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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 14(A)(3)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 6, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving, pursuant to the provisions of Section 17-02 of the Miami-Dade Code of Ordinances, a loan of $2,200,000 of Documentary Surtax funds to Sunset Pointe Associates, Ltd., or related entity, for the development of the Sunset Pointe Apartments Affordable Housing Project; authorizing the County Mayor to execute a conditional loan commitment and standard shell contracts, standard shell loan documents, amendments and other documents or agreements necessary to accomplish the purposes of this resolution; authorizing the County Mayor to subordinate the County's interests and to exercise the termination, waiver, acceleration, cancellation and other provisions contained therein

Resolution No. R-922-15

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Jean Monestime

Abigail Price-Williams
County Attorney

APW/cp

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 6, 2015

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(3)

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. 14(A)(3)
10-6-15

RESOLUTION NO. R-922-15

RESOLUTION APPROVING, PURSUANT TO THE PROVISIONS OF SECTION 17-02 OF THE MIAMI-DADE COUNTY CODE OF ORDINANCES, A LOAN OF $2,200,000 OF DOCUMENTARY SURTAX FUNDS TO SUNSET POINTE ASSOCIATES, LTD., OR RELATED ENTITY, FOR THE DEVELOPMENT OF THE SUNSET POINTE APARTMENTS AFFORDABLE HOUSING PROJECT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A CONDITIONAL LOAN COMMITMENT AND STANDARD SHELL CONTRACTS, STANDARD SHELL LOAN DOCUMENTS, AMENDMENTS AND OTHER DOCUMENTS OR AGREEMENTS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS RESOLUTION; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO SUBORDINATE THE COUNTY'S INTERESTS AND TO EXERCISE THE TERMINATION, WAIVER, ACCELERATION, CANCELLATION AND OTHER PROVISIONS CONTAINED THEREIN

WHEREAS, Alhambra Cove Associates, Ltd. previously received two loans of Documentary Surtax funds from the County in the amount of $1,000,000 and $1,200,000 for the development of the Alhambra Cove affordable housing project; and

WHEREAS, Alhambra Cove is an affordable housing community which will continue to be operated pursuant to the County Rental Regulatory Agreement; and

WHEREAS, the maturity date of the $1,000,000 loan to Alhambra Cove Associates, Ltd. is August 2033, and the maturity date of the $1,200,000 loan to Alhambra Cove Associates, Ltd. is September 2034, however, Alhambra Cove Associates, Ltd. has agreed to pre-pay both loans in full, including any accrued interest, prior to closing on the County loan to Sunset Pointe Associates, Ltd., or related entity, approved in this resolution; and

WHEREAS, Section 17-02 of the Miami-Dade County Code of Ordinances provides that any affordable housing developer which repays its County loan in full before the date on which

the loan is due may, upon approval of the Board of County Commissioners, have the repaid funds loaned to it, or a related entity, for additional eligible affordable housing projects; and

WHEREAS, Alhambra Cove Associates, Ltd., a Cornerstone Group entity, has offered to pre-pay the loans described above and has requested that the pre-paid funds totaling $2,200,000, be loaned to their related entity Sunset Pointe Associates, Ltd., or related entity, for the development of the Sunset Pointe Apartments affordable housing project; and

WHEREAS, the Board desires to receive the pre-paid funds and to loan those funds to Sunset Pointe Associates, Ltd., or related entity, for the development of the Sunset Pointe Apartments affordable housing project, which will be an 82-unit garden-style affordable multi-family community located at 1170 NW 79th Street in unincorporated Miami-Dade County, serving households with incomes not greater than 50% and 60% of area median income,

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 whereas clauses above as if fully set forth herein.

Section 2. The Board approves, pursuant to the provisions of Section 17-02 of the Miami-Dade County Code of Ordinances, a loan to Sunset Pointe Associates, Ltd., or related entity, in an amount not to exceed $2,200,000 of Documentary Surtax funds for development of the Sunset Pointe Apartments affordable housing project, an 82-unit garden-style affordable multi-family community located at 1170 NW 79th Street in unincorporated Miami-Dade County, serving households with incomes not greater than 50% and 60% of area median income. This loan to Sunset Pointe Associates, Ltd., or related entity, is conditioned upon the pre-payment by

Alhambra Cove Associates, Ltd. of its two loans totaling $2,200,000 and satisfaction of the conditions set forth in the conditional loan commitment, attached hereto as Exhibit A.

