

MEMORANDUM

Agenda Item No. 8(K)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution authorizing the County Mayor to (1) execute a settlement agreement between Magnolia North 2145 Apartments, LLC and Opa-Locka Community Development Corporation, Inc. to resolve a dispute regarding the development of the Magnolia North 2145 Apartments affordable housing project located at 2145 and 2171 Lincoln Avenue in the City of Opa-Locka (project); (2) accept and record a special warranty deed conveying to the County real property located at 2145 and 2171 Lincoln Avenue, Opa-Locka, Florida; (3) pay off approximately \$124,688.00 of subordinate debt of Magnolia North 2145 Apartments, LLC; (4) execute and record a restrictive covenant for the benefit of Neighborhood Housing Services of South Florida, Inc.; (5) enforce the terms of a County Deed, including exercising the reverter; (6) allocate up to \$5,000,000.00 of documentary surtax funds to complete the project; (7) to complete or procure a developer to complete the project; and (8) execute, amend and/or modify contracts and other documents as necessary to accomplish the purposes of this resolution and to fulfill, administer and enforce said agreements

Resolution No. R-911-21

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 9-16-21 Public Housing and Community Services Committee.

This substitute differs from the original version as stated in the Mayor's memorandum.

The accompanying resolution was prepared by the Public Housing and Community Development Department and placed on the agenda at the request of Prime Sponsor Vice-Chairman Oliver G. Gilbert, III.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: October 5, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Settlement Agreement between Miami-Dade County, Magnolia North 2145 Apartments, LLC, and Opa-Locka Community Development Corporation, Inc., Acceptance of Deed, Allocation of Documentary Stamp Surtax (Surtax) Funds, and Related Matters

The substitute differs from the original item by authorizing the County Mayor or County Mayor's designee to effectuate and enforce the terms, including the reverter, of the County Deed recorded in the public record of Miami-Dade County at Book 21103, page 4499 (the "County Deed") as to all three parcels described in that deed, rather than only as to two of the three parcels.

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board):

- 1) Authorize the County Mayor or County Mayor's designee to execute the settlement agreement (settlement agreement) between the Miami-Dade County (County), Magnolia North 2145 Apartments, LLC (owner), and Opa-Locka Community Development Corporation, Inc. (subordinate lender) resolving a dispute between the parties regarding the development of Magnolia North 2145 Apartments affordable housing project (project);
- 2) Authorize the County Mayor or County Mayor's designee to accept and record a special warranty deed from the owner conveying to the County real property located at 2145 and 2171 Lincoln Avenue, Opa-Locka, Florida 33054 (property);
- 3) Authorize the County Mayor or County's Mayor's designee to pay off subordinate debt of the owner to the Federal Home Loan Bank of Atlanta Affordable Housing Program through its member Branch Banking and Trust Company (BB&T) in the amount of approximately \$124,688.00 (second mortgage) with unrestricted funds realized from Public Housing and Community Development Department's (PHCD) operation of County-owned affordable housing developments;
- 4) Authorize the County Mayor or County Mayor's designee to execute and record a restrictive covenant for the benefit of Neighborhood Housing Services of South Florida, Inc. (NHSSF) which such covenant includes affordability restrictions and repayment provisions up to the amount of \$1,332,043.04 if the affordable housing is not completed and operational within five years from the date of conveyance of the property to the County;
- 5) Authorize the County Mayor or County Mayor's designee to effectuate and enforce the terms of the County Deed recorded in the public record of Miami-Dade County at Book 21103, page 4499 (the "County Deed") and to exercise all rights set forth in the County Deed, including, but not limited to, exercising the County's option to enforce its reversionary interest after conducting all due diligence;
- 6) Allocate to PHCD \$1,000,000.00 of repaid Documentary Stamp Surtax (Surtax) loan funds and an additional \$4,000,000.00 of Surtax funds to complete the project;

- 7) Authorize the County Mayor or County Mayor's designee to complete construction or procure a developer to complete the project subject to the Board's approval; and
- 8) Authorize the County Mayor or County Mayor's designee, upon a determination that such actions are in the best interest of the County, to execute, amend and/or modify contracts and other documents as necessary to accomplish the purposes of this resolution and to fulfill the terms of the settlement agreement, restrictive covenant, and warranty deed, subject to approval by the County Attorney's Office as to form and legal sufficiency, and to administer and enforce said agreements, including but not limited to termination and acceleration provisions.

SCOPE

The original project included the acquisition and demolition of an existing building and new construction of 12 units of affordable housing and 8,863 square feet of commercial space at the property located at 2145 and 2171 Lincoln Avenue, Opa-Locka, Florida 33054. The project is located in Commission District 1 represented by Vice Chairman Oliver Gilbert III.

DELEGATION OF AUTHORITY

This item requests a delegation of authority to allow the County Mayor or the County Mayor's designee to:

- 1) execute the settlement agreement between the County, owner, and subordinate lender;
- 2) accept and record a special warranty deed from the owner conveying the property to the County;
- 3) pay off subordinate debt of the owner to the Federal Home Loan Bank of Atlanta Affordable Housing Program through its member BB&T in the amount of approximately \$124,688.00 with unrestricted funds realized from PHCD's operation of County-owned affordable housing developments;
- 4) execute and record a restrictive covenant for the benefit of NHSSF which such covenant includes affordability restrictions for 40 years and repayment provisions up to the amount of \$1,332,043.04 if the affordable housing is not completed and operational within five years from the date the covenant is recorded;
- 5) effectuate and enforce the terms of the County Deed, including, but not limited to, exercising the County's option to enforce its reversionary interest after conducting all due diligence;
- 6) authorize the County Mayor or County Mayor's designee to allocate \$1,000,000.00 of repaid Surtax loan funds and an additional \$4,000,000.00 of Surtax funds to the project; and
- 7) authorize the County Mayor or the County Mayor's designee to complete construction or procure a developer to complete the project subject to the Board's approval; and
- 8) execute, amend and/or modify contracts and other documents as necessary to accomplish the purposes of this resolution and to fulfill the terms of the settlement agreement, restrictive covenant, and warranty deed, subject to approval by the County Attorney's Office as to form and legal sufficiency, and to administer and enforce said agreements, including but not limited to termination and acceleration provisions.

FISCAL IMPACT/FUNDING SOURCE

This item will not have a current negative fiscal impact on the County's general fund. However, the general fund could be implicated in the amount of \$1,332,043.04 if the County fails to complete the project and operate it as affordable housing within five years from the date the covenant is recorded. This item

also allocates \$1,000,000.00 of repaid Surtax loan funds and an additional \$4,000,000.00 of Surtax funds to PHCD for the development, construction and operation of the project.

TRACK RECORD/MONITORING

The project will be monitored by Michael Liu, Director of PHCD.

BACKGROUND

This agenda item authorizes the County Mayor or County Mayor's designee to perform numerous actions in order to settle a dispute between Owner and the County and, as part of that settlement, take ownership of real property located at 2145 and 2171 Lincoln Avenue in the City of Opa-Locka and to develop the project.

The settlement agreement provides that the County will accept a deed conveying the property with the unfinished project to the County, subject to two subordinate mortgage liens. The settlement agreement and deed reserve the County's rights to foreclose on the subordinate mortgage liens in order to clear them from the title. However, the administration recommends the subordinate mortgages be satisfied as follows. The County will pay off the second mortgage in the amount of approximately \$124,688.00, held by Federal Home Loan Bank of Atlanta, while the third mortgage lien in the amount of \$180,000.00 will be satisfied by the subordinate lender.

NSP2 Funds

On December 21, 2010, the subordinate lender executed a grant agreement for \$1,330,000.00 of Neighborhood Stabilization Program 2 (NSP2) funds with NHSSF for the acquisition and rehabilitation of the Magnolia North housing development. The subordinate lender, in conjunction with the Miami-Dade NSP2 Consortium, applied for and was awarded NSP2 funds from HUD. These funds were not secured by a mortgage, but the owner executed and recorded a restrictive covenant for the benefit of NHSSF, the consortium lead member.

The restrictive covenant executed by the owner committed to operate the property as affordable housing for a period of 40 years. The failure to do so would result in a lien being placed on the property for the full amount of the NSP2 funds disbursed, including all program income (as defined in 24 CFR Part 92) derived from or in connection with the property and/or the grant, and all unpaid fees, charges and other obligations of the owner due under any of the grant documents. As part of this settlement agreement, this covenant will be cancelled by NHSSF and a new covenant will be executed by Miami-Dade County and recorded for the benefit of NHSSF in substantially the form attached as Exhibit B to the resolution, which covenant includes affordability restrictions for 40 years and repayment provisions up to the amount of \$1,332,043.04 if the affordable housing is not completed and operational within five years from the date the covenant is recorded.

