

This instrument Was Prepared By:

Record and Return to:
Miami-Dade County
Public Housing and Community Development
701 NW 1st Court, 16th Floor
Miami, Florida 33136
Attention: Director

**MIAMI-DADE COUNTY
AFFORDABLE HOUSING RESTRICTIVE COVENANT FOR HOMEOWNERS**

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT (“Covenant”) is made this ____ day of _____, 20____, by _____, (hereinafter referred to as the “Owner”), in favor of Miami Dade County, a political subdivision of the State of Florida (hereinafter referred to as “County”) and the City of Coral Gables, Florida (hereinafter referred to as the “City”).

WHEREAS, the Owner holds title to certain property located at _____ and legally described in Exhibit “A,” (the “Property”), attached hereto and made a part hereof by this reference; and

WHEREAS, the Property was rehabilitated as affordable housing for low or moderate income households pursuant to Resolution No. [R _____] adopted on [_____] (“Allocation Resolution”) by the Board of County Commissioners for Miami-Dade County, Florida which approved an allocation of \$592,308 to the City for the rehabilitation of those eligible single-family and multi-family homes contained within the MacFarlane Homestead Subdivision Historic District (“MacFarlane District”); and

WHEREAS, pursuant to the Allocation Resolution and the Grant and Interlocal Agreement (“Agreement”) between the County and the City, eligible homeowners with property within the MacFarlane District are given the opportunity to apply for rehabilitation of his/her/their historic home with Building Better Communities General Obligation Bond (“BBC GOB”) Program funding if the homeowner meets the criteria for a “low income” or “moderate income” household, as such terms are defined herein, and the homeowner 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, pursuant to the Agreement between the Owner and the City, the Owner hereby makes the following binding commitments to ensure that the Property complies with the requirements of the BBC GOB Program, the Funding Allocation, and the Agreement;

NOW, THEREFORE, as consideration for the grant of BBC GOB Program funds, 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, the County:

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

Adjusted for family size means adjusted in a manner that results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility for up to and including moderate income households, based upon a formula established by the United States Department of Housing and Urban Development (“HUD”).

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 or 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.

Capital Improvements means the documented commercially reasonable cost of structural improvements made to the Property by the Owner.

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/own 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 Property must remain affordable. The control period begins on the date the rehabilitation is completed for the Property, as indicated by a final, passing building inspection and shall expire 20 years thereafter, regardless of the transfer of ownership during that 20-year period.

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

Eligible Purchaser means one or more natural persons or a family that has been determined by the County and the City to meet the eligibility requirements of a low or moderate income household according to income limits, adjusted to family size, published annually by HUD based upon the annual gross income of the household, and that said purchaser has received a Certificate of Qualifications.

Low Income Household means those households whose total annual adjusted gross income does not exceed 80% 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.

Maximum Resale Price means the purchase price that would be Affordable (as such term is defined herein) to a credit-worthy Eligible Purchaser earning 140% of the Area Median Income.

The Maximum Resale Price shall be approved by the County prior to the sale of the Property and it shall take 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 qualified household, and (d) an estimation of annual property taxes, assessments, loan insurance, and financing fees, allowances for property maintenance and repairs, homeowners' insurances, homeowners' association fees, if any, and allowances for utilities.

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 MSA or, if not within an MSA, within Miami-Dade County, whichever is greater as defined by HUD.

Owner means one or more natural persons or a family that has been determined by Municipality and the County to meet the eligibility requirement of a low or moderate income household according to the income limits, adjusted to family size, published annually by HUD based upon the annual gross income of the household, and that said Owner has received a Certificate of Qualification.

Property means the eligible home owned by Owner as his/her/their primary residence and awarded BBC GOB Program funds for rehabilitation. Specifically, the Property is described as:

Property Address:

Legal Description of the Property:

Narrative Description of the Property: [type of home (i.e. "shotgun" house), square footage of home, number of bedrooms/bathrooms]

2. **Effect of Restrictive Covenant.** The Owner understands and agrees that once recorded, this Covenant shall be a restrictive covenant on the Property that shall run with the Property and shall be binding on the Property, the Owner, and upon any purchaser, transferee, grantee, lessee, mortgagee, or subsequent owner, or any combination of each, and on their heirs, assigns, executors, administrators, devisees, successors and assigns and on any other person or authority having any right, title or interest in the Property or any portion thereof for the length of the Control Period.

3. **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.

4. **Restrictions Against Leasing, Refinancing and Junior Encumbrances.** The Property shall not be sold, leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of County. 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. 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 and/or to invalidate any mortgage, sale or conveyance. Upon recovery, after payment of costs, the balance shall be paid to County. In the event that County consents for good cause to any such

conveyance, lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction, which exceeds the actual carrying costs of the Property as determined by County and/or the Maximum Resale Price, shall be paid to County.

5. **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.

(b) County shall have 60-days from receiving the Notice of Sale from the Owner to provide the Owner with the Maximum Resale Price that the Owner may receive for the sale of the Property.

(c) Owner may then proceed to sell the Property to an Eligible Purchaser at a price that is at or below the Maximum Resale Price and upon reasonable terms and conditions in a purchase and sale agreement.

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

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 Eligible 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 Eligible Purchaser or the enforceability of the restrictions herein.

6. **Resale and Transfer Restrictions:** (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold 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 Eligible 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 Eligible Purchaser thereof, and the Maximum Resale Price therefore, and states that the proposed conveyance, sale or transfer of the Property to the selected Eligible Purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant.

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

(c) Within ten (10) days of the closing of the conveyance of the Property from the Owner to the selected Eligible 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 Covenant, 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 Covenant.

(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, 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 Covenant identical in form and substance to this Covenant which the Owner hereby agrees to execute, to secure execution by the County or its designee, and to record with the deed, except that (i) during the term of ownership

of the Property by the County or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible 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 this Covenant, 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 after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the County is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the County. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the County under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the County.

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

(f) If any party other than a Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, the Property shall be conveyed subject to this Covenant except that (i) if the purchaser at such foreclosure sale or assignee of a deed in lieu of foreclosure is not an Eligible Purchaser ("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 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 Covenant.

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

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

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

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.

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

By

Witness:

Print Name

LEGAL Description:_____