Section 3. The Board authorizes the County Mayor or County Mayor's designee to execute a conditional loan commitment, in substantially the form attached hereto as Exhibit A, and to execute all standard shell contracts, standard shell loan documents, amendments and other agreements necessary to fulfill the purposes of this resolution. The Board further authorizes the County Mayor or County Mayor's designee, upon a determination that such actions are in the best interest of the County, to execute any documents or agreements necessary to accomplish the purposes set forth in this resolution and to subordinate and/or modify the terms of contracts, agreements, amendments and loan documents so long as such modifications are approved by the County Attorney's Office and are not substantially inconsistent with this resolution, and to exercise the termination, waiver, acceleration, or other provisions set forth therein.

The Prime Sponsor of the foregoing resolution is Chairman Jean Monestime. It was offered by Commissioner **Dennis C. Moss**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **aye**

Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**absent**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Brenda Kuhns Neuman

Exhibit A

Miami-Dade County
Conditional Loan Commitment

Date

To:

Re:

Dear Developer:

We are pleased to advise you that on _____ the Board of County Commissioners (BCC) approved a Conditional Loan Commitment for development activity at the above-listed property (the "Property"). The loan is conditionally committed for the payment of hard construction costs as a portion of the development costs to construct the affordable housing units on the Property. This Conditional Loan Commitment is made based upon the application submitted by Borrower and is subject to the following terms and conditions:

Borrower:

Project:

Loan Amount: The loan amount of not-to-exceed $_____is the amount approved by the BCC in Resolution No. _____ and includes all terms and conditions of such BCC approval, including project scope, activity type and, for federal funds, national objective to be achieved (the "Loan"). The loan amount may be decreased as determined by the Mayor or the Mayor's designee, based on the information and documentation provided by Developer.

Conditions: The Loan is conditioned upon the terms, conditions and requirements set forth below (the "Conditions"). The County shall not issue a final unconditional loan commitment, enter into a funding contract, close on the Loan or disburse the Loan funds until all the Conditions are met.

Collateral: Upon satisfaction of the Conditions, Miami-Dade County (County) and Borrower will enter into a funding contract and loan agreement. The Loan shall be evidenced by a promissory note and secured by a construction/permanent mortgage with assignment of leases and rents, a collateral assignment of leases and rents, a collateral assignment of construction documents, a rental regulatory agreement (where applicable), and any other security or collateral as deemed appropriate by the Mayor or Mayor's designee, in his or her sole discretion, with approval of the County Attorney's Office. Borrower shall additionally be required to provide the County with an environmental indemnification agreement, a UCC-1, title affidavit, partnership affidavit (if applicable), corporate resolution approving the loan documents, opinion of counsel, certification of borrower to borrower's counsel, and title policy making the County an insured. The Collateral shall be determined based upon

financial feasibility and subsidy layering underwriting to be performed by County staff in an internal process and by an independent underwriter and paid for by Borrower ("Underwriting") following review of a current title search. Additional forms of security may be required if liens, encumbrances, restrictions or covenants exist on the Property which the Mayor or Mayor's designee determines, in his or her sole discretion, threaten the County's Collateral. The Mayor or Mayor's designee shall determine, in his or her sole discretion and in consultation with the County Attorney's Office, whether the Collateral provided by Borrower is sufficient to close and disburse the Loan.

Interest Rate: Loan terms, including the interest rate, are those set forth in the FY 2015 Request for Application (RFA) Book for the same funding source for similar projects, as modified prior to closing by the Mayor or Mayor's designee in accordance with the results of Underwriting.

Repayable: There will be no penalty for prepayment of the Loan (payment of Loan balance before the end of the repayment term). Repayment terms are those set forth in the FY 2015 RFA, or as modified prior to closing by the Mayor or Mayor's designee in accordance with the results of Underwriting. The prepayment of any Loan shall not affect the term of affordability set forth in the Rental Regulatory Agreement or in any of the other Loan Documents.

