

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov
OFFICE OF HOUSING & COMMUNITY SERVICES
555 17 St., Miami Beach, FL 33139, Tel: (305) 673-7260 Fax: (305) 673-7772

July 30, 2019

Miami Beach Community Development Corporation
Mr. Ahmed Martin, Interim Executive Director
945 Pennsylvania Avenue, 2nd floor
Miami Beach, FL 33139

RE: Default of HOME Program Agreement between the City of Miami Beach ("the City") and Miami Beach Community Development Corporation (MBCDC) for the Allen Apartments, 2001 Washington Avenue

Dear Mr. Martin:

This letter is sent to you as a notification that the above captioned address is currently in default, pursuant to the terms delineated in your contract executed on October 30, 2008, as noted below.

ARTICLE IV **SPECIAL PROVISIONS APPLICABLE TO FUNDS PROVIDED UNDER THE HOME PROGRAM**

(L) **Tenant and Participant Protection.** MBCDC agrees that the lease to be executed with the tenants of rental housing will be in accordance with 24 CFR Part 92.253. Furthermore, if HOME assistance is provided to a CHDO, the CHDO must adhere to a fair lease and grievance procedure approved by the City and provide a plan for and follow a program of tenant participation in management decisions (24 CFR Part 92.303).

The City monitored various MBCDC projects from June 24 to July 17, 2019 and found that the following units had expired leases: 107, 110, 111, 202, 203, 209, 210, 303 and 310, some exceeding a period of thirty (30) days.

You are hereby advised that you have thirty [30] days to remedy the issues noted above. This office must receive documentation of remedy via standard mail or electronic mail by August 30, 2019.

If the default complained of is not fully and satisfactorily cured within thirty (30) days of receipt of such notice of default to MBCDC, at the expiration of said thirty (30) day period (or such additional period of time, as permitted by the City, in its sole discretion, as required to cure such default in the event MBCDC is diligently pursuing curative efforts) this Agreement may, at the City's sole option and discretion, be deemed automatically canceled and terminated, and the City fully discharged from any and all liabilities, duties and terms arising out of, or accruing by virtue of the Agreement. In the event if a default for cause, the City may, at its option, avail itself of any and all remedies pursuant to 24 CFR Part 85.43, as amended from time to time, including suspension, in whole or in part, of MBCDC's Funds, as set forth herein, and any other remedies that may be legally available.

If you have any questions, please contact Marcela Rubio, HOME/SHIP Program Coordinator, at (305) 673-7260 or via e-mail at marcelarubio@miamibeachfl.gov. We appreciate your prompt attention to this matter to ensure your compliance and prevent the possibility of contractual default.

Sincerely,


Marcela Rubio, HOME/SHIP Program Coordinator

Cc:
Maria Ruiz, Department Director
Alba Tarre, Assistant Director
Susanne Torriente, Assistant City Manager
Deb Wedoe, Florida Housing Finance Corporation
Michael Liu, Miami-Dade County Public Housing Community Development Director

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

HOME PROGRAM AGREEMENT

THIS AGREEMENT, entered into this 30 day of October, 2008, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, having its principal office at 1700 Convention Center Drive, Miami Beach, Florida, (hereinafter referred to as the City), and the **MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION**, a not-for-profit Florida corporation, with offices located at 945 Pennsylvania Avenue, Miami Beach, Florida (hereinafter referred to as "MBCDC").

WITNESSETH:

WHEREAS, on February 18, 1992, the City was designated by the United States Department of Housing and Urban Development (HUD) as a participating jurisdiction for the receipt of funds as provided under the HOME Investment Partnerships Program under 24 CFR PART 92, as amended (HOME Program); and

WHEREAS, the City has entered into an agreement with HUD for the purpose of conducting an affordable housing program with federal financial assistance under the HOME Program; and

WHEREAS, on April 8, 1993, the Mayor and City Commission approved Resolution No. 93-20756, designating Miami Beach Community Development Corporation (MBCDC) as a qualified Community Housing Development Organization (CHDO) under the HOME Program; and

WHEREAS, the City has determined the necessity for providing affordable housing in the City through the Fiscal Year 2006/2007 One-Year Action Plan for Federal funds, adopted by Resolution No. 2006-26253 on July 12, 2006; and

