

Instrument prepared by:

Assistant County Attorney
111 N.W. 1ST Street, Suite 2810
Miami, Florida 33128

Instrument returned to:

Public Housing and Community Development

701 N.W. 1ST Court, 16th Floor
Miami, Florida 33136
Folio No: See Exhibit "A" attached

TRI-PARTY AGREEMENT

THIS TRI-PARTY AGREEMENT made and entered into by MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida ("County") and _____, a Florida _____ corporation (the "Borrower"), in favor of _____, ("Lender").

RECITALS

WHEREAS, Lender is about to make a loan to Borrower in the amount of \$_____ (the "Loan"), for the purpose of constructing affordable housing in accordance with the County's Infill Housing Initiative Program to be located at _____ (the "Improvements"). Said Loan is to be evidenced by and repayable in accordance with the terms of a Promissory Note executed by Borrower in favor of Lender (the "Note"), and secured in part by a Construction Loan Mortgage and Security Agreement (the "Mortgage"), and [insert] (the "Loan Documents"). The Mortgage encumbers that certain real property located at _____, Miami-Dade County, Florida (the "Property") as more particularly described on Exhibit "A" attached hereto, together with all improvements located thereon.

WHEREAS, the County conveyed the Property to Borrower by that certain County Deed, dated _____, 20____, attached hereto as Exhibit "B" attached hereto, which was recorded on _____, 20____, in Official Records Book _____, at Page _____, of the Public Records of Miami-Dade County, Florida (the "Deed").

WHEREAS, the Deed is subject to certain restrictions, including the following: [INSERT RESTRICTIONS LISTED IN COUNTY DEED] (the "Restrictions").

WHEREAS, the County acknowledges that Borrower desires to obtain the Loan from Lender and that Lender is willing to extend the Loan to Borrower from time to time in such amounts as Lender deems advisable, provided that this Tri-Party Agreement shall be and remain in effect, and all parties agree to Lender's mortgage on the following terms.

NOW THEREFORE, the parties agree as follows:

1. Recital.

The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

2. Restrictions.

Notwithstanding any default, foreclosure by the Lender, deed in lieu of foreclosure, or subsequent transfer of the Property resulting from the foregoing, the Restrictions set forth in the Deed shall remain in full force and effect, and shall constitute a restrictive covenant which shall run with the land, notwithstanding any other term herein.

Lender agrees that its Mortgage, Loan Documents, and any right or remedy set forth herein or in any other document, shall be subordinate to such Restrictions, and that any future sale or conveyance of the Property shall be subject to and encumbered by the Restrictions.

In the event of any conflict between this paragraph, and any term in this, or any other document, the terms of this paragraph shall supersede same.

This term shall survive the termination of this Agreement.

3. Reverter.

During the period that the Lender's Mortgage on the Property remains unsatisfied, or in the event of a breach of any Restriction by any future owner, the parties agree that the County shall have the right, but not the obligation, to exercise its right of reverter in the event of such a breach (as opposed to an automatic reverter). Such right shall be in addition to all other legal rights and remedies including but not limited to the right to file suit to enforce such restriction. The County may exercise such right by providing 30 days written notice to the Lender and the Borrower, and in such event, the County shall have the right to reenter and take possession of the Property and to terminate and revest in the County the estate conveyed by the Deed to the Borrower. In such event, all of the monetary investments and improvements made to the Property shall be forfeited without any compensation or right to compensation whatsoever. In the event of the exercise of such reverter, the Property shall revert encumbered only by the subject Mortgage, which may be paid off by the County at its option without penalty, and only to this extent, the reverter is subordinate to the lien of Mortgage. Any subsequent or other mortgage or encumbrance on the Property, if obtained without prior County approval, shall be subordinate to the County's right of reverter.

This term shall survive the termination of this Agreement.

4. Termination.

This Agreement shall terminate upon the earlier of the issuance of a Certificate of Occupancy for the property located at _____, Miami, Florida or the

payment of the amounts due under the Loan Agreement. Upon termination, all terms of the original Deed shall still apply to the Property. Lender and Borrower shall provide written notice to the County within five days of the payoff of the amounts due under the Loan Documents and/ or upon the issuance of such Certificate of Occupancy, along with written notice by the Lender that this Agreement is terminated. Failure to so provide the notice, however, does not **effect** the termination date of this Agreement, which shall be deemed effective upon the earlier of the aforementioned dates of the payoff or the issuance of the Certificate of Occupancy.

5. Notice to the County.

- (a) Anything contained in the Loan Documents to the contrary notwithstanding, if any default shall occur which entitles Lender to declare a default under the Loan Documents, which if uncured by the Borrower would result (*inter alia*) in an acceleration of the Note and a foreclosure of the Mortgage (a "Default"), Lender agrees to notify the County in writing (the " Default Notice") of the Default at least 15 days in advance of the proposed acceleration of the Note (if such Default is capable of being cured by the payment of money), and at least 30 days in advance of the proposed acceleration of the Note, if such Default is not capable of being cured by the payment of money (hereinafter, the "Default Notice Period"). During such 15 or 30 day Default Notice Period, the County may notify Lender of the County's desire to cure the Default, and pay or cause to be paid to Lender all payments then due and in arrears as specified in the Default Notice and which may become due during such 15 or 30-day period, and which may become due subsequent to such Notice, and /or comply, or in good faith with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of the Loan Documents then in Default and reasonably capable of being complied with by the County.
- (b) Any Default Notice to be given by Lender to the County pursuant to any provision of this Section 5 shall be deemed properly addressed if sent to the County in the manner specified in Paragraph 12 at the address given herein below, unless notice of a change of address has been properly given to Lender by the County. Exercise by the County of the right of reverter shall not prevent the Lender from foreclosing upon a future uncured event of default in the event that the County does not pay off the Mortgage upon the reverter.
- (c) Nothing contained herein should be construed as an obligation of the County to cure any Default of the Borrower, or to pay any amount due under the Mortgage and Note.

