

INFILL HOUSING INITIATIVE PROGRAM GUIDELINES



Public Housing and Community Development
Infill Program
701 NW 1 Court, 16th Floor
Miami, Florida 33136
Main Number: (786) 469-4226
Fax Number: (786) 469-4199
Folio No.: _____

INFILL HOUSING INITIATIVE AFFORDABLE HOUSING RESTRICTIVE COVENANT FOR HOMEBUYERS

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT ("Covenant") is made this ____ day of _____, 201__, by (Buyer)_____, (hereinafter referred to as the "Owner"), in favor of Miami Dade County, a political subdivision of the State of Florida (hereinafter referred to as "County").

WHEREAS, the Owner holds title to certain property located at Street, Miami, FL. (address), and legally described in Exhibit "A," (the "Property"), attached hereto and made a part hereof by this reference; and

WHEREAS, the Property was developed as affordable housing for low or moderate income households in accordance with the Miami-Dade County Infill Housing Initiative (the "Program"); and

WHEREAS, pursuant to this Program, eligible homebuyers are given the opportunity to purchase residential property at less than its fair market value if the purchaser agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and to convey the property for an amount not greater than the maximum resale price, all as more fully provided herein; and

WHEREAS, in order to qualify for such participation the Owner hereby makes the following binding commitments to ensure that the Property complies with the requirements of the Program;

NOW, THEREFORE, as consideration for the conveyance of the Property at less than fair market value, and other good and valuable consideration which the owner acknowledges, the Owner, including his/her/their heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are imposed for the benefit of, and shall be enforceable by and through its designated agency.

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

Affordable means where the mortgage payment, including taxes and insurance, does not exceed 30 percent of the amount which represents the percentage of the median annual gross income for low and moderate income households. However, it is not the intent to limit an individual household's ability to devote more than 30 percent of its income for housing, and housing for which a household devotes more than 30 percent of its income shall be deemed affordable if the first institutional mortgage lender is satisfied that the household can afford mortgage payments in excess of the 30 percent benchmark.

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

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

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

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

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

Eligible Housing or Eligible Home means any dwelling unit that is: (i) located on an Infill parcel; (ii) constructed in accordance with the Program; and (iii) used as the primary residence of a qualified household.

Eligible Purchaser means one or more natural persons or a family that is a first-time homebuyer, has obtained a first-time homebuyer counseling certificate within the past 12 months; has been determined by the County to meet the eligibility requirement of a low income or moderate income household according to the income limits, adjusted to family size, published annually by the United States Department of Housing and Urban Development based upon the annual gross income of the household, and that said purchaser has received a Certificate of Qualification.

First Time Homebuyer means an individual who has had no ownership interest in a principal residence during the 3-year period ending prior to the date of purchase of the Property. This includes a spouse (if either meets the above test, they are considered first-time homebuyers); a single parent who has only owned a home with a former spouse while married; an individual who is a displaced homemaker and has only owned with a spouse; or an individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations.

Low Income Household means those households whose total annual adjusted gross income is 80% percent or less than the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within Miami-Dade County, whichever is greater as defined by HUD.

Maximum Resale Price means the sum of (i) the current area median income for the Metropolitan Area of Miami-Dade County as published by the U.S. Department of Housing and Urban Development (HUD) multiplied by the resale price multiplier, as defined herein, (ii) capital improvements, if any, however, in no event shall the Maximum Resale Price be greater than the purchase price for which a credit-worthy Eligible Household earning 140% of the Area Median Income, as required by the Program for an eligible household to obtain mortgage financing (as such purchase price is determined

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by County), and further provided that the Resale Price shall not be less than the purchase price paid for the Property by the Owner unless the Owner agrees to accept a lesser price.

Maximum Sale Price Up to \$205,000.00 for County-owned properties and \$215,000 for Private Properties or such other amount set by the Board of County Commissioners, not to exceed an amount affordable at the maximum target income range set forth in Chapter 17, Article VII of the Code of Miami-Dade County, taking into account (a) family size; (b) an annual fixed interest rate based on a thirty (30) year mortgage term; (c) payment of up to five percent (5%) down payment by a Eligible Household; and (d) an estimation of annual property taxes, assessments, loan insurance and financing fees, allowances for property maintenance and repairs, homeowners insurances, homeowner association fees, if any, and allowances for utilities. The sales price set forth herein, i.e. \$205,000.00 for County-owned properties and \$215,000.00 for Private Properties, shall remain the maximum sale price for said units for a period of one (1) year from the effective date of this Implementing Order. The Department Director shall annually review the affordability of the maximum sale price, and, in the event the Department Director determines that it is necessary to increase or decrease said sale price, the Department Director shall recommend a new sale price for approval by the Board of County Commissioners.