The new covenant will encumber only part of the Magnolia property, i.e., only parcel 1. The administration recommends assuming the risk of repaying the \$1,332,043.04 and executing such a restrictive covenant because the risk of repayment for not producing and maintaining the affordable housing is low with the County taking over the construction and operation of the project. NHSSF has executed the agreement attached as Exhibit B to the resolution.

In 2010 and 2015, NSP2 funds in the combined amount of \$180,000.00 were disbursed and secured by a third mortgage as amended by that certain Amended and Restated Mortgage and Security Agreement (together the junior mortgage). The junior mortgage encumbers parcel 1. The loan documents, including the junior mortgage, were assigned to subordinate lender in 2017 pursuant to an assignment agreement. The County is not repaying this loan. The settlement agreement provides that the subordinate lender will execute and record a satisfaction of the third mortgage at or prior to closing.

AHP Funds

On July 31, 2013, the Federal Home Loan Bank of Atlanta, through BB&T, loaned owner \$350,000.00 in Affordable Housing Program funds for the development of the Magnolia North project. The loan was secured by a mortgage. This loan has a remaining balance of approximately \$124,688.00, which the County will repay as part of this transaction. Upon that repayment, the loan documents will be canceled or satisfied and all affordability requirements terminated.

County HOME Funds

From 2011 through 2015, the Board approved the allocation of federal Home Investment Partnerships (HOME) 2011-2013 and HOME 2015 funds in the total amount of \$1,729,519.00 to the owner. The resolutions are described more fully in Attachment 1. On April 14, 2015, the owner closed on the County HOME loan in the amount of \$1,265,519.00. The HOME loan is secured by a mortgage with affordability restrictions imposed by the loan documents, including a rental regulatory agreement. Overall, the County invested property, and disbursed \$998,079.52 of the total HOME loan funds towards the development of the project.

On October 11, 2016, PHCD notified the owner in writing of its failure to complete construction of the project. At that time, PHCD noted that the construction was only 25 percent complete. In an effort to negotiate with the owner and avoid declaring the owner in default, PHCD offered to allow the owner to submit to PHCD proof of additional financing commitments which would show that the owner had the financial ability to complete construction.

On October 24, 2016, the owner responded in written correspondence that it had secured sufficient financing to complete construction of the project. Subsequently, the owner applied for additional funding during the County's FY 2016 Documentary Surtax/SHIP Request for Applications process and was recommended for funding. The owner failed to submit the required documents to the credit underwriter for the completion of the credit underwriting report, therefore, the underwriter could not provide a determination to PHCD that the project was financially feasible. By September 15, 2017, the owner had entered into a repayment agreement with BB&T due to its failure as project sponsor to ensure project completion by the deadline.

The owner, who is the borrower of the HOME funds, is also a related company of the subordinate lender.

On September 5, 2018, the County sent a Notice of Default, attached hereto as Attachment 2, for failure to comply with the County's loan documents, most notably for failing to complete construction of the project and make 12 affordable housing units available for low- to moderate-income residents.

The County's mortgage lien is in first position. Therefore, the County has the right to foreclose upon the mortgage, receive the proceeds of the foreclosure sale of the property, and seek a deficiency judgment against the owner in the event that the sale proceeds did not make the County whole. The administration

is recommending not to proceed with a foreclosure because (1) according to the property appraiser, the combined value of the property is quite low at \$138,284.00, and a foreclosure sale will not result in proceeds sufficient to make the County whole; (2) the administration wants to preserve the property as affordable housing, and this cannot be assured if the property is sold in a foreclosure sale; (3) the foreclosure process takes time, and the County needs to either recover the HOME funds invested in the project or show that housing has been completed and is benefiting residents in accordance with U.S. Department of Housing and Urban Development’s (HUD) federal completion deadline; and (4) in addition, the property is located in the County’s largest participating municipality and in one of the targeted urban areas having a high priority need for affordable housing.

The owner’s failure to timely complete the project places the County’s HOME funds at risk because the County could be required to repay HUD the amount of HOME funds invested in this project.

Of the \$1,729,519.00 of HOME funds allocated, only \$998,079.52 were disbursed, leaving an undisbursed balance of \$731,439.48. The settlement agreement provides that the County will cancel and satisfy the HOME loan, the HOME funding agreements, and all the County loan documents associated with the loan, including the mortgage.

The undisbursed balance of \$731,439.48 of HOME funds will be recaptured in subsequent legislation to be brought before the Board. Due to the investment of HOME funds in the project, PHCD will maintain restrictive covenants on the property to ensure compliance with HOME and County requirements.

Surtax Funds

In addition, the administration recommends the allocation of \$1,000,000.00 of repaid Surtax loan funds and \$4,000,000.00 of Surtax funds in order for PHCD to take the project in-house, go through permitting, and construct and complete the project. The administration recommends developing the property as mixed use commercial and affordable residential housing, which was the original goal.

PHCD will redeploy \$1,000,000.00 of pre-paid Surtax loan funds from Villas Del Lago, Ltd., an entity of OLCDC, to PHCD for the project. Villas Del Lago is an existing 288-unit affordable rental housing development located at 21100 NW 14th Pl, Miami, Florida 33169, which was initially financed with Low Income Housing Tax Credits issued by Florida Housing Finance Corporation in 2003. The County was the holder of a junior Surtax mortgage encumbering the property.

Villas Del Lago, Ltd. - Villas Del Lago Loan Pay-Off						
Loan #	Project Name	Funding Source	Loan Amount	Maturity Date	Pay-Off Amount	Pay-Off Date
36042	Villas Del Lago	Surtax	\$1,000,000.00	9/30/2033	\$1,000,000.00	11/27/2019

The maturity date of the loan was September 30, 2033, however, the owner paid off the loan in full on November 27, 2019. On October 25, 2019, PHCD received a request from the OLCDC, to redeploy \$1,000,000.00 of Surtax funds that were prepaid from Villas Del Lago Apartments to the project. This item recommends that the Board approve an allocation to PHCD of \$1,000,000.00 in Surtax funds to support the development of the project. After Board approval, PHCD will seek to complete the project in-

house or through the procurement of a general contractor to complete the affordable housing for needy families.

Project loans and liens consist of:

1st Mortgage
\$500,000 of HOME 2011 and \$50,000 of HOME CHDO 2011 (R-446-11) - On June 7, 2011
\$240,519 of HOME 2012 (R-361-12) - May 1, 2012
\$475,000 of HOME 2013 (R-356-13) - May 7, 2013
\$464,000 of HOME 2015 (R-490-15) - June 2, 2015
2nd Mortgage
\$350,000 of FHLBA and BB&T AHP
3rd Mortgage
\$180,000 of Community Fund of North Miami-Dade HUD NSP2

County Reversionary Interests

This legislation authorizes the County Mayor or County Mayor's designee to effectuate and enforce the terms of the County Deed and to exercise all rights set forth in the County Deed, including, but not limited to, exercising the County's option to enforce its reversionary interest after conducting all due diligence, including title searches and environmental reviews. The County Deed conveyed to the City of Opa-Locka three parcels, only one of which is part of the project. As to the three parcels conveyed, the County Deed required the city to build one or two single family homes no later than October 1, 2003, and permitted one of the lots to be used as an open space. To date, the parcel which is part of the project (Folio No. 08-2122-003-0170), has unfinished improvements while the other two parcels which are not part of the Magnolia project (Folio Nos. 08-2122-003-1100 and 08-2122-003-1110) remain vacant. The reverter may be satisfied or enforced as to the parcel which is part of the project, described in Exhibit A to the settlement agreement as parcel 2, or may be enforced, at the discretion of the County Mayor or County Mayor's designee in order to clear title to the Magnolia property. In addition, the County Mayor or County Mayor's designee will enforce the reverter and take back the remaining parcels of property which are not part of the Magnolia project but remain undeveloped in violation of the deed restrictions.