6. Procedure Upon Default.

- (a) If Lender shall elect to declare a Default by reason of any action or inaction of the Borrower, and the County shall have proceeded in the manner provided for by section 5 hereinabove, the specified date for acceleration of

the Note as fixed by Lender in the Default Notice shall be extended for a period which is co-extensive with the County's performance of the Borrower's obligations under the Loan Documents, provided that the County or Borrower shall, during such period pay or cause to be paid all monetary obligations of Borrower under the Loan Documents as the same become due, and continue its good faith efforts to perform all of Borrower's other obligations under the Loan Documents.

- (b) In the event a Default shall have occurred, the Borrower fails to cure same and the County exercises its option to cure such Default on behalf of Borrower or Borrower otherwise violates one or more of the Restrictions, title to the Project shall revert back to the County after written notice to the Lender and the Borrower from the County (the "Reversion"). Upon the occurrence of a Reversion, the County agrees to file in the Public Records of Miami-Dade County, Florida a notice of transfer of title to the Project from the Borrower to the County.

Nothing contained hereinabove shall require the County to cure any Default of the Borrower, or to exercise its right of reversion, should it deem it in its sole discretion not to do so.

7. Approval of County Mayor. Pursuant to his delegated authority under Resolution No. _____, the County hereby approves a loan by _____ to Borrower in the amount of \$_____, subject to the restrictions and provisions set forth herein, No written modification, extension, or renewal of this mortgage may be made without express written consent of the County.
8. Breach of Tri-Party Agreement. Any breach of this Agreement by the County or Borrower shall constitute a Default under the Loan Documents, and all indebtedness then owing to Lender under the Loan Documents shall, at Lender's option, become due and payable at once. Prior to repayment of the Loan in full to Lender, any funds or property of any kind received by the County from or on account of the Borrower or the Project, shall be held by the County in trust for Lender and shall be paid or delivered over to Lender upon demand. Waiver of earlier Defaults by Lender shall not be construed as waiver of any later breach.
9. Miscellaneous. This Agreement shall be binding upon all parties hereto and their respective heirs, assigns, successors, executors and administrators. This Agreement is assignable by Lender and shall inure to the benefit of any successor or assign of Lender. Borrower and the County hereby specifically acknowledge, accept and agree to the assignment of this agreement and Lender's rights hereunder, to any related or affiliated entity of Lender and to any permanent lender, and agrees to **attorn** to such assignee and to execute such modifications hereto or other documentation as may be required to facilitate such assignment.
10. Governing Law; Jurisdiction and Venue. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Florida (without

giving effect to Florida's principles of conflicts of law). Borrower, Lender and the County hereby irrevocably submit to the non-exclusive jurisdiction of any Florida court sitting in the County of Miami-Dade, Florida, over any suit, action or proceeding arising out of or relating to this Agreement.

- 11. Estoppel Certificate. The County and/or Borrower shall, without charge, at any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of the Loan), within 15 days after written request to Lender to do so, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether the Loan Documents have been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) that the Loan Documents are in full force and effect; (c) as to the existence of any default thereunder of which Lender has knowledge; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of the Borrower or the County of which they have knowledge; (e) as to the commencement and expiration dates of the term of the Loan Documents; and (f) as to any other matters as may be reasonably so requested. Any such certificate by the Borrower and/ or the County may be relied upon by Lender, any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on Borrower and/ or the County.

- 12. Notices. All notices, demand, or request, and responses thereto, required or permitted to be given pursuant to this Agreement shall be in writing and shall be hand delivered or sent by either Federal Express or other recognized overnight delivery service, or by certified or registered mail, postage prepaid, return receipt requested, and addressed to the party as provided below or at such other place as such party may from time to time designate in a notice to the other parties. Any notice shall be effective when hand delivered or three (3) days after the letter transmitting such notice is certified or registered and deposited in the United States mail.

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand, or request sent. Any such notice, if given to Lender, shall be addressed as follows:

If to County: MIAMI-DADE COUNTY
 Attn: [INSERT]
 111 N.W. First Street
 Miami, Fl 33128

with copy to: INSERT

If to Borrower, to: INSERT

with a copy to: INSERT

If to Lender, to: INSERT

with a copy to: INSERT

- 13. Changes to Agreement. This Agreement may not be changed, amended, or modified in any manner other than by an agreement in writing specifically referring to this Agreement and executed by all the parties hereto.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

(a) **IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first written above.

Approved as to legal form and sufficiency:

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

Name: Terrence A. Smith
 Assistant County Attorney
 Miami-Dade County, Florida
 STATE OF FLORIDA)
)
 COUNTY OF MIAMI-DADE)

By: _____
 Name: _____
 Title: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, who is personally known or produced identification.

 Print or Stamp Name: _____
 Notary Public, State of Florida at Large
 Commission No.: _____
 My Commission Expires: _____

BORROWER:

[INSERT NAME]

By: _____

Name: _____

Title: _____

STATE OF FLORIDA)

)

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____ of _____, a Florida _____, as an act of the corporation and on behalf of said partnership, who is personally known or produced identification.

Print or Stamp Name: _____

Notary Public, State of Florida at Large

Commission No.:

My Commission Expires:

EXHIBIT “A”

LEGAL DESCRIPTION

[INSERT LEGAL DESCRIPTION AND FOLIO]

EXHIBIT "B"
COUNTY DEED