WHEREAS, MBCDC warrants and represents that it possesses the legal authority to enter into this Agreement, by way of a resolution, motion, or similar action that has been duly adopted or passed as an official act of the MBCDC governing body, authorizing the execution of this Agreement, including all understandings and assurances contained herein, and authorizing the person identified as the official representative of MBCDC to act in connection with this Agreement and to provide such additional information as may be required; and

WHEREAS, it is acknowledged and agreed that funds to be granted to MBCDC derive from Federal funds appropriated to the City by HUD for the uses and purposes herein referred to and, accordingly, it is acknowledged and agreed that this Agreement is entered into in compliance by MBCDC with all applicable provisions of Federal, State and local laws, statutes, rules and regulations.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

ARTICLE I **DEFINITIONS**

As used in this Agreement the terms listed below shall have the following meanings as defined in the HOME Investment Partnerships Program Final Rule, 24 CFR Part 92, and any amendments thereto:

- (a) HOME Program: HOME Investment Partnerships Program, Final Rule, 24 CFR Part 92, as amended;

- (b) HUD: United States Department of Housing and Urban Development or any successor agency;
- (c) CHDO: Community Housing Development Organization as defined in the HOME Program;
- (d) Funds: HOME Program funds;
- (e) HOME Assisted Units: A term that refers to the number of units in a project assisted with HOME Program funds for which rent, occupancy, and resale/recapture restrictions apply.
- (f) Project: One or more buildings on a single site or multiple sites that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking. For the purposes of this Agreement, the "Project" referenced herein shall refer to the Allen House Apartments, located 2001 Washington Avenue.

ARTICLE II

ALLOCATION OF HOME FUNDS

In consideration for the performance by MBCDC of its role and responsibilities set forth in this Agreement, the City will provide One Hundred Ninety-Two Thousand, Four Hundred Eighty One Dollars (\$192,481) (Funds), from its Fiscal Year 2006/2007 HOME allocation to MBCDC to be used for eligible CHDO project that provides for the rehabilitation of the apartment building know as the Allen House Apartments, located at 2001 Washington Avenue, Miami Beach, that will provide 39 units of rental housing for income qualified persons (the Project). MBCDC will rehabilitate the Project as more fully described in the Scope of Services (Exhibit A) and Budget (Exhibit B) attached hereto. MBCDC will maintain required HOME Program rent and occupancy limitation for a minimum period of 30 years (the Affordability Period).

ARTICLE III

PROCEEDS FROM HOME INVESTMENT

In accordance with the HOME Final Rule, as amended, at 24 CFR PART 92.300(a)(2), MBCDC may retain the proceeds resulting from the CHDO's investment of its CHDO set aside funds for use in other housing activities which benefit low-income families. However, any recapture of HOME funds for housing not meeting the affordability requirements of 24 CFR PART 92.254(a)(5)(ii), will be considered Program income and will be repaid in accordance with the requirements of 24 CFR PART 92.503.

ARTICLE IV

SPECIAL PROVISIONS APPLICABLE TO FUNDS

PROVIDED UNDER THE HOME PROGRAM

MBCDC expressly agrees to the following terms and conditions in conformity with the HOME Program:

(a) **Repayment of Funds.** The Funds (which definition shall include the allocation of any additional funds that may be provided by the City in the future as a result of an amendment or modification of this Agreement) shall be repaid in their entirety if the Project HOME units do not meet the affordability requirements for the required time period in accordance with the terms of the Affordability Period, this Agreement and the HOME Program. Any violation of these requirements may, at the City's option, result in the entire amount of the Funds, as indicated in Article II or as

subsequently amended or modified, being returned and/or otherwise repaid by MBCDC to the City, and same shall be considered and treated as an event of default resulting in the City's termination for cause of the Agreement, pursuant to Article XXVI herein. The City reserves the right to review the affordability requirements, as set forth herein. Concurrent with its execution of this Agreement, MBCDC shall execute a Mortgage and Note against the property at 2001 Washington Avenue, Miami Beach, FL, in the format provided by the City, incorporating the terms of this article, which shall be recorded in the Official Records of Miami-Dade County Florida. The affordability requirements and the Affordability Period shall apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure.

(b) **Rent Limitation.** HOME assisted rental units will bear rents in accordance with 24 CFR 92.252, as published from time-to-time by HUD. The City shall provide a HOME Program rent schedule annually to MBCDC.