Attachments



Morris Copeland
Chief Community Services Officer

Magnolia North 2145 Apartments

Resolution #	Reso Date	Contract Date	Allocation Amt.	Expended	Bal. Remaining
Reso # R-446-11	06/07/2011	04/18/2012	\$ 500,000.00	\$500,000.00	\$0
Reso # R-446-11	06/07/2011	04/18/2012	\$ 50,000.00	\$ 50,000.00	\$0
Reso # R-361-12	05/01/2012	09/19/2014	\$ 240,519.00	\$0	\$240,519.00
Reso # R-356-13	05/07/2013	09/19/2014	\$ 475,000.00	\$448,079.52	\$ 26,920.48
Reso # R-490-15	06/02/2015	03/09/2016	\$ 464,000.00	\$0	\$464,000.00
Total			\$1,729,519.00	\$998,079.52	\$731,439.48



Attachment 2

Public Housing and Community Development
701 NW 1st Court, 14th Floor
Miami, FL 33136
T 786-469-2100 F 786-469-2236

www.miamidade.gov

September 5, 2018

Via U.S. Certified Mail

Willie Logan, President
Opa Locka Community Development Corporation, Inc., Managing Member
of Magnolia North 2145 Apartments, LLC
490 Opa Locka Boulevard, Suite 20
Opa Locka, Florida 33054

Shahzad Emami, Esq.
Legal Services of Greater Miami, Inc.
3000 Biscayne Blvd., Suite 500
Miami, Florida 33137

**RE: Magnolia North 2145 Apartments LLC - Magnolia North Apartments
HOME Investment Partnership (HOME) loan in the amount of \$1,729,519
Total Units: 12; Total HOME assisted units: 12**

Dear Mr. Logan:

This letter serves as Notice of Default by Miami-Dade County (the "County") to Magnolia North 2145 Apartments, LLC (the "Borrower") of the Loan Agreement dated April 14, 2015, between Borrower and Miami-Dade County (the "Loan Agreement"); the Promissory Note dated April 14, 2015, given by Borrower to the County (the "Note"); the Mortgage and Security Agreement and Assignment of Leases, Rents and Profits given by Borrower to the County on April 14, 2015, (the "Mortgage"); the FY 2011 Home Investment Partnerships Program (HOME) Contract Between Miami-Dade County and Opa-Locka Community Development Corporation and its Affiliate Magnolia North 2145 Apartments, LLC, dated April 18, 2012, in the amount of up to \$50,000 (the "HOME CHDO Contract"); the FY 2011 Home Investment Partnerships Program (HOME) Contract Between Miami-Dade County and Opa-Locka Community Development Corporation and its Affiliate Magnolia North 2145 Apartments, LLC dated April 18, 2012, in the amount of up to \$500,000 (the "FY 2011 HOME Contract"); and the FY 2014 Home Investment Partnerships Program (HOME) Contract Between Miami-Dade County and Magnolia North 2145 Apartments, LLC, dated September 19, 2014, as amended by that certain Amendment One to the FY 2014 Home Investment Partnerships Program (HOME) Contract Between Miami-Dade County and Magnolia North 2145 Apartments, LLC executed March 9, 2016, in the amount of up to \$1,179,519 (the "FY 2014 HOME Contract").

Borrower is in default of the Loan Agreement, specifically section 2(h) for failure to complete construction of the Complex, as defined in the Loan Agreement, by December 31, 2015; section 3 for failure to use the proceeds of the \$1,265,519 loan of federal Home Investment Partnerships Program ("HOME") funds for construction of the Complex, as defined in the Loan Agreement; section 7(a) which requires that Borrower set aside 20% of the units in the Complex for households at or below 50% of area median income and the remaining 80% of the units in the Complex for households at or below 65% of area median income; section 9(a) for failure to satisfy the conditions of the Loan; section 9(g) for failure to complete construction by December 31, 2015; section 9(i) for events of default under other loan documents, including the Note, Home Contract, and Mortgage. Pursuant to the Loan Agreement, the County hereby offers Borrower an opportunity to cure these defaults within thirty (30) days. Failure to cure these events of default shall result in the County exercising any and all rights afforded under the Loan Agreement as well as any and all remedies available to the County at law and/or equity.

Borrower is in default of the Mortgage, specifically sections 2.01(b) for failure to keep or perform the terms, conditions and covenants of the Mortgage; section 2.01(g) for failure to comply with the requirements of the HOME Contract; and section 2.01(h) for failure to comply with the terms of the Loan Agreement, Note and other Loan Documents, as defined in the Mortgage. Failure to cure these events of default shall result in the County exercising any and all rights afforded under the Mortgage as well as any and all remedies available to the County at law and/or equity, including but not limited to accelerating the loan evidenced by the Note and foreclosing upon the mortgage.

Borrower is in default of the Note for failure to make annual payments of \$10,124 beginning on October 20, 2017. Further, Borrower is in default of the Loan Agreement, Mortgage, and HOME Contract, which all constitute defaults of the Note. Failure to cure these defaults within thirty (30) days shall result in the County exercising any and all rights afforded under the Note as well as any and all remedies available to the County at law and/or equity, including but not limited to accelerating the Note and foreclosing upon the mortgage.

Borrower is in default of the FY 2011 HOME Contract, HOME CHDO Contract and FY 2014 HOME Contract. Specifically, Borrower is in default for failure to carry out the Activities described in Attachment A, Scope of Services of each contract, including but not limited to failure to complete Rental Rehabilitation of the multi-unit complex and failure to construct 12 new units of affordable housing, as required in section II(A) of each contract; failure to comply with the requirements set forth in Attachment A-1 of each contract; failure to comply with the requirements of the HOME Program, as set forth in 24 C.F.R. Part 92, by not completing construction of the Complex in order to benefit low- to moderate-income people as required by section II(F) of each contract.

On October 11, 2016, PHCD notified Borrower in writing of its failure to complete construction of the Complex. At that time, PHCD noted that construction was only 25 percent complete on the Complex. In an effort to negotiate with Borrower and avoid declaring Borrower in default, PHCD offered to allow Borrower to submit to PHCD proof of additional financing commitment which would show that Borrower had the financial ability to complete construction.

Page 3,
Opa-Locka Community Development
Corporation, Inc.

As of today, Borrower has not delivered the required new construction of affordable housing within the required time frame, as set forth in the agreements described above. Borrower's failure to timely complete the Complex places the County at risk of failing to meet its expenditure deadline for the HOME program.

The County gave Borrower additional time and tried to negotiate with Borrower in order to facilitate Borrower completing the project. In correspondence from the Borrower to PHCD dated October 24, 2016, Borrower indicated that it had secured sufficient financing to complete construction of the project. Subsequently, Borrower applied for additional funding during Public Housing and Community Development's FY 2017 Request for Applications (RFA) process and was recommended for additional funds, subject to a favorable underwriting recommendation. However, Borrower failed to submit the required documents to the underwriter in order for them to complete the report. As such, there was no favorable underwriting recommendation and, therefore, the funding recommended could not be awarded.

At this point, it is apparent not only that construction of the Complex has not been completed timely, but that Borrower is unable to complete the project.

Borrower has drawn down \$998,079.52 of the Loan described in the Note. If Borrower is unable to cure the defaults set forth herein within 30 days, the Loan shall be accelerated and shall be immediately due and payable in full. In addition, \$731,439.48 of funds not yet drawn down will be recaptured. The County reserves all rights to enforce the Note, Loan Agreement, Mortgage, HOME CHDO Contract, FY 2011 HOME Contract, FY 2014 HOME Contract, and to exercise all remedies available to the County at law and equity.

On March 29, 2018, when you were updating Deputy Mayor Maurice L. Kemp, it was suggested that you would submit a Deed -in- Lieu of foreclosure. The County would be willing to accept such a document and has prepared such for your review and execution.

We are providing the Deed -in- Lieu of foreclosure under a separate letter and would expect that you will complete same as soon as possible. The agreement must go to the Board of County Commissioners (Board) for approval.

Should you have any questions, please contact, Clarence Brown, Division Director, at (786) 469-2258.

