

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND ACCEPTING PAYMENT IN THE AMOUNT OF \$46,962.50, AS FULL AND FINAL SATISFACTION OF A STATE HOUSING INITIATIVES PARTNERSHIP (SHIP) ACT LOAN, IN THE PRINCIPAL AMOUNT OF \$17,352.50, AND SECURED BY A DECLARATION OF RESTRICTIVE COVENANT, RECORDED ON JUNE 30, 2010, IN OFFICIAL RECORDS BOOK 27336, AT PAGE 4484; WHICH WAS EXECUTED BY THE OWNER OF THE PROPERTY LOCATED AT 3481 SHERIDAN AVENUE, IN FAVOR OF THE CITY; SAID AMOUNT INCLUDING A COMPROMISE BETWEEN THE HEIRS OF THE ESTATE OF LEONARD KUSHELL IN THE CALCULATION OF THE SHARED EQUITY PROVISION CONTAINED WITHIN THE RESTRICTIVE COVENANT; AND PROVIDED THAT THE PERSONAL REPRESENTATIVE OF THE ESTATE OF LEONARD KUSHELL EXECUTES A RELEASE OF LIABILITY AGAINST THE CITY IN THE FORM THAT IS ACCEPTABLE TO THE CITY ATTORNEY.

WHEREAS, the State of Florida enacted the William E. Sadowski Affordable Housing Act, Chapter 92-317 of Florida Sessions Laws, allocating a portion of documentary stamp taxes on deeds to local governments for the development and maintenance of affordable housing; and

WHEREAS, the City is a recipient of grant funds pursuant to the State Housing Initiatives Partnership (SHIP) Act, codified in Sections 420.907-420.9079, Florida Statutes, and awards SHIP Program funds to eligible persons to partially assist in the construction, rehabilitation, or financing of eligible housing without the requirement for repayment as long as the condition of the award is maintained; and

WHEREAS, the City administers monitors existing SHIP Program loans under the affordability period of up to fifteen (15) years ("Affordability Period"), whereby a grantee cannot rent, sell or refinance the property without paying for the SHIP Program loan; and

WHEREAS, loans are secured by a Declaration of Restrictive Covenant ("Covenant"), setting forth the terms of the SHIP Program, including a provision that requires Owner to share in the profit from the sale of the property ("Shared Equity Provision") in the event of a sale of the property prior to the expiration of the Affordability Period; and

WHEREAS, the City issued a SHIP Program loan, in the amount of \$17,352.50, to Leonard Kushell, who resided at 3481 Sheridan Avenue ("Owner"), secured by a Covenant recorded on June 30, 2010, in Official Records Book 27336, at page 4484, which Covenant contained a Shared Equity Provision; and

WHEREAS, the Shared Equity Provision of the Covenant states that "If the unit is sold between the first and the tenth year, 50% of the profit shall be paid to the City; if the unit is sold between the eleventh and the fifteenth year, 25% of the profit shall be paid to the City", however the Covenant does not defined how the profit would be calculated; and

WHEREAS, in December 2019, an heir of the Estate of Leonard Kushell notified the City of the Owner's death and requested a payoff amount in order to move forward with the sale of the property during the affordability period; and

WHEREAS, the heirs of the Estate of Leonard Kushell have taken the position that they should not be responsible for the additional payment pursuant to the Shared Equity Provision, based upon conflictive language in the Covenant, as follows: (1) the heirs should be excluded parties under the Shared Equity Provision; and (2) the Covenant states that the SHIP Program funds were utilized in the purchase of the property in order to provide affordable housing; however Owner had owned the property since June 1, 1987; and

WHEREAS, the City Administration disagrees with the Estate as to the first basis, as the sale of the Property triggers the Shared Equity Provision as to a sale by the Owner and his successors and/or assigns; however the City Administration does agree with the Estate as to the second basis, in that, the Owner had owned the property prior to securing this SHIP Program loan, therefore this language was placed in error in the Covenant; and

WHEREAS, in an effort to resolve the dispute, the City Administration and the Estate have agreed to a compromise payoff relating to the Shared Equity Provision, resulting in the amount of \$29,610.00, for a total payoff amount of \$46,962.50; and

WHEREAS, the compromise payoff was calculated by taking the SHIP Program loan amount and dividing it by the TRIM value of the property in the year 2010, in the amount of \$386,138.00, when the SHIP Program loan was provided to Owner, determining a loan to value percentage of 4.5% and applying this percentage to the current sales price of the property, in the amount of \$658,000, for a total recapture amount of \$29,610.00 ("Shared Equity Payment"); and

WHEREAS, the City will utilize these recaptured funds to assist income-eligible participants fulfill SHIP Program activities; and

WHEREAS, the City Administration recommends approving the compromise Shared Equity Payment, provided that the personal representative of the Estate of Leonard Kushell executes a full release of liability to the City, that is acceptable to the City Attorney, in connection with the acceptance of this compromise payoff amount.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, approving and accepting payment, in the amount of \$46,962.50, as full and final satisfaction of a State Housing Initiatives Partnership (SHIP) Act loan, in the principal amount of \$17,352.50, and secured by a Declaration of Restrictive Covenant, recorded on June 30, 2010, in Official Records Book 27336, at page 4484; which was executed by the Owner of the property located at 3481 Sheridan Avenue, in favor of the City; said amount including a compromise between the heirs of the Estate of Leonard Kushell in the calculation of the Shared Equity Provision contained within the Restrictive Covenant; and provided that the personal representative of the Estate of Leonard Kushell executes a full release of liability against the City in the form that is acceptable to the City Attorney.


PASSED AND ADOPTED this ____ day of _____, 2020.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney
4/8/2020
Date