Moderate Income Household means those households whose total annual adjusted gross income is greater than 80% and less than 140% percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within Miami-Dade County, whichever is greater as defined by HUD.

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

Resale Price Multiplier Calculation: _____ \$ _____

Current HUD 201____ Area Median Income – Revised _____ \$ _____

Resale Price Multiplier: _____

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

3. **Restrictions Against Leasing, Refinancing and Junior Encumbrances.** The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of County; provided, however, this provision shall not apply to a first mortgage granted on the date of the delivery of the Deed in connection with the conveyance of the Property from Grantor to Owner securing indebtedness not greater than one hundred percent (100%) of the purchase price. Any rents, profits, or proceeds from any transaction described in the preceding sentence which transaction has not received the requisite written consent of County shall be paid upon demand by Owner to County for deposit in its Affordable Housing Trust Fund. County may institute proceedings to terminate such lease or rental agreement and to recover such rents, profits or proceeds, and costs of collection, including attorneys' fees and costs of litigation. Upon recovery, after payment of costs, the balance shall be paid to County for deposit to its Affordable Housing Trust Fund. In the event that County consents for good cause to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceeds

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the actual carrying costs of the Property as determined by County, shall be paid to County for deposit in the Affordable Housing Trust Fund.

4. **Notice of Sale.**

(a) When the Owner or any successor in title to the Owner shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Owner shall notify County in writing of the Owner's intent to sell the Property (the "Notice of Sale"). County shall calculate the Maximum Resale Price which the Owner may receive for the sale of the Property based upon the average rate of real property appreciation for the Metropolitan Statistical Area (MSA) during the period the home was owned by the current Owner plus any documented capital improvements as defined herein.

(b) County shall have 60-days from receiving the Notice of Sale from the Owner to enter into a Purchase and Sale Agreement at or below the Maximum Resale Price or provide the owner with written notification of the County's intent to waive its right of first refusal.

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

(d) Should Owner be unable to identify an Eligible Purchaser within 120-days of County receiving the Notice of Sale, Owner shall have the right to require County purchase the property at or below the Maximum Resale Price, provided Owner has made a good faith effort to sell the property to an eligible purchaser, to include agreeing to reasonable terms and conditions in a purchase and sale agreement. County, at its sole discretion, shall have the right to extend the 120-day period if in the opinion of County the Owner has not made a good faith effort to sell the Property or has not cooperated with County in selecting an eligible purchaser.

(e) Nothing in this Restriction constitutes a promise, commitment or guarantee by COUNTY that upon resale the Owner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

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

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

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6. **Resale and Transfer Restrictions:**

(a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Owner, or the Owner's successors, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the selected purchaser of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and unless a certificate (the "Compliance Certificate") is obtained and recorded, signed and acknowledged by County which Compliance Certificate refers to the Property, the Owner, the selected purchaser thereof, and the Maximum Resale Price therefore, and states that the proposed conveyance, sale or transfer of the Property to the selected purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Restriction.

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

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected purchaser, the Owner shall deliver to County a copy of the Deed of the Property, together with the recording information. Failure of the Owner or Owner's successors to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

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

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

(a) The holder of record of any mortgage on the Property (each, a "Mortgage") shall notify County and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to County as set forth in this Restriction, and to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Restriction.

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

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

(c) Not earlier than sixty (60) days following the delivery of the Foreclosure Notice to County and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state or local taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee's mortgage, and further subject to a Restriction, as set forth above.

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

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

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

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

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

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

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

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

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

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

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

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

Witness:

Owner:

Print Name

Witness:

Owner:

Print Name:

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____day of _____, 201____, by _____, who [] is personally known to me or [] produced _____ as identification.

My commission expires:

Notary Public

Print name: _____

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Rev. 2/7/2017

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EXHIBIT “A”

LEGAL DESCRIPTION

[INSERT LEGAL DESCRIPTION AND FOLIO]

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Rev. 2/7/2017