Sincerely,



Michael Liu
Director

c: Brenda Kuhns Neuman, Assistant County Attorney
Terrence A. Smith, Assistant County Attorney
Clarence Brown, Division Director, PHCD
Tangie White Jackson, Manager, PHCD
Maritza Zuaznabar, Special Project Administrator 1, PHCD



MEMORANDUM (Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: October 5, 2021

FROM: 
Gen Bonzon-Keenan
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
- ☐ Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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)
10-5-21

RESOLUTION NO. _____ R-911-21

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO (1) EXECUTE A SETTLEMENT AGREEMENT BETWEEN MAGNOLIA NORTH 2145 APARTMENTS, LLC AND OPA-LOCKA COMMUNITY DEVELOPMENT CORPORATION, INC. TO RESOLVE A DISPUTE REGARDING THE DEVELOPMENT OF THE MAGNOLIA NORTH 2145 APARTMENTS AFFORDABLE HOUSING PROJECT LOCATED AT 2145 AND 2171 LINCOLN AVENUE IN THE CITY OF OPA-LOCKA (PROJECT); (2) ACCEPT AND RECORD A SPECIAL WARRANTY DEED CONVEYING TO THE COUNTY REAL PROPERTY LOCATED AT 2145 AND 2171 LINCOLN AVENUE, OPA-LOCKA, FLORIDA; (3) PAY OFF APPROXIMATELY \$124,688.00 OF SUBORDINATE DEBT OF MAGNOLIA NORTH 2145 APARTMENTS, LLC; (4) EXECUTE AND RECORD A RESTRICTIVE COVENANT FOR THE BENEFIT OF NEIGHBORHOOD HOUSING SERVICES OF SOUTH FLORIDA, INC.; (5) ENFORCE THE TERMS OF A COUNTY DEED, INCLUDING EXERCISING THE REVERTER; (6) ALLOCATE UP TO \$5,000,000.00 OF DOCUMENTARY SURTAX FUNDS TO COMPLETE THE PROJECT; (7) TO COMPLETE OR PROCURE A DEVELOPER TO COMPLETE THE PROJECT; AND (8) EXECUTE, AMEND AND/OR MODIFY CONTRACTS AND OTHER DOCUMENTS AS NECESSARY TO ACCOMPLISH THE PURPOSES OF THIS RESOLUTION AND TO FULFILL, ADMINISTER AND ENFORCE SAID AGREEMENTS

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 this Board:

Section 1. Authorizes the County Mayor or County Mayor's designee to execute the settlement agreement in substantially the form attached as Exhibit 1 between the Miami-Dade

County (County), Magnolia North 2145 Apartments, LLC, and Opa-Locka Community Development Corporation, Inc. to resolve a dispute between the parties regarding the development of the Magnolia North 2145 Apartments affordable housing project (project) located at 2145 and 2171 Lincoln Avenue in the City of Opa-Locka.

Section 2. Authorizes the County Mayor or County Mayor's designee to accept and record a special warranty deed, in substantially the form attached as Exhibit B to the settlement agreement (which is Exhibit 1 to this resolution), from Magnolia North 2145 Apartments, LLC, conveying to the County real property located at 2145 and 2171 Lincoln Avenue, Opa-Locka, Florida 33054.

Section 3. Authorizes the County Mayor or County's Mayor's designee to pay off subordinate debt of Magnolia North 2145 Apartments, LLC to the Federal Home Loan Bank of Atlanta Affordable Housing Program through its member Branch Banking and Trust Company in the amount of approximately \$124,688.00 with unrestricted funds realized from the Public Housing and Community Development Department's (PHCD) operation of County-owned affordable housing developments.

Section 4. Authorizes the County Mayor or County Mayor's designee to execute and record a restrictive covenant for the benefit of Neighborhood Housing Services of South Florida, Inc. in substantially the form attached as Exhibit 2, which covenant includes affordability restrictions and repayment provisions up to the amount of \$1,332,043.04 if the affordable housing is not completed and operational within five years from the date of conveyance of the property to the County.

Section 5. ~~[[Authorizes the County Mayor or County Mayor's designee to cancel, in part, and enforce, in part, the reverter in the County Deed recorded in the public record of Miami-Dade County at Book 21103, page 4499. The reverter will be cancelled as to the parcel, which is part of the project, described in Exhibit A to the settlement agreement as parcel 2 (Folio No. 08-2122-003-0170). This Board further authorizes the County Mayor or County Mayor's designee to enforce the reverter and take back two parcels of property (Folio Nos. 08-2122-003-1100 and 08-2122-003-1110) which are not part of the project and remain undeveloped in violation of the deed restrictions, subject to due diligence and clear title to the satisfaction of the County Mayor or County Mayor's designee, in their sole discretion.]]~~¹ >>Authorizes the County Mayor or the County Mayor's designee to take all actions necessary to effectuate and enforce the terms of the County Deed recorded in the public record of Miami-Dade County at Book 21103, page 4499 (the "County Deed") and to exercise all rights set forth in said County Deed, including, but not limited to, exercising the County's option to enforce its reversionary interest after conducting all due diligence, including title searches and environmental reviews, as applicable. In the event the County Mayor or the County Mayor's designee should exercise the County's reversionary interest, then the County Mayor or the County Mayor's designee shall execute and record an instrument approved by the County Attorney's Office in the public records of Miami-Dade County and provide a copy of such instrument to the County Property Appraiser. This Board further authorizes the County Mayor or the County Mayor's designee to receive on behalf of the County, after conducting all due diligence, including, but not limited to, title searches and environmental reviews, where applicable, one or more deeds which convey the project and all properties described

¹ The differences between the substitute and the original item are indicated as follows: Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< are added.

in the County Deed to the County. Upon the receipt of such deeds, the County Mayor or the County Mayor's designee shall record such deeds in the public records of Miami-Dade County.<<

Section 6. Authorizes the allocation to PHCD of \$1,000,000.00 of repaid Documentary Surtax loan funds and an additional \$4,000,000.00 of Documentary Surtax funds to complete the project. This Board further authorizes the County Mayor or County Mayor's designee to complete construction or procure a developer to complete the project, subject to County procurement policies and approval of this Board.

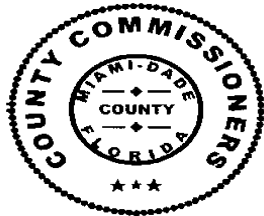
Section 7. Authorizes the County Mayor or County Mayor's designee, upon a determination that such actions are in the best interest of the County, to execute, amend and/or modify contracts and other documents as necessary to accomplish the purposes of this resolution and to fulfill the terms of the settlement agreement, restrictive covenant, and warranty deed authorized herein, subject to approval by the County Attorney's Office as to form and legal sufficiency, and to administer and enforce said agreements, including but not limited to termination and acceleration provisions.

Section 8. This Board directs the County Mayor or the County Mayor's designee, pursuant to Resolution No. R-974-09, to record in the public record the County Deed, covenants, reverters and mortgages creating or reserving a real property interest in favor of the County and to provide a copy of such recorded instruments to the Clerk of the Board within 30 days of execution and final acceptance. This Board directs the Clerk of the Board, pursuant to Resolution No. R-974-09, to attach and permanently store a recorded copy of any instrument provided in accordance herewith together with this resolution.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **José "Pepe" Diaz** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	absent		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	absent
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 5th day of October, 2021. 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: **Melissa Adames**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Brenda Kuhns Neuman

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "**Agreement**") is made effective as of _____, 2021, (the "**Effective Date**"), among the parties **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida with an address of 111 NW First Street, Miami, FL 33128, Attn: County Mayor ("**Senior Lender**"); **MAGNOLIA NORTH 2145 APARTMENTS, LLC**, a Florida Limited Liability Company with an address of 490 Opa-Locka Boulevard Suite 20, Opa-Locka, FL 33054 ("**Borrower**"); and **OPA-LOCKA COMMUNITY DEVELOPMENT CORPORATION, INC.**, a Florida nonprofit corporation with an address of 490 Opa-Locka Boulevard, Suite 20, Opa-Locka Florida 33054 ("**Junior Lender**"). Together, Senior Lender, Borrower and Junior Lender may be referred to as the "**parties**".

RECITALS

- A. Borrower owns fee simple title to the real property and the improvements thereon legally described in Exhibit "A" attached hereto (the "**Real Property**").