(c) **Rent schedule and utility allowances.** In accordance with 24 CFR 92.252(b)(c) and (d), the City must review and approve rents and the monthly utility allowances proposed by the MBCDC prior to initial occupancy. MBCDC must re-examine and document the income of each tenant living in the HOME assisted units annually. The maximum monthly rent must be recalculated by MBCDC and reviewed and approved by the City annually. Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases and, in any event, the MBCDC must provide the tenant with not less than 30 days written notice before implementing any rent increase.

(d) MBCDC shall comply with all applicable federal regulations as they may apply to restrictions and limitations regarding real property under MBCDC's control acquired or improved in whole or in part with HOME funds.

(e) The Project must provide safe, sanitary, and decent residential housing for income eligible tenants (i.e., persons whose income is within specific income levels set forth by HUD).

(f) **Income Targeting.** MBCDC shall maintain written documentation that conclusively demonstrates that the Project assisted in whole or in part with HOME funds provides benefit to very-low income households (annual income does not exceed 50 percent of the median family income for the area) and low-income households (annual income does not exceed 80 percent of the median income for the area) as required.

(g) **Records:** MBCDC shall maintain all records sufficient to meet the requirements of 24 CFR 92.508(a)(2) Program Records, 92.508(a)(3) Project Records, 92.508(a)(5) (other Federal requirements records,) 92.508(a)(6) program administration records. All records required herein shall be retained and made accessible as provided in 24 CFR 92.508 (c) and (d) and Florida Statutes Chapter 119.

(i) **Property Standards.** For the duration of this Agreement and any amendments hereto, housing that is assisted with HOME funds, must meet all applicable local codes, rehabilitation standards, ordinances and zoning ordinances at the time of project completion. The City shall conduct annual or bi-annual, as required, on-site inspections of the Project to assure compliance with housing codes. The City may select a sample of the units in the Project to satisfy the inspection requirements.

(j) **Environmental Review.** For the Project described in the Scope of Services (Exhibit A), attached hereto, MBCDC shall obtain a Phase I, Environmental Assessment for the project, and

agree to mitigate any hazardous conditions identified therein.

(k) **Affirmative Marketing.** In order to provide persons in the housing market area with a range of housing choice, regardless of race, color, religion, sex, handicap, familial status, or national origin, MBCDC agrees to administer the HOME Program in a manner that will affirmatively further the purposes of Title VI of the Civil Rights Act of 1964 at 24 CFR 1, the Fair Housing Act at 24 CFR 100 and Executive Order 11063 at 24 CFR 107. MBCDC will submit its written procedures that implement these requirements for review and approval by the City.

(l) **Tenant and Participant Protection.** MBCDC agrees that the lease to be executed with the tenants of rental housing will be in accordance with 24 CFR Part 92.253. Furthermore, if HOME assistance is provided to a CHDO, the CHDO must adhere to a fair lease and grievance procedure approved by the City and provide a plan for and follow a program of tenant participation in management decisions (24 CFR Part 92.303).

(m) **CHDO Capabilities.** MBCDC, as a CHDO, agrees that it will function as an owner of the Project and that it shall have effective management control.

(n) **Change in Status.** MBCDC agrees to advise the City in writing within thirty (30) days of any organizational, operational or legal status changes made by MBCDC that affect documents that were submitted by MBCDC to obtain CHDO status.

ARTICLE V **ELIGIBLE COSTS**

MBCDC agrees that eligible costs for the Project under this Agreement are limited to those eligible costs as outlined in 24 CFR Part 92.206 of the HOME Program.

ARTICLE VI **METHOD OF PAYMENT**

The Funds shall be used by MBCDC solely for rehabilitation of the Project.

(2) Any payment due under the terms of this Agreement may be withheld pending the receipt and approval by the City of all reports and documents which MBCDC is required to submit to the City pursuant to the terms of this Agreement or any amendments thereto.

(3) No payments will be made without evidence of appropriate insurance required by this Agreement. Such evidence must be on file with the City.

(4) MBCDC understands and agrees that disbursement requests for funds under this Agreement are only to be requested when such funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

ARTICLE VII **SUBCONTRACTS**

(a) MBCDC shall include a statement in all subcontracts that it executes that the subcontractor shall hold the City harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement to the extent allowed by law.

- (b) If MBCDC subcontracts, a copy of the executed subcontract must be forwarded to the City within ten (10) days after execution.