Term: The Loan will be for the period of time set forth for similar loans in the FY 2015 RFA, or as may be established prior to closing by the Mayor or Mayor's designee in accordance with the results of Underwriting.

Conditions:

1. Underwriting, as explained above, shall include financial feasibility review, subsidy layering review, and credit review. Underwriting is performed to protect the County's scarce affordable housing funds and is performed to ensure that the Project has sufficient financing to be completed timely and that the Project is not over-subsidized, meaning the Loan is not needed or the Loan Amount is too high. The County reserves the right to reduce the Loan Amount subject to Underwriting. The County further reserves the right to refuse to issue a final, unconditional loan commitment to Borrower or to enter into a contract for the Loan or to close on the Loan in the event that Underwriting determines that the project is financially unfeasible or otherwise is unfeasible. The costs of Underwriting are to be paid by Borrower.
2. Borrower must prove control of the Property through purchase or lease, as evidenced by a deed or lease and recorded memorandum of lease in Borrower's name. Absence of any threat of foreclosure, taking by eminent domain, or pending bankruptcy are additionally required.
3. Borrower must provide the County with written financing commitments showing committed financing for the entire Development Cost of the Project, including any gaps between the Loan and the overall costs to develop the Project. The Development Cost of the Project means the total cost of completing the entire Project, from acquisition to the issuance of Certificate of Occupancy, including but not limited to the costs for acquisition, design and planning, zoning and variances, financing costs, legal costs, construction, and permitting. In the event of a dispute as to what amount constitutes the actual Development Cost, Borrower and County will use the amount determined by Underwriting to be the Development Cost.
4. Conformance of the Project with the County legislation approving the Loan.
5. Complete plans and specifications of the Project.
6. Payment and performance bond in the amount of the entire construction budget or otherwise in conformance with applicable law. Where a payment and performance bond is not required by law, the Mayor or Mayor's designee may alternatively accept – at the Mayor or Mayor's designee's sole discretion – a letter of credit in an amount acceptable to the Mayor or Mayor's designee.
7. Appraisal of the Property showing that the value of the Project and Property, when completed, exceeds the total amount of debt from all sources to be secured by the Project, unless waived by the Mayor or Mayor's designee.
8. A Phase I environmental report requiring no further action.

9. Such other conditions which are customary and reasonable for a loan of this nature, such as adhering to all Federal, State and local regulations, ordinances, codes and standards.
10. Meeting all requirements of the Documentary Surtax or HOME program, as applicable.
11. Compliance with Resolution No. R-346-15, establishing a maximum total development cost per unit; and Resolution No. R-343-15, establishing a maximum amount of total development costs that may be paid with Documentary Surtax funds.

This Conditional Loan Commitment will expire in six (6) months if not extended by Miami-Dade County. An extension of this Conditional Loan Commitment may be granted at the sole and absolute discretion of Miami-Dade County. Any extension granted will be contingent upon compliance with and in accordance with Resolutions No. R-165-13 and/or R-232-14, as applicable and must be signed by the Mayor or Mayor's Designee to be valid. If the loan does not close prior to the expiration or extension of this Conditional Loan Commitment, the funds will be subject to recapture and allocated to other projects. This Conditional Loan Commitment is not assignable. This Conditional Loan Commitment is the sole and complete agreement between the parties as to the terms of the Loan described herein. The terms of this Conditional Loan Commitment may only be changed in writing in a document signed by the Mayor or the Mayor's designee. No representations, written or verbal, of Miami-Dade County employees, or others purporting to act on behalf of Miami-Dade County, may change the terms of this Commitment.

Miami-Dade County wishes to thank you for your proposal and the opportunity to provide financing for this development, and we look forward to closing this transaction.

Sincerely,

Miami-Dade County

_____
Carlos A. Gimenez, Mayor

Date: _____

c: Russell Benford, Deputy Mayor

Approved as to Form and Legal Sufficiency

_____
Assistant County Attorney

Date _____