- B. On April 14, 2015, Borrower executed and delivered to Senior Lender that certain Promissory Note in the original principal amount of \$1,265,519.00 (the "**Note**") evidencing a loan of federal HOME Investments Partnerships Program ("**HOME**") funds. The Note is secured by, among other instruments, that certain Mortgage and Security Agreement and Assignment of Leases, Rents and Profits (the "**Mortgage**") dated April 14, 2015, and recorded on April 21, 2015, at Book 29586, Page 2099 in the Official Records of the public record of Miami-Dade County; that certain Collateral Assignment of Leases, Rents and Contract Rights (the "**Assignment**") dated April 14, 2015, and recorded on April 21, 2015, in the Official Records of the public record of Miami-Dade County at Book 29586, Page 2122; that certain Environmental Compliance and Indemnity Agreement dated April 14, 2015, executed by the Borrower in favor of Senior Lender (the "**Environmental Indemnity**"); and that certain UCC Financing Statement recorded on April 21, 2015, in the Official Records of the public record of Miami-Dade County at Book 29586, Page 2134. These security instruments and also that certain Rental Regulatory Agreement (the "**Rental Regulatory Agreement**"), recorded on April 22, 2015, in the Official Records of the public record of Miami-Dade County at Book 29588, Page 585, which is a covenant running with the land, encumber the Real Property. The Note, the Mortgage, the Assignment, the Environmental Indemnity, the Rental Regulatory Agreement, that certain Loan Agreement executed on April 14, 2015 between Borrower and Senior Lender (the "**Loan Agreement**"), and all other related agreements and instruments evidencing or securing the foregoing or executed in conjunction with the foregoing are hereinafter collectively referred to as the "**Loan Documents**". The indebtedness evidenced by the Loan Documents shall be referred to herein as the "**Indebtedness**".

- C. In addition to the Loan, Senior Lender allocated in Resolution No. R-490-15 to Borrower pursuant to certain funding agreements an additional \$464,000.00 of HOME funds (the "Unsecured County Funds"), which allocation was memorialized in Amendment One to the FY 2014 Home Investment Partnerships Program (HOME) Contract between Senior Lender and Borrower, executed on March 9, 2016. The Unsecured County Funds were never disbursed to Borrower.
- D. The Loan and the Unsecured County Funds were committed to Borrower to pay for the development of a mixed-use commercial and residential project with all residential units to be set aside as affordable housing (the "Project").
- E. Senior Lender alleges that Borrower has defaulted on the obligations set forth in the Loan Documents and the funding agreements associated with the Loan. Borrower's default is described in detail in the default letter to Borrower dated September 5, 2018 (the "Alleged Specified Defaults"). Senior Lender alleges that Borrower's defaults include, but are not limited to, Borrower's failure to use the proceeds of the Loan for the construction of the complex as set forth in the Loan Agreement and to operate the complex for the benefit of low- to moderate-income households as set forth in the Loan Documents.
- F. Senior Lender desires that Borrower convey to Senior Lender the Real Property pursuant to this Agreement to avoid unnecessary and costly litigation, including but not limited to foreclosure and invocation of the rights pursuant to the Assignment, and the delays associated therewith. The conveyance shall be subject to matters set forth in the title commitment by National Title and Abstract Company dated October 23, 2020, as resolved prior to closing to the Senior Lender's satisfaction.
- G. Borrower executed in favor of Community Fund of North Miami Dade, Inc. ("Original Junior Lender") that certain Promissory Note dated January 3, 2011 in the original principal amount of \$152,386.84 and that certain Future Advance promissory note dated January 13, 2015, recorded in Official Records Book 29470 at Page 2868, in the amount of \$27,613.16 (together the "Junior Note"), both evidencing a loan of federal Neighborhood Stabilization Program 2 funds in the total amount of \$180,000.00 (the "Junior Loan"). The Junior Note is secured by that certain Mortgage in favor of Original Junior Lender recorded on January 5, 2011, in the Official Records of the public record of Miami-Dade County at Book 27543, Page 3041-3042, as amended by that certain Amended and Restated Mortgage and Security Agreement executed between Borrower and Original Junior Lender on January 13, 2015, and recorded on January 14, 2015, in the Official Records of the public record of Miami-Dade County at Book 29465, Page 1065 (together the "Junior Mortgage"). The Junior Mortgage encumbers Parcel 1 of the Real Property. The Junior Note and Junior Mortgage were assigned from Original Junior Lender to Junior Lender by that certain Assignment of Mortgage and Other Loan Documents, recorded December 22,

2017 in the Official Records of the public record of Miami-Dade County in Book 30802 at Page 3557. The Junior Note, the Junior Mortgage, and all other related agreements and instruments evidencing or securing the foregoing or executed in conjunction with the foregoing are hereinafter referred to as the "Junior Loan Documents".

- H. Borrower executed that certain Declaration of Restrictive Covenants dated August 1, 2011 for the benefit of Neighborhood Housing Services of South Florida, Inc. ("NHSSF"), recorded on August 3, 2011 in Official Records Book 27778, Page 3803 encumbering Parcel 1, a portion of the Real Property (the "Old NHSSF Covenant"). The Old NHSSF Covenant requires, among other things:
- a) that 40% of the Project units shall remain affordable to those persons with incomes at or below 50% of Area Median Income, with the remaining units affordable to those persons with incomes at or below 120% of Area Median Income, as determined by the United States Department of Housing and Urban Development ("HUD"), with adjustments and certain exceptions as provided in 24 CFR Part 92, until the date which is forty (40) years after the project is operational; and
 - b) that in the event any of the units do not remain affordable, that the owner shall immediately make payment to NHSSF in an amount equal to the full amount of funds disbursed and outstanding, plus all program income (as defined in 24 CFR Part 92) derived from or in connection with the property, and all unpaid fees, charges and other obligations of owner due under any of the NSP2 grant documents; and
 - c) that any amount owed by the owner to NHSSF for failure to comply with the Old NHSSF Covenant may be secured by a lien on the property.
- I. Junior Lender desires that Borrower convey to Senior Lender the Real Property pursuant to this Agreement to avoid unnecessary and costly litigation, including but not limited to foreclosure and invocation of the rights pursuant to the Assignment, and the delays associated therewith, in order to ensure that the Real Property is used as affordable housing for low- to moderate-income households.
- J. The Federal Home Loan Bank of Atlanta ("FHLBA") through its member Branch Banking and Trust Company ("BB&T"), awarded Borrower an Affordable Housing Program Subsidy in the amount of \$350,000 (the "AHP Loan") in accordance with the Affordable Housing Program Agreement executed between FHLBA, BB&T, Junior Lender, and Borrower, and secured by that certain Mortgage, Assignment of Leases And Rents, Security Agreement and Fixture Filing between Junior Lender as mortgagee and project sponsor, and Borrower, recorded January 26, 2015, in the Official Records of the public record of Miami-

Dade County at Book 29476 Page 1892 (the "AHP Mortgage") with a remaining balance of approximately \$124,688.

NOW, THEREFORE, without conceding any default, liability, or wrongdoing, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto hereby agree as follows:

1. The above Recitals are true and correct and are incorporated by reference herein.
2. The parties agree to coordinate and cooperate with the title company selected by Senior Lender ("Title Agent") to close this transaction. The parties agree that the closing date ("Closing Date") shall be within 90 days of the Effective Date, unless additional time is needed, in which case the parties may agree in writing to extend the Closing Date. On the Closing Date, in the event that title issues remain unresolved, the County may in its sole and absolute discretion choose to extend the Closing Date or terminate this Agreement.
3. On or before the Closing Date, Borrower hereby stipulates and agrees to execute and deliver to Senior Lender a deed for the Real Property in the form of Exhibit "B" attached hereto ("Deed"), which shall be recorded.
4. On or before the Closing Date, Senior Lender agrees to release Borrower from the Indebtedness and all liability pertaining to the Loan Documents, except that Borrower's liability pursuant to the Environmental Indemnification and Senior Lender's rights to foreclose upon the Mortgage in order to extinguish liens and encumbrances on the Real Property shall survive and continue. Senior Lender retains all rights to foreclose in order to extinguish liens and encumbrances on the Real Property, including but not limited to those encumbrances belonging to Junior Lender; however, Senior Lender agrees to forbear from exercising Senior Lender's right to a deficiency judgment on the sum of all principal, interest and other amounts due under or secured by the Loan Documents against Borrower and members of Borrower, and their respective officers, directors, partners, agents, employees, attorneys and representatives, as well as the respective heirs, personal representatives, successors and assigns of any and all of them. On or before the Closing Date, Senior Lender agrees to terminate or cancel any and all agreements between Senior Lender and Borrower memorializing the Unsecured County Funds, and Borrower shall be released from all obligations associated therewith.
5. Junior Lender agrees to remove and/or satisfy on or before the Closing Date all encumbrances on the Real Property relating to the Junior Loan and hereby waives all rights to any remedy against Borrower that would affect the Real Property. Such agreement by Junior Lender includes, but is not limited to, the agreement to execute and record a satisfaction and release of the Junior Mortgage as well as a satisfaction and release of any and all other liens or encumbrances which Junior Lender has on the Real Property on or before the Closing Date. Junior Lender does not waive Junior Lender's rights to seek a deficiency judgment on the

sum of all principal, interest and other amounts due under or secured by the Junior Loan Documents against Borrower and members of Borrower, and their respective officers, directors, partners, agents, employees, attorneys and representatives, as well as the respective heirs, personal representatives, successors and assigns of any and all of them. Junior Lender agrees to execute and record any agreement, waiver, or notice sought by Senior Lender in order to effectuate the purposes of this Agreement.

