eligible Household by a valid and sufficient deed conveying a good and clear record and marketable title to the Property free from any and all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Notice of Sale, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements or record specified in the deed from the Owner to the Eligible Household, (v) such additional easements, restrictions, covenants and agreements of record, including, but not limited to this Covenant. The deed shall specifically provide that the Property is subject to this Covenant and shall reference the Official Record Book and Page number of this recorded Covenant. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the subsequent purchaser or the enforceability of the restrictions herein.

6. **Resale and Transfer Restrictions:** (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold, transferred or conveyed by the Owner, or the Owner's successors, and no attempted sale, conveyance or transfer shall be valid, unless: (1) the Owner has delivered its Notice of Sale to the County; (2) the aggregate

## Exhibit II

value of all consideration and payments of every kind given or paid by the Eligible Household of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property; (3) a certificate (the "Compliance Certificate") is obtained and recorded, signed and acknowledged by the County, which Compliance Certificate refers to the Property, the Owner, the Eligible Household thereof, and the Maximum Resale Price therefore, and states that the proposed conveyance, sale or transfer of the Property to the subsequent purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant.

(b) The Owner, any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate as conclusive evidence that the proposed conveyance, sale or transfer of the Property to the Eligible Household is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant, and may record such Compliance Certificate in connection with the conveyance of the Property.

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to an Eligible Household, the Owner shall deliver to the County a copy of the deed of the Property, a copy of the Declaration of Restriction signed by the Eligible Household, together with the recording information. Failure of the Owner, or the Owner's successors to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

7. **Discrimination.** The Owner shall not discriminate against any person in the exercise of its obligations under this Covenant and all such actions shall be taken without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, disability, political affiliation, or source of income, any other factor which cannot be lawfully, used.

8. **Survival of Restriction Upon Exercise of Remedies by Mortgagees.** (a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the County and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the County as set forth in this Covenant. Such notice shall be sent to the County by either mailing it certified or registered mail, postage pre-paid, or by a nationally recognized courier service (such as FedEx or DHL), to the following address: Director, Department of Public Housing and Community Development or successor department, 701 1<sup>st</sup> Court, 14<sup>th</sup> Floor, Miami, Florida 33136, with a copy to the County Attorney's Office, 111 N.W. 1<sup>st</sup> Street, 28<sup>th</sup> Floor, Miami, Florida 33128. and, if applicable, to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the institution of any foreclosure action or before the acceptance of a deed in lieu of foreclosure. In addition, the Owner expressly agrees to immediately deliver to the County any type of Foreclosure Notice and/or documents relating to the institution of any foreclosure proceeding and/or any other communications and disclosures made by any Mortgagee regarding the Property pursuant to this Covenant.

(b) The Owner grants to the County the right and option to purchase the Property upon receipt by the County of any Foreclosure Notice. In the event that the County intends to exercise its option, the County or its designee shall acquire the Property within one hundred twenty (120) days of receipt of such foreclosure notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgages senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred (100%) percent of the Maximum Resale Price calculated

## Exhibit II

at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), or (ii) the Maximum Resale Price (which for this purpose may be less than the purchase price paid for the Property by the Owner) (the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, building code violations, public assessments, any and all unpaid federal or state or local taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a declaration of restrictions identical in form and substance to this Covenant which the Owner hereby agrees to execute, to secure execution by the County or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the County or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Household), and (ii) the Maximum Resale Price shall be calculated as set forth herein but shall not be greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to this Covenant and shall reference the Official Record Book and Page number of this recorded Covenant. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the County or its designee or the enforceability of the restrictions herein.

(c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the County and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state or local taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee's mortgage, and further subject to a Restriction, as set forth above.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the County for deposit in accordance with "The Program" after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the County is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the County. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the County under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the County.

(e) If any Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall apply to such Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such Mortgagee, and the Property shall be conveyed subject to this Covenant, except that (i) during the term of ownership of the Property by such Mortgagee the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by such Mortgagee

## Exhibit II

at the foreclosure sale, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to this Covenant and shall reference the Official Record Book and Page number of the recorded covenant. Failure to comply with the preceding sentence shall not affect the validity of the conveyance to the Mortgagee or the enforceability of the restrictions herein.

(f) If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to this Covenant except that (i) if the purchaser at such foreclosure sale or assignee of a deed in lieu of foreclosure is not an Eligible Household, then during the term of ownership of the Property by such purchaser, the owner-occupancy requirements of Section 2 hereof shall not apply, and (ii) the control period shall be tolled. Said deed shall clearly state that it is made subject to this Covenant, and shall reference the Official Record Book and Page number of the recorded covenant. Failure to comply with the preceding sentence shall not affect the validity of the conveyance to such third party purchaser or the enforceability of the restrictions herein.