ARTICLE VIII

CONDITIONS OF SERVICES

- (a) As a condition of the services and obligations contemplated by this Agreement, MBCDC agrees to comply with the regulations of the HOME Program.

- (b) MBCDC agrees to comply with the requirements of Executive Orders 11625 and 12432 concerning **Minority Business Enterprise** and 12138 **Women's Business Enterprise** which encourage the use of minority and women's business enterprises, to the maximum extent possible, in connection with HOME-funded activities.

- (c) MBCDC agrees to comply with the Displacement, Relocation, and Acquisition requirements in accordance with the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970** (URA) (42 U.S.C. 4201-4655) and 49 CFR Part 24.

- (d) MBCDC agrees to comply with all of the following federal laws, executive orders and regulations pertaining to fair housing and equal opportunity:

(1) **Title VI of the Civil Rights Act of 1964, As Amended** (42 U.S.C. 2000d) -- States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin. Its implementing regulations may be found in 28 CFR Part 1.

(2) **Title VIII of the Civil Rights Act of 1968, As Amended the "Fair Housing Act"** (42 U.S.C. 3601) and its implementing regulations at 24 CFR Part 100-115 -- Prohibits discrimination in the sale or rent of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status or handicap.

(3) **Equal Opportunity in Housing** (Executive Order 11063, As Amended by Executive Order 12259) and implementing regulations at 24 CFR Part 107 -- Prohibits discrimination in housing or residential property financing related to any federally assisted activity against individuals on the basis of race, color, religion, sex or national origin.

(4) **Age Discrimination Act of 1975, As Amended** (42 U.S.C. 6101) and its implementing regulations at 24 CFR Part 146 -- Prohibits age discrimination in programs receiving federal financial assistance.

(5) **Equal Employment Opportunity**, Executive Order 11246, As Amended and its implementing regulations at 41 CFR Part 60 -- Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000.

- (e) MBCDC agrees to comply with the requirements of **Section 3 of the Housing and Urban Development Act of 1968** (12 U.S.C. 1701u) -- which requires that, to the greatest extent feasible, opportunities for training and employment arising from HOME will be provided to low-income persons residing in the program service area, and, to the greatest extent feasible, contracts for work to be performed in connection with HOME will be awarded to business concerns which are located in or owned by persons residing in the program service area.

(f) MBCDC will ensure that all units in a project assisted with HOME funds comply with the **Lead Based Paint Poisoning Prevention Act** (42 U.S.C. 4821, et) and its implementing regulations at 24 CFR PART 35.

(g) MBCDC agrees to comply with the **Federal Labor Standards Provisions**, as described in HUD Handbook 1344-1 (Federal Labor Standards Compliance in Housing and Community Development Programs) -- Applies to all projects with 12 or more HOME-assisted units, regardless of whether HOME funds are used for construction or other costs.

ARTICLE IX **TERM OF AGREEMENT**

This Agreement shall become effective on October 30, 2008, and shall terminate at the conclusion of the 30 year Affordability Period as specified in 24 CFR 92.252 (affordable rental housing).

ARTICLE X **TERMINATION**

The City and MBCDC agree that this Agreement may be terminated in whole or in part, for cause, (as defined in Article XXVI herein and in accordance with the provisions of 24 CFR Part 85.43) or for convenience (as defined in Article XXVII and in accordance with the provisions of 24 CFR, Part 85.44). A written notification shall be required at least thirty (30) days prior to the effective date of such termination, and shall include the reason for the termination (if for cause), the effective date, and in the case of a partial termination, the actual portion to be terminated.

ARTICLE XI **AMENDMENTS**

Any alterations, variations, modifications or waivers of this Agreement shall only be valid when they have been reduced to writing and duly signed by both parties hereto. Any changes which do not substantially change the scope of the Agreement or increase the total amount payable under this Agreement, shall be valid only when reduced to writing and approved and signed by the City, through the City Manager, and MBCDC.

ARTICLE XII **CONFLICT OF INTEREST**

(a) MBCDC shall comply with the standards contained in 24 CFR Part 92.356 which states that no owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private for profit or non-profit (including a CHDO when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an owner-occupant of single-family housing or to an employee or agent of the owner or developer of a rental housing project who occupies a HOME assisted unit as the project manager or maintenance worker. Exceptions may be granted by the City in accordance with 24 CFR Part 92.356(f)(2).