6. On or before the Closing Date, Senior Lender shall effectuate the payoff of the AHP Loan and immediately record said satisfaction.
7. Lender agrees to negotiate, execute and record a restrictive covenant for the benefit of NHSSF to the satisfaction of both NHSSF and Senior Lender ("New Restrictive Covenant"). Because Senior Lender is executing the New Restrictive Covenant, Senior Lender expressly does not assume and shall have no obligation to abide by the Old NHSSF Covenant. On or before the Closing Date, Borrower shall arrange to have the Old NHSSF Covenant satisfied and shall immediately record or permit the Title Agent to record said satisfaction in the Official Records of the public record of Miami-Dade County and deliver to Senior Lender or Title Agent a copy of the recorded satisfaction.

8. **Acknowledgments and Agreements by Borrower.** Borrower hereby acknowledges and agrees to the following:

- (a) That prior to the date hereof, Senior Lender has not waived in any respect its rights and remedies with respect to the Loan Documents;
- (b) That on and as of April 30, 2021, as to the Indebtedness (i) Borrower is indebted to Senior Lender, among other things, for the following amounts: (A) principal in the amount of \$998,179.52, (B) interest in the amount of \$7,763.00; (C) alleged default interest in the amount of \$467,647.33 (which Borrower is not contesting); (D) mortgage discharge and late fees in the amount of \$ 0; and (E) the Fees and Expenses, as defined below; (ii) all such amounts remain outstanding and unpaid; and (iii) all such amounts are due and payable in full, without offset, deduction or counterclaim of any kind or character whatsoever, but are subject to increase, decrease or other adjustment as a result of any and all payments, accrued interest, fees and other charges including, without limitation, attorneys' fees and costs of collection, which are payable to Senior Lender under the Loan Documents;
- (c) That on and as of the Effective Date, the Loan Documents including, without limitation, the Mortgage and the Assignment, are valid and binding and are enforceable in accordance with the terms of the Loan Documents, and the security interests, security titles and liens granted to Senior Lender pursuant to the Loan Documents, are, to the best of Borrower's knowledge, properly perfected;
- (d) That Senior Lender's actions have been reasonable and appropriate under the circumstances and are within its rights under the Loan Documents

and applicable law and Senior Lender has fully performed all of its obligations under the Loan Documents and applicable law;

- (e) That Senior Lender has no obligation to make loans or other financial accommodations available to Borrower and, due to the Alleged Specified Defaults, Senior Lender has the absolute and unconditional right to exercise its remedies and enforce its rights under the Loan Documents and applicable law at any time without notice, including, without limitation, the right (without prior notice or opportunity to cure of any kind) to commence foreclosure proceedings, seek the appointment of a receiver, or both. If Senior Lender took these actions it would be acting reasonably and appropriately, and within its rights under the Loan Documents and applicable law;
- (f) In consideration of the execution and delivery of this Agreement by Senior Lender (which Borrower acknowledges to be good, valuable and adequate consideration), Borrower agrees not to file a proceeding under the United States bankruptcy code or any state insolvency law, or take any other legal action related to the transactions evidenced in the Loan Documents;
- (g) In the event Borrower materially defaults in the full and timely performance of any of its obligations under this Agreement, Senior Lender shall have the absolute right to pursue any and all rights and remedies at law and/or equity against Borrower and/or the Real Property. Any material nonperformance or untimely performance of any obligation under this Agreement shall constitute a default hereunder.
- (h) The Indebtedness has been accelerated or has become due by its terms and is currently due and payable;
- (i) All of Borrower's cash, checks, instruments, wire transfers, and ACH transfers that are Real Property or proceeds of the Real Property must be forwarded to Senior Lender. All other proceeds of the Real Property must be immediately delivered to Senior Lender in the form received. No Property or proceeds of the Real Property may be on deposit with any financial institution, except Senior Lender, or evidenced by a certificate of deposit, cashier's check, or other instrument issued by any person other than Senior Lender; and
- (j) Senior Lender and its agents are granted full and complete access to Borrower's facilities, books and records to conduct audits as often as Senior Lender desires. Audit costs are part of the Indebtedness, secured by the Real Property and payable on the earlier of demand or receipt of an invoice therefor.

9. **Fees and Expenses.** In consideration of Senior Lender's agreements hereunder, Borrower shall pay all costs and expenses associated with the consummation of the transactions contemplated by this Agreement, including without limitation, recording fees, title premiums and related charges, and any and all transfer taxes [documentary stamps] payable in connection with the transfer of the Real Property from Borrower to Senior Lender (collectively, the "**Fees and Expenses**").
10. **Property Conveyances by Borrower.** All assignments and conveyances from Borrower to Senior Lender made herein or in accordance with this Agreement are and shall be absolute and free of any right of redemption that Borrower may have or anyone claiming by, through, or under Borrower in the following real and personal property. Borrower agrees to execute and deliver to Senior Lender any additional assignments, assurances, instruments or agreements necessary to effectuate the terms of this Agreement, upon the written request of Senior Lender to Borrower. Senior Lender does not accept by conveyance, assignment or any other manner any personal property or equipment located on or contracts associated with the Real Property. Borrower shall remove all personal property and equipment from the Real Property prior to the Closing Date.
11. **Merger.** The parties agree that the conveyance by Borrower to Senior Lender of the Real Property shall not result in a merger of title or otherwise affect the lien of the Mortgage. It is the specific intent of the parties that the Note, Mortgage, and other Loan Documents, and the liens thereof, shall remain in full force and effect and shall not be extinguished or merged by this Agreement or by the instrument of conveyance.

12. **Notices.**

- (a) Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, or (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested. All notices shall be sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice. . All notices shall be deemed effectively given on the date that such notice is received or refused.
- (b) Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

To Borrower: Magnolia North 2145 Apartments, LLC
c/o Opa Locka Community Development Corporation, Inc.
490 Opa Locka Boulevard, Suite 20
Opa Locka, Florida 33054
Attention: Willie Logan, President

with a copy to: Legal Services of Greater Miami, Inc.

4343 West Flagler Street, Suite 100
Miami, Florida 33137
Attention: Chiara Brandstaetter, Esq.

To Senior Lender: Miami-Dade County
111 NW 1st Street, Suite 2810
Miami, FL 33128
Attn: County Mayor

with a copy to: Miami-Dade County Attorney's Office
111 NW 1st Street, Suite 2810
Miami, FL 33128
Attn: Brenda Kuhns Neuman, Esq.

with a copy to: Public Housing and Community Development
701 NW 1st Court, 14th Floor
Miami, FL 33136
Attention: Michael Liu, Director

13. **Miscellaneous**

- a. **Entire Agreement.** This Agreement, and the exhibits attached hereto, and all other instruments and documents executed and delivered at closing by either party hereto, embody the entire agreement between the parties in connection with the transaction contemplated hereby and there are no oral or parol agreements, representations, or inducements existing between the parties relating to the transaction contemplated hereby that are not expressly set forth herein and covered hereby.
- b. **County Commission Approval.** In addition to the conditions set forth herein, this Agreement and the parties' obligations hereunder are contingent upon the final approval of this Agreement and acceptance of the Real Property described herein by the Miami-Dade County Board of County Commissioners (the "**Board**"), which shall be within the Board's sole discretion. If the Board, in its sole discretion, does not approve of this Agreement, then this Agreement shall be null and void. Borrower understands that such approval is an express contingency to the settlement of this matter.
- c. **Modification.** This Agreement may not be modified except in writing signed by all of the parties hereto.
- d. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, administrators, executors, personal representatives, successors, and assigns of the parties hereto.