(g) Upon satisfaction of the requirements contained in this Section 8, the County shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as provided in Section 6(b) hereof as conclusive evidence that the conveyance of the Property pursuant to this Section 8 is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant.

(h) The Owner understands and agrees that nothing in this Covenant constitutes a promise or guarantee by the County that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

(i) If a Foreclosure Notice is delivered after the delivery of a Conveyance Notice as provided in Section (a) hereof, the procedures set forth in this Section 8 shall supersede the provisions of Section hereof.

9. The County is the beneficiary of this Covenant, and as such, the County may enforce these restrictions, conditions and/or restrictive covenants by action at law or in equity, including without limitation, a decree of specific performance or mandatory or prohibitory injunction, as well as civil and criminal penalties as provided for at law.

10. If any covenant, restriction, condition or provision contained in this document is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, restriction, condition or provision herein contained, all of which shall remain in full force and effect. This Covenant shall be construed in accordance with the laws of the State of Florida and venue shall be exclusively in Miami Dade County, Florida.

11. This Covenant shall run with the land.

12. This Covenant shall survive any proceedings in foreclosure, bankruptcy, probate or any other proceedings at law or in equity.

13. It shall be at the sole discretion of the County, through its Board of County Commissioners (the "Board"), to amend or terminate any portion of this Covenant through the adoption of a Resolution. Any such amendment or termination shall be by a majority vote of the Board.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, this Covenant has been executed by the Owner hereto on the day and year first above-written.

Witness:

\_\_\_\_\_

Print Name

Witness:

\_\_\_\_\_

Print Name:

Owner:

\_\_\_\_\_

\_\_\_\_\_

Owner:

\_\_\_\_\_

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, by

\_\_\_\_\_, who [ ] is

personally known to me or [ ] produced \_\_\_\_\_ as identification.

My commission expires:

\_\_\_\_\_  
Notary Public

Print name: \_\_\_\_\_

DO NOT EDIT, ADD, ALTER OR CHANGE THIS RESTRICTIVE COVENANT



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING  
AND DEVELOPMENT

MAY 29 2014

RECEIVED  
JUN 03 2014

Miami-Dade Public Housing  
and Community Development

Mr. Greg Fortner, Director  
Miami-Dade County  
Department of Public Housing & Community Development  
701 N. W. 1<sup>st</sup> Court – 16<sup>th</sup> Floor  
Miami, Florida 33136

Dear Mr. Fortner:

Thank you for your continued cooperation and efforts to resolve non-compliant HOME activities funded through the Miami-Dade County HOME program. At our February 27, 2014 meeting, HUD agreed to review the status of several projects to make a final determination on the amount of HOME funds that are subject to repayment due to non-compliance.

As a result of a joint remote monitoring conducted in September 2012, by the Office of Affordable Housing Programs (OAHP) and the Miami Field Office, HUD identified 18 activities in the Integrated Disbursement and Information System (IDIS) to which funds were committed more than five (5) years ago but were not completed in IDIS. These same 18 activities were included in monitoring findings made by the Field Office in on-site monitoring review reports issued October 27, 2008 and August 12, 2011 respectively.

The HOME final rule at 24 CFR 92.205(e) provides that when HOME funds are expended for projects that are not completed, i.e., no HOME-assisted units are produced, the project is considered terminated before completion. In such cases, the participating jurisdiction (PJ) must repay the HOME funds expended on the project to its HOME Investment Trust Fund account in accordance with 24 CFR 92.503(b)(2). In addition, 24 CFR 92.502(d)(1) requires that project completion information be entered into IDIS within 120 days of the final draw of HOME funds. The regulation states that, if satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions. Accordingly, IDIS generated "flags" on County activities that were in final draw status for more than 120 days. These flags prevent the County from setting up new projects in IDIS until those activities are satisfactorily addressed in IDIS.

HUD previously asked the County to examine the 18 open activities and provide HUD with: 1) a budget, financing commitments, and a schedule of completion for projects that are still underway; and 2) a proposed schedule for repayment for funds invested in terminated projects or request for voluntary grant reduction.

HUD has reviewed the supplemental information the County submitted and determined that 9 projects were terminated before completion. The County invested a total of \$6,080,101 of HOME funds in these projects. These determinations and the required repayment amounts for each project are included as an attachment to this letter.