(b) MBCDC shall disclose any possible conflicts of interest or apparent improprieties of any party that is covered by the above standards. MBCDC shall make such disclosure in writing to the City immediately upon MBCDC's discovery of such possible conflict. The City will then render an opinion, which shall be binding on all parties.

(c) **Related Parties.** MBCDC shall report to the City the name, purpose, and any other relevant information in connection with any related-party transaction. This includes, but is not limited to, a

for-profit or nonprofit subsidiary or affiliate organization, an organization with overlapping Board of Directors, and an organization for which MBCDC is responsible for appointing memberships. MBCDC shall report this information to the City upon forming the relationship or, if already formed, shall report it immediately.

ARTICLE XIII **INDEMNIFICATION AND INSURANCE**

MBCDC shall indemnify and hold harmless the City from any and all claims, liabilities, losses, and causes of action which may arise out of an act, omission, negligence or misconduct on the part of MBCDC or any of its agents, servants, employees, contractors, patrons, guests, clients, or invitees. MBCDC, shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits in the name of the City, when applicable, and shall pay all costs and judgements which may issue thereon.

MBCDC shall provide a General Liability Policy with coverage for Bodily Injury and Property Damage, in the amount of \$500,000 per occurrence (the policy must include coverage for contractual liability to cover the above indemnification); and the City of Miami Beach shall be named as an additional insured followed by the statement: **"This coverage is primary to all other coverage carried by the City covering this specific agreement only."** MBCDC shall hold proof of Workers' Compensation Coverage as per statutory limits of the State of Florida.

Automobile and vehicle coverage shall be required when the use of automobiles and other vehicles are involved in any way in the performance of the Agreement.

MBCDC shall submit to the City an ORIGINAL Certificate of Insurance.

All insurance coverage shall be approved by the City's Risk Manager prior to the release of any funds under this Agreement. Further, in the event evidence of such insurance is not forwarded to the City's Risk Manager within thirty (30) days after the execution of this Agreement, this Agreement shall become null and void, and the City shall have no obligation under the terms thereof unless a written extension of this thirty (30) day requirement is secured from the Risk Manager.

ARTICLE XIV **REPORTS**

(1) Progress Reports. Owner agrees to submit monthly progress reports to the City, describing the status of the Project and achievement of objectives as provided herein and in the Scope of Services (Exhibit A) and Budget (Exhibit B), attached hereto. The progress reports shall be submitted no later than ten days after the end of each month until such time as all funds are expended or, for rental projects, until the Project is fully occupied.

It will be the responsibility of Owner to notify the City in writing, of any actions, law, or event, that will impede or hinder the completion projects and activities as provided in this Agreement. After such notification, the City will take whatever actions it deems appropriate to ensure the success of the program.

(2) Tenant and Rent Schedule Certification.

a. Owner shall submit to the City for approval the proposed rents for the HOME units and, if applicable, the monthly allowances for utilities and services to be paid by the tenant. The City shall approve submitted rents if such rents comply with applicable Federal standards, or if HUD has

approved same.

b. MBCDC shall provide the City with the initial tenant list, and any and all subsequent updates, amendments and modifications thereto, with documentation for all tenants in the HOME units confirming family size, income, financial classification, ethnicity, HOME rents charged and other information the City may require to fulfill its reporting requirements to HUD. This report will continue to be required throughout the Affordability Period hereunder. The initial report shall be due within thirty (30) days of Project lease-up.

c. Annually, MBCDC shall deliver to the City's Housing and Community Development Division, by October 31st of each calendar year, its signed report in form and substance acceptable to the City, to include names of tenants, unit type, family size and income, rents charged, and occupancy/vacancy factor of each unit for the prior fiscal year (October 1st through September 30th). The report will continued to be required throughout the Affordability Period hereunder beginning on the date of issuance of a Final Certificate of Completion for the project.

(3) Other reports as may be required by the City to demonstrate compliance with any of the terms of this Agreement.

If the required reports described above are not submitted to the City or are not completed in the manner acceptable to the City, the City may withhold further payments until they are completed or may take any other action as the City may deem appropriate.