- e. Waivers. No written waiver by any party at any time of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision herein or a consent to any subsequent breach of the same or any other provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion.
- f. Captions. The captions, section numbers, and article numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of such paragraphs or articles of this Agreement nor in any way affect this Agreement.
- g. Time is of Essence; Counterparts; Electronic Signatures; Governing Law; Venue. All parties hereto agree that time is of the essence in this transaction; that this Agreement may be executed in counterparts and may be executed electronically, and said execution shall be deemed valid by all parties in accordance with Florida Statutes, Section 668.50; that this Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida; and that any dispute arising under, in connection with or related to this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in Miami-Dade County, Florida.
- h. Brokers. Senior Lender and Borrower represent and warrant to the other that it has had no direct dealings with any real estate brokers, salesmen, agents, finders, or consultants in connection with the conveyance of the Real Property to Senior Lender.
- i. Senior Lender's Liability. Notwithstanding any provision contained in this Agreement to the contrary, or in any agreement to be delivered pursuant to this Agreement, it is agreed that in no event shall Senior Lender's officers, officials, employees, representatives or agents be personally or individually liable for any obligation set forth in this Agreement.
- j. Borrower's Liability.
 - a. Limitation on Personal Liability. Notwithstanding any provision contained in this Agreement to the contrary, or in any agreement to be delivered pursuant to this Agreement, it is agreed that the Borrower's members and their respective officers shall not be individually or personally liable to Senior Lender by reason of a breach of any obligation of Borrower pursuant to this Agreement and/or the Loan Documents.
 - b. Limitation on Enforcement of the Loan Documents. All recourse of Senior Lender against Borrower as to the terms of the Loan Documents shall be satisfied solely from the Real Property (it being agreed that any obligation of a member, director, or officer to contribute funds or loan funds to Borrower and any negative capital account on the part of a member of Borrower shall not be deemed an asset of

Borrower for the purposes of this Agreement). This limitation of liability is strictly limited to the Senior Lender's enforcement of the Loan Documents and is superseded by the indemnification set forth below.

- k. **Indemnification.** The Senior Lender shall not assume any liability for the acts, omissions to act, or negligence of the Borrower, its agents, servants or employees; nor shall the Borrower exclude liability for its own acts, omissions to act, or negligence relating to the Property or the Project or arising out of the Borrower's performance pursuant to this Agreement. The Borrower shall indemnify and hold harmless the Senior Lender and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Senior Lender or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the acts, omissions to act, or negligence relating to the Property or the Project by Borrower or its employees, agents, servants, partners principals or subcontractors. The Borrower shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the Senior Lender, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Borrower expressly understands and agrees that any insurance protection shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Senior Lender or its officers, employees, agents and instrumentalities as herein provided. Nothing herein is intended to serve as a waiver of sovereign immunity by the Senior Lender or Awardee. Nothing herein shall be construed as consent by the parties to be sued by third parties in any matter arising out of this Agreement. The provisions of this section survive the termination or expiration of this Agreement.
- l. **Value.** Borrower hereby confirms to Senior Lender that the value of the Real Property does not exceed the Indebtedness owing to Senior Lender pursuant to the Loan Documents. The terms and provisions of this Agreement shall survive the Closing and delivery of the Deed and other documents to be delivered to Senior Lender pursuant to this Agreement.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement as of the day and year first above written.

BORROWER:

MAGNOLIA NORTH 2145 APARTMENTS, LLC,
a Florida limited liability company

By: Opa-Locka Community Development Corporation, Inc.,
a Florida nonprofit corporation, its Manager

By: _____

Willie Logan, President

Date: July 8, 2021

SENIOR LENDER:

MIAMI-DADE COUNTY,
a political subdivision of the State of Florida

By: _____

Name: Morris Copeland

Title: Chief Community Services Officer

Date: _____

JUNIOR LENDER:

OPA-LOCKA COMMUNITY DEVELOPMENT CORPORATION, INC.

By: _____

Name: Willie Logan

Title: President/CEO

Date: July 8, 2021

EXHIBIT "A"
LEGAL DESCRIPTION

Parcel 1:

2145 Lincoln Avenue Opa-Locka, Florida 33054

Lots 10, 11, 12 and 13, Block 3, MAGNOLIA SUBDIVISION, according to the plat thereof, as recorded in the Plat Book 40, Page 80, of the Public records of Miami-Dade County, Florida.

Parcel 2:

2171 Lincoln Avenue Opa-Locka, Florida 33054

Lots 14, 15 and 16, Block 3, MAGNOLIA SUBDIVISION, according to the plat thereof, as recorded in the Plat Book 40, Page 80, of the Public records of Miami-Dade County, Florida.

EXHIBIT "B"
FORM OF DEED

This Instrument prepared by:
Brenda Kuhns Neuman, Esq.
Miami-Dade County Attorney's Office
111 NW 1st Street, Suite 2810
Miami, FL 33128

Property Appraiser's Parcel I.D. Nos.:
08-2122-003-0130
08-2122-003-0170

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED made this _____ day of _____, 2021, between **MAGNOLIA NORTH 2145 APARTMENTS, LLC**, a Florida limited liability company, having an address at 490 Opa Locka Boulevard, Suite 20, Opa Locka, Florida 33054 ("Grantor"), to **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida ("Grantee").

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), in hand paid by Grantee, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, hereby grants, bargains, sells, transfers, delivers, and conveys unto the Grantee, all that certain real property situated in Miami-Dade County, State of Florida, to-wit (the "Property"):

See Exhibit "A" attached hereto and made a part hereof.

SUBJECT TO:

1. Taxes for the year 2021 and subsequent years.
2. Zoning laws, ordinances and regulations imposed by governmental authority.
3. Easements, restrictions, and limitations of record, if any, without intent of reimposing same.

TOGETHER with all tenements, hereditaments, and appurtenances thereto belonging or anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND GRANTOR HEREBY COVENANTS WITH GRANTEE THAT GRANTOR IS LAWFULLY SEIZED OF THE PROPERTY IN FEE SIMPLE; THAT GRANTOR HAS GOOD RIGHT AND LAWFUL AUTHORITY TO SELL AND CONVEY THE PROPERTY; AND THAT GRANTOR HEREBY FULLY WARRANTS THE TITLE TO THE PROPERTY AND WILL DEFEND THE SAME AGAINST THE LAWFUL CLAIMS OF ALL PERSONS CLAIMING BY, THROUGH OR UNDER GRANTOR.

THIS SPECIAL WARRANTY DEED is executed, delivered and accepted as an absolute conveyance of all of Grantor's right, title and interest in and to the Property, and not as additional security for that certain loan (the "Loan") made by Miami-Dade County to Grantor, which Loan is evidenced by a promissory note dated April 14, 2015. Grantee hereby accepts this conveyance in full satisfaction of the Loan. It is the intention of Grantor to transfer absolute title to the Property to Grantee free of any equity of redemption by Grantor. It is the further intention of Grantor and Grantee that the liens created by the mortgage and other documents securing the Loan will not merge into the fee title acquired by Grantee pursuant to this Warranty Deed and such liens are not released hereby. Grantee preserves its rights as the mortgagee under the mortgage to foreclose any junior encumbrances or liens. Grantor shall have no further interests or claims in and to the Property or to the rents, issues or profits, or other proceeds that may be derived from the Property, of any kind whatsoever.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized the day and year first above written.

SIGNATURE ON THE FOLLOWING PAGE

Signed, sealed and delivered
in the presence of:

[Signature]
Print Name: Len. Stoddard
[Signature]
Print Name: Marcia Grant

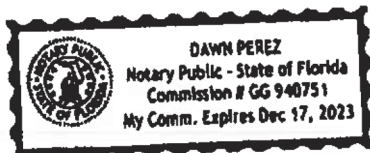
MAGNOLIA NORTH 2145 APARTMENTS, LLC,
a Florida limited liability company

By: Opa-Locka Community Development
Corporation, Inc., its Manager, a Florida not for
profit organization.

By: [Signature]
Name: Willie Logan
Its: President/CEO

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

THE FOREGOING INSTRUMENT was acknowledged before me by means of ☒ physical presence
or ☐ online notarization this 8TH day of July, 2021 by Willie Logan as
President and CEO, of Opa-Locka Community Development Corporation, Inc., a Florida not for
profit corporation, Manager of Magnolia North 2145 Apartments, LLC, a Florida limited liability company,
on behalf of Magnolia North 2145 Apartments, LLC. She He is personally known to me or has produced
_____ as identification



NOTARY PUBLIC, State of Florida
Printed Name: Dawn Perez
Commission No.: GG 940751
My Commission Expires: 12/17/2023

EXHIBIT "A" TO SPECIAL WARRANTY DEED
Legal Description

Parcel 1: 2145 Lincoln Avenue, Opa-Locka, FL 33054

Folio: 08-2122-003-0130

Lots 10, 11, 12, and 13, Block 3, MAGNOLIA SUBDIVISION, according to the plat thereof, as recorded in the Plat Book 40, Page 80 of the Public records of Miami-Dade County.