The County must repay these funds to its HOME Investment Trust Fund account within 60 days of date of this letter. The IDIS flags will remain in place until the repayment or a repayment agreement is signed. The Miami Field Office will provide guidance on how to make the repayment. If the County wishes to request a voluntary grant reduction in lieu of all or a portion of the required repayment, the request must be made through the Miami Field Office. The request must be signed by the County's chief elected official and include evidence of fiscal distress that precludes the County from repaying its HOME account and must waive the County's right to notice and a hearing under 24 CFR 92.552 prior to HUD reducing the County's grant.

HUD appreciates the County's efforts to improve its HOME program. If you have any questions about this determination, you may contact Marcia Sigal, Director, Program Policy Division, Office of Affordable Housing Programs at 202-402-3002.

Sincerely,



Yolanda Chávez  
Deputy Assistant Secretary  
for Grant Programs.

Attachment

cc:

Ann Chavis, CPD Director, Miami Field Office

## List of Flagged Activities/Terminated Projects

### St. John CDC / St. John Apartments/ CHDO Operating – IDIS #4516 and 4526

The project was completed in IDIS on 3/15/13 and beneficiary data verified. Both activities #4516 and #4526 were merged into one activity, totaling \$2,045,025.

No repayment required.

### St. John Village Homes – IDIS Activity #4525

The County used HOME funds to acquire a site for the intended construction of a 10-unit townhome development. The project was terminated before completion and the developer repaid the County. The County provided documentation of repayment of \$252,354.38 from non-federal funds to the HOME Treasury account.

No repayment required.

### Anchorage Apartments - IDIS Activity #2521

The County committed \$181,133 towards a transitional housing project in 2000. The project was terminated before completion prior to receiving NSP funding to complete.

Repayment Due: \$181,133.

### East Little Havana Development Corp. – IDIS Activity #111

The project was completed in IDIS on 10/10/13 and beneficiary data verified.

No repayment required.

### Model Housing Coop Villas – IDIS Activities #2522 and #105

The County completed the sale of 26 units, but has six additional lease/purchase units remaining to be sold. Although this activity will remain open until the lease purchase units are transferred, it will no longer be flagged.

No repayment required.

### Meridian Place Apartments – IDIS Activity #3181

The County submitted documentation that explains why the number of units originally proposed in IDIS (76) was reduced (to 34), and IDIS shows that the units were completed. The County submitted a written agreement for the project. However, that written agreement addresses the requirements of other HUD programs, but it does not meet the requirements for a HOME written agreement. For example, the correct HOME rents must be included in a HOME written agreement, and the correct number of HOME units designated as such must also be explicitly stated in the agreement. The County has indicated that it may still be possible for the County to amend the existing written agreement or execute a separate valid HOME written agreement with the owner of the project. If that is the case, the new written agreement must be executed and HOME restrictions recorded within 60 days of this letter. The Miami Field Office will determine whether all

appropriate HOME restrictions have been placed on the appropriate number of units. Until that time, the "flag" on that activity is IDIS must remain in place.  
Repayment due: \$385,794.58.

**Miami Beach CDC / Villa Matti – IDIS Activity #4551**

The project was completed in IDIS on 2/13/14 and beneficiary data verified.  
No repayment required.

**Sugar Hill Apartments – IDIS Activity #2272**

The County expended a total of \$1,757,834 from 1999 through 2005 to complete the rehabilitation of the 192-unit rental project. The project was terminated before completion prior to receiving NSP funding to complete it.  
Repayment Due: \$1,757,834

**Alternative Programs – IDIS Activity #14**

According to a written agreement with Alternatives, Inc. HOME funds totaling \$ 490,506.59 were used to purchase land in 1995 for a 48 unit transitional housing project . The land sat vacant for 16 years, until 2011, when NSPII funds were used for an entirely different project, a 72 units garden-style apartment project (called Georgia Ayers). There is no written agreement which identifies the HOME units in this project. The original project was terminated before completion.  
Repayment due: \$490,506.59.

**Downtown Miami CDC – Flagler First Condo – IDIS #3194**

Eleven (11) homebuyer units remain unsold and the County indicated the developer was working on selling homes to eligible homebuyers. HUD requested that the County produce documentation of these sales, e.g., sales contracts, or to provide a plan to convert the units to rental. No documentation has been provided.  
Repayment due: \$1,000,000.

**Tacolcy/Western Goulds Project – IDIS Activities #13 and #136**

The County funded the construction of 3 new homes and the rehabilitation of nineteen (19) existing homes, for total of twenty-two (22) homebuyer units assisted with HOME funds. The County indicated to HUD that 2 units have been sold, HUD requested that the County provide documentation that the purchasers of those 2 units are eligible for HOME assistance, and a correct cost allocation so that the calculation regarding repayment appropriately credit the County for the two units (if sold to eligible homeowners). No information has been provided.  
Repayment due: \$528,006 and \$180,000 respectively.