ARTICLE XV **AUDIT AND INSPECTIONS**

At any time during normal business hours and as often as the City and/or the comptroller of the United States may deem necessary, there shall be made available to the City and/or representatives of the comptroller to audit, examine and make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. If during the course of a monitoring, the City determines that any payments made to MBCDC do not constitute an allowable expenditure, the City will have the right to deduct/reduce those amounts from their related invoices. MBCDC must maintain records necessary to document compliance with the provisions of this Agreement.

ARTICLE XVI **COMPLIANCE WITH LOCAL, STATE AND FEDERAL REGULATIONS**

MBCDC agrees to comply with all applicable Federal regulations as they may apply to program administration. Additionally, MBCDC will comply with all State and local laws and ordinances hereto applicable.

ARTICLE XVII **ADDITIONAL CONDITIONS**

(a) It is expressly understood and agreed by the parties hereto that monies contemplated by this Agreement to be used for the compensation, originated from grants of HOME Program funds and must comply with all applicable HUD rules and regulations.

It is expressly understood and agreed that in the event of curtailment or non-production of said federal grant funds, that the financial sources necessary to continue to pay MBCDC compensation will not be available and that this Agreement will thereby terminate effective as of the time that it is determined that said funds are no longer available.

In the event of such determination, MBCDC agrees that it will not look to, nor seek to hold liable, the City or any individual member of the City Commission thereof personally for the performance of this Agreement and all of the parties hereto shall be released from further liability each to the other under the terms of this Agreement.

(b) Title and paragraph headings are for convenient reference and are not a part of this Agreement.

(c) In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached document, the terms in this Agreement shall rule.

(d) No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

ARTICLE XVIII **ACCESS TO RECORDS**

MBCDC, agrees to allow access during normal business hours to all financial records to authorized Federal, State or City representatives and agrees to provide such assistance as may be necessary to facilitate financial audit by any of these representatives when deemed necessary to insure compliance with applicable accounting and financial standards. MBCDC shall allow access during normal business hours to all other records, forms, files, and documents which have been generated in performance of this Agreement, to those personnel as may be designated by the City.

ARTICLE XIX **SEVERABILITY OF PROVISIONS**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

ARTICLE XX **PROJECT PUBLICITY**

MBCDC agrees that any news release or other type of publicity pertaining to the project as stated herein must recognize the City as the recipient funded by the United States Department of Housing and Urban Development administered by the Housing and Community Development Division of the Neighborhood Services Department and the entity which provided funds for the Project.

ARTICLE XXI **DRUG-FREE WORKPLACE**

MBCDC agrees to administer, in good faith, a policy to ensure that it complies with the Drug-Free Workplace Act requirements under 24 CFR Part 24, Subpart F, and will ensure that the workplace is free from the unlawful manufacture, distribution, dispensing, possession or use of drugs or alcohol.

ARTICLE XXII **NONDELEGABLE**

MBCDC agrees that the obligations undertaken pursuant to this Agreement shall not be delegated or assigned to any other person or firm unless the City shall first consent in writing to the performance or assignment of such service or any part thereof by another person or firm.

ARTICLE XXIII
SUCCESSORS AND ASSIGNS

MBCDC agrees that this Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors, and assigns.

ARTICLE XXIV
INDEPENDENT CONTRACTOR

MBCDC and its employees and agents shall be deemed to be independent contractors and not agents or employees of the City, and shall not attain any rights or benefits under the Civil Service or Pension Ordinances of the City, or any rights generally afforded classified or unclassified employees; further he/she shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

ARTICLE XXV
ASSIGNMENT

This Agreement may not be assigned or transferred by MBCDC without the prior written consent of the City thereto. It shall be deemed a default of this Agreement in the event that MBCDC does not strictly comply with the procedures established herein for obtaining City consent to assignment or transfer as defined by this Article. In the event such consent is not obtained, in the manner prescribed herein, the City shall be entitled to declare a default, cancel this Agreement, and resort to its rights and remedies against the defaulting party. In the event MBCDC transfers an interest of more than one (1%) percent ownership in its stock by pledge, sale, or otherwise; or if MBCDC makes an assignment for the benefit of its creditors, or uses this Agreement as security or collateral for any loan; or if MBCDC is involved in any bulk transfer of its business or assets, then in that event each of the foregoing actions shall also be deemed an assignment of this Agreement and shall require the City's prior written consent. A merger, dissolution, consolidation, conversion, liquidation or appointment of a receivership for MBCDC, shall be deemed an assignment of this Agreement and will require the prior written consent of the City thereto.