Parcel 2: 2171 Lincoln Avenue, Opa-Locka, FL 33054

Folio: 08-2122-003-0170

Lots 14, 15, and 16, Block 3, MAGNOLIA SUBDIVISION, according to the plat thereof, as recorded in the Plat Book 40, Page 80 of the Public records of Miami-Dade County.

This Instrument Prepared By
Chiara Brandstaetter, Esq.
Legal Services of Greater Miami, Inc.
4343 West Flagler Street, Suite 100
Miami, Florida 33134

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Covenant") dated this _____, 2021, is given to Neighborhood Housing Services of South Florida, Inc., a Florida non-profit corporation ("Lead Member"), by Miami-Dade County, a political subdivision of the state of Florida ("Owner"), its successors and assigns.

RECITALS

- A. Magnolia North 2145 Apartments, LLC was the original owner ("Magnolia North") of a project located at 2145 Lincoln Avenue in the City of Opa-locka, Florida (the "Property") that is intended to increase the supply of affordable rental housing units; and
- B. Lead Member is the lead member of the Miami-Dade County NSP Consortium ("Consortium") for federal Neighborhood Stabilization Program 2 ("NSP2") funds administered by the United States Department of Housing and Urban Development ("HUD") and approved an allocation of NSP2 funds in the amount of One Million Three Hundred Thirty-Two Thousand Forty-Three and 04/100 Dollars (\$1,332,043.04) (the "Grant") to the Project; and
- C. To secure the Grant, Magnolia North and affiliated entities executed various recorded and unrecorded documents (collectively, the "Grant Documents"), including a Restrictive Covenant recorded August 3, 2011, in Official Records Book 27778 at Page 3803 in the Official Records of Miami-Dade County, Florida (the "Old NHSSF Covenant"), which require Lead Member's consent to

any conveyance of the Project; and

- D. Magnolia North conveyed to Owner the Property via Special Warranty Deed executed on _____ and recorded in the Official Records of the public record of Miami-Dade County at Book _____ at Page _____ on _____; and
- E. As an inducement for Magnolia North conveying the Property to Owner and obtaining Lead Member's consent to the conveyance, Owner covenants to construct and operate affordable housing in accordance with the restrictions contained herein and in accordance with applicable NSP2 regulations; and

In consideration of the premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Owner agrees and declares as follows:

AGREEMENT

1. The recitals set forth above are true and correct and are incorporated into this Covenant.
2. Owner shall construct on the Property a project of Owner's design which may be mixed-use commercial and residential or entirely residential (the "Project"). The residential units constructed on the Property shall constitute the "Assisted Units" and shall be governed by the affordability restrictions of this Covenant.
3. Owner shall have five years from the date this Covenant is recorded to complete construction of the Project. However, in the event that an extension of time may be required to complete construction, said extension may be granted by NHSSF in its discretion in writing. For the purposes of this Covenant, the Project shall be considered completed upon the issuance of a certificate of occupancy ("Project Completion").
4. 40% of the Assisted Units shall remain affordable to those persons with incomes at or below 50% of Area Median Income and the remaining 60% of Assisted Units shall be affordable to those persons with incomes at or below 120% of Area Median Income, as determined by HUD, with adjustments and certain exceptions as provided in 24 CFR Part 92, until the date which is forty (40) years after Project Completion (the "Affordability Period"), in accordance with the NSP2 regulations, HUD regulations, and applicable federal, state, and local laws.
5. This Covenant shall be a covenant running with the Property for the Affordability Period, shall be binding upon all subsequent owners of the Property for such

term, and is not merely a personal covenant of the Owner. This Covenant shall remain in full force and effect and shall be binding upon the Owner, its successors and assigns from the date hereof until the expiration of the Affordability Period.

6. The Old NHSSF Covenant has been cancelled and/or satisfied, and Owner is not responsible for compliance with the Old NHSSF Covenant.

7. This Covenant is a covenant running with the land. This Covenant shall be recorded in the Public Records of Miami-Dade County, Florida, at the sole cost and expense of Owner, and shall become effective upon recordation.

8. Lead Member, its successors and assigns, is the beneficiary of this Covenant and as such, Lead Member may enforce this Covenant by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of this Covenant.

9. The parties agree that in the event of failure of any of the Assisted Units to remain Affordable during the Affordability Period, Lead Member shall provide written notice to Owner and allow Owner 60 days to cure such violation. If Owner fails to cure the violation, and if HUD demands that Lead Member repay the Grant, then Owner shall make payment to the Lead Member in the amount equal to the amount of repayment demanded by HUD, however Owner's liability for such repayment shall be limited and in no event shall exceed \$1,332,043.04. Any failure of Lead Member to enforce this Covenant or any part hereof shall not be deemed a waiver of the right to do so thereafter.

10. It is understood and agreed that the Lead Member shall have the right any time during normal working hours to enter and investigate the use of the Project to determine whether the conditions of this Covenant are being complied with.

11. This Covenant may be modified, amended, or released as to any portion of the Project only by a written instrument executed on behalf of the Lead Member and by the then owner of the fee simple title to the land to be affected by such modification, amendment or release. Should this instrument be modified, amended or released, the Lead Member and Owner shall execute a written instrument in recordable form to be recorded in the Public Records of Miami-Dade County, Florida, effectuating and acknowledging such modification, amendment, or release.

12. The invalidity of any clause, part or provision of this Covenant shall not affect the validity of the remaining portions hereof.

13. Upon expiration of the Affordability Period, this Covenant shall terminate and shall no longer be effective.

14. Any and all requirements of the laws of the State of Florida that must be satisfied in order for the provisions of this Covenant to constitute a covenant running with the land shall be satisfied in full, and any requirements or privileges of estate are intended to be satisfied, or in the alternate, an equitable servitude has been created to ensure that these restrictions run with the land. For the term of this Covenant, each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Covenant, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Covenant.

<<SIGNATURES ON FOLLOWING PAGES>>

The parties have caused this Declaration of Restrictive Covenant to be executed by its duly authorized to be effective as of the day and year first above written.

WITNESS:

Signature

Print Name

Signature

Print Name

OWNER:

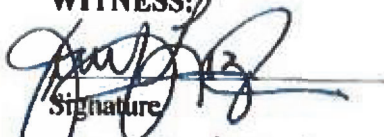
Miami-Dade County, a political subdivision
of the State of Florida

By: _____
Morris Copeland, Chief Community
Services Officer

Date: _____

The parties have caused this Declaration of Restrictive Covenant to be executed by its duly authorized to be effective as of the day and year first above written.

WITNESS:


Signature

Print Name


Signature

Melissa Clarke
Print Name

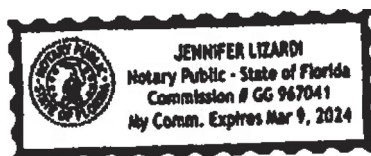
LEAD MEMBER:

Neighborhood Housing Services of South Florida, Inc., a Florida nonprofit corporation.

By: 
Kimberly T. Henderson, President & CEO

**STATE OF FLORIDA
COUNTY OF MIAMI-DADE**

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 14 day of July 2021, by KIMBERLY T. HENDERSON, as President & CEO of NEIGHBORHOOD HOUSING SERVICES OF SOUTH FLORIDA, INC., a Florida nonprofit corporation. Said person is personally known to me or has produced a valid driver's license as identification.



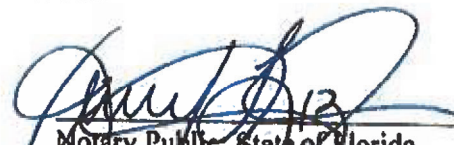

Notary Public, State of Florida
Print Name: Jennifer Lizardi
My Commission Expires: March 9, 2024
My Commission No.: GG 967041

EXHIBIT "A"
Legal Description of the Property

Lots 10, 11, 12 and 13, Block 3 of MAGNOLIA SUBDIVISION according to the plat thereof as recorded in Plat Book 40, Page 80 of the Public Records of Miami-Dade County, Florida