**The Preserve – IDIS Activities #1741 and #2012**

The County acquired a site for \$386,999.60 for the intended construction of 108 units of single family units. An additional \$85,000 was expended for project delivery costs for the first phase of

construction, originally scheduled to be completed in 1997. The County submitted documentation of an expenditure recovery totaling \$413,000 that is reflected in IDIS (shows as an 'Adjustment' made on 1/4/2007). The Miami Field Office will ensure that the \$413,000 represents proceeds from the sale of the property and HUD will credit \$413,000 against the combined Preserve activities #1741 and #2012, totaling \$471,999.60.

Repayment due: \$58,999.60.

**Little Haiti Housing Association (LHHA) Villa Jardin – IDIS Activity #4527**

The County has determined that the project will not move forward. Nothing was constructed and a letter was sent to the developer requesting repayment of the HOME funds. The County is responsible for repayment of the funds regardless of whether funds may be recovered from the project develop.

Repayment due: \$46,150.89.

**Capital Building Project – IDIS Activity #4099**

The County indicates that the project was foreclosed in February 2010. Although the spreadsheet submitted by the County indicates \$1,000,000 was expended, this amount appears to be typographic error. According to IDIS, the amount expended was \$500,000.

Repayment due: \$500,000. ( Note: \$492,436.14 from an expired grant must be repaid to the County's local account, while the balance of \$7,563.86 repaid to the HOME Treasury account).

U.S. DEPARTMENT OF HUD 01/22/2014  
STATE:FLORIDA

PROGRAM	2014 ADJUSTED HOME INCOME LIMITS							
	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Fort Lauderdale, FL HUD Metro FMR Area								
30% LIMITS	14500	16600	18650	20700	22400	24050	25700	27350
VERY LOW INCOME	24150	27600	31050	34500	37300	40050	42800	45550
60% LIMITS	28980	33120	37260	41400	44760	48060	51360	54660
LOW INCOME	38650	44200	49700	55200	59650	64050	68450	72900
Miami-Miami Beach-Kendall, FL HUD Metro FMR Area								
30% LIMITS	14300	16350	18400	20400	22050	23700	25300	26950
VERY LOW INCOME	23800	27200	30600	34000	36750	39450	42200	44900
60% LIMITS	28560	32640	36720	40800	44100	47340	50640	53880
LOW INCOME	38100	43550	49000	54400	58800	63150	67500	71850
West Palm Beach-Boca Raton, FL HUD Metro FMR Area								
30% LIMITS	13750	15700	17650	19600	21200	22750	24350	25900
VERY LOW INCOME	22900	26150	29400	32650	35300	37900	40500	43100
60% LIMITS	27480	31380	35280	39180	42360	45480	48600	51720
LOW INCOME	36650	41850	47100	52300	56500	60700	64900	69050
Naples-Marco Island, FL MSA								
30% LIMITS	13850	15800	17800	19750	21350	22950	24500	26100
VERY LOW INCOME	23050	26350	29650	32900	35550	38200	40800	43450
60% LIMITS	27660	31620	35580	39480	42660	45840	48960	52140
LOW INCOME	36900	42150	47400	52650	56900	61100	65300	69500
North Port-Bradenton-Sarasota, FL MSA								
30% LIMITS	12050	13800	15500	17200	18600	20000	21350	22750
VERY LOW INCOME	20100	22950	25800	28650	30950	33250	35550	37850
60% LIMITS	24120	27540	30960	34380	37140	39900	42660	45420
LOW INCOME	32100	36700	41300	45850	49550	53200	56900	60550
Ocala, FL MSA								
30% LIMITS	9800	11200	12600	13950	15100	16200	17300	18450
VERY LOW INCOME	16300	18600	20950	23250	25150	27000	28850	30700
60% LIMITS	19560	22320	25140	27900	30180	32400	34620	36840
LOW INCOME	26050	29800	33500	37200	40200	43200	46150	49150
Orlando-Kissimmee-Sanford, FL MSA								
30% LIMITS	12050	13800	15500	17200	18600	20000	21350	22750
VERY LOW INCOME	20100	22950	25800	28650	30950	33250	35550	37850
60% LIMITS	24120	27540	30960	34380	37140	39900	42660	45420
LOW INCOME	32100	36700	41300	45850	49550	53200	56900	60550