ARTICLE XXVI
TERMINATION FOR CAUSE

The City may place MBCDC in default of this Agreement and may suspend or terminate this Agreement, in whole or in part, for cause, as prescribed in Article X herein. "Cause" shall include the following:

- (a) MBCDC's failure to comply and/or perform in accordance with any of the terms and conditions of this Agreement, or any Federal, State or local regulation.
- (b) MBCDC's failure to maintain the insurance required by the City.
- (c) Submitting any required report to the City which is late, incorrect, or incomplete in any material respect after notice and reasonable opportunity to cure, as set forth in subparagraph (e) hereof, has been given by the City to MBCDC.
- (d) Implementation of this Agreement, for any reason is rendered impossible or infeasible.
- (e) Failure to respond in writing within thirty (30) days of notice of same from City to any concerns raised by the City, including providing substantiating documentation when requested by the City;

- (f) Any evidence of fraud, waste or mismanagement as determined by the City's monitoring of project(s) under this Agreement, or any violation of applicable HUD rules and regulations;
- (g) MBCDC's insolvency or bankruptcy;
- (h) An assignment or transfer of this Agreement or any interest therein which does not comply with the procedures set forth in Article XXV herein;
- (i) Failure to comply and/or perform in accordance with the affordability requirements, and/or an unauthorized transfer of title to its HOME Projects.

If the default complained of is not fully and satisfactorily cured within thirty (30) days of receipt of such notice of default to MBCDC, at the expiration of said thirty (30) day period (or such additional period of time, as permitted by the City, in its sole discretion, as required to cure such default in the event MBCDC is diligently pursuing curative efforts) this Agreement may, at the City's sole option and discretion, be deemed automatically canceled and terminated, and the City fully discharged from any and all liabilities, duties and terms arising out of, or accruing by virtue of the Agreement. In the event of a default for cause, the City may, at its option, avail itself of any and all remedies pursuant to 24 CFR Part 85.43, as amended from time to time, including suspension, in whole or in part, of MBCDC's Funds, as set forth herein, and any other remedies that may be legally available.

ARTICLE XXVII **TERMINATION FOR CONVENIENCE**

Notwithstanding Article XXVI above, MBCDC herein consents that the City may terminate this Agreement, in whole or in part, for convenience, as set forth in 24 CFR Part 85.44. In the event of termination for convenience, MBCDC shall immediately return any unused funds (as of the date of termination) to the City.

ARTICLE XXVIII **ADDITIONAL REMEDIES**

In the event of a default and termination for cause, the City shall also be entitled to bring any and all legal and/or equitable actions which it deems to be in its best interest, in Miami-Dade County, Florida, in order to enforce the City's rights and remedies against the defaulting party. The City shall be entitled to recover all costs of such actions, including reasonable attorney's fees. To the extent allowed by law, the defaulting party waives its right to jury trial and its right to bring permissive counterclaims against the City in any such action.

ARTICLE XXIX **MAINTENANCE AND RETENTION OF RECORDS**

MBCDC agrees that it will maintain all records required pursuant to 24 CFR Part 92.508, in an orderly fashion in a readily accessible, permanent and secured location, and that it will prepare and submit all reports necessary to assist the City in meeting record keeping and reporting requirements thereunder.

- (1) Records shall be maintained for a period of **five years** after the closeout of Funds under this Agreement except as provided herein (2), (3) and (4).
- (2) If any litigation, claim, negotiation, audit or other action has been started before the regular expiration date, the records must be retained until completion of the action and resolution of all

issues which arise from it, or until the end of the regular period specified in paragraph (1), whichever is later;

(3) **Records regarding Project requirements that apply for the duration of the Affordability Period, as well as the written agreement and inspection and monitoring reports, must be retained for five years after the Affordability Period terminates;**

(4) Records covering displacements and acquisition must be retained for at least five years after the date by which the persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR Part 92.353.

ARTICLE XXX LIMITATION OF LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$192,481 less any amounts actually distributed by the City to MBCDC. MBCDC hereby expresses its willingness to enter into this Agreement with MBCDC's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$192,481 less any amounts actually distributed by the City to MBCDC. Accordingly, and notwithstanding any other term or condition of this Agreement, MBCDC hereby agrees that the City shall not be liable to MBCDC for damages in an amount in excess of \$192,481, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

ARTICLE XXXI VENUE

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall be in Miami-Dade County, Florida.

ARTICLE XXXII ADDITIONAL CONDITIONS AND COMPENSATION

It is expressly understood and agreed by the parties hereto that monies contemplated by this Agreement to be used for the compensation, originated from grants of federal HOME Investment Partnerships Program funds, and must be implemented with all of the applicable rules and regulation of the U.S. Department of Housing and Urban Development. It is expressly understood and agreed that in the event of curtailment or non-production of said federal grant funds, that the financial sources necessary to continue to pay the Provider compensation will not be available and that this Agreement will thereby terminate effective as of the time it is determined that said funds are no longer available. In the event of such determination, MBCDC agrees that it will not look to, nor seek to hold liable, the City or any individual member of the City Commission thereof, personally for the performance of this Agreement and all parties hereto shall be released from further liability each to the other under the terms of this Agreement.

ARTICLE XXXIII
ACCESSIBILITY LAWS COMPLIANCE

MBCDC agrees to adhere to and be governed by the following accessibility requirements:

(a) **Architectural Barriers Act of 1968, As Amended** (42 U.S.C.4151) and its implementing regulations at 35 CFR Part 107 -- States that public (i.e., those intended to be accessible to the general public) buildings and conveyances financed with federal funds are designed, constructed, or altered to provide accessibility to the physically handicapped.

(b) **Section 504 of the Rehabilitation Act of 1973** (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8 -- Prohibits discrimination in federally assisted programs on the basis of handicap and imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and activities that receive federal funds.

(c) **Title VIII of the Civil Rights Act of 1968, As Amended the "Fair Housing Act"** (42 U.S.C. 3601) and its implementing regulations at 24 CFR Part 100-115.

MBCDC must complete and submit the City's Disability Non-Discrimination Affidavit (Affidavit), a copy of which is attached hereto and incorporated herein as Exhibit C. In the event MBCDC fails to execute the City's Affidavit, or is found to be in non-compliance with the provisions of the Affidavit, the City may impose such sanctions as it may determine to be appropriate, including but not limited to, withholding of payments to MBCDC under the Agreement until compliance and/or cancellation, termination or suspension of the Agreement in whole or in part. In the event the City cancels or terminates the Agreement pursuant to this Article, MBCDC shall not be relieved of liability to the City for damages sustained by the City by virtue of MBCDC's breach of the Agreement.

ARTICLE XXXIV
NOTICES

All notices shall be sent to the parties at the following addresses:

City: Hilda M. Fernandez, Assistant City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

MBCDC: Roberto Datorre, President
Miami Beach Community Development Corporation
945 Pennsylvania Avenue
Miami Beach, FL 33139

with copies to:

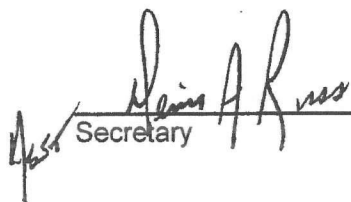
Annette Ayala
Housing and Community Development
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

or such address and to the attention of such other person as the City or MBCDC may from time to time designate by written notice to the other.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials on the day and date first above indicated.

MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION,
a Florida not-for-profit corporation

ATTEST:

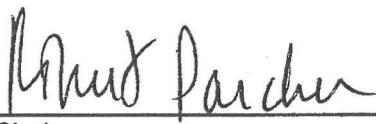

Secretary



Authorized Signatory

Roberto Datorre, President
Name, Title of Authorized Signatory

CITY OF MIAMI BEACH
a Florida Municipal corporation

ATTEST:

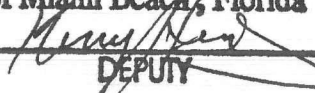

City Clerk


Authorized Signatory

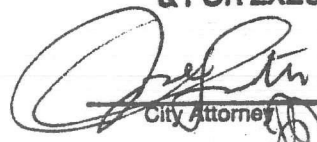
Jorge M. Gonzalez, City Manager

I do hereby certify that the above
and foregoing is a true and correct
copy of the original thereof
on file in this office.

Witness my hand and seal of said City
this 30th day of Oct. A.D. 2008

CITY CLERK of the City
of Miami Beach, Florida
BY 
DEPUTY

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney
10/28/08
Date