

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 8, 2010 [X] Consent [] Regular
[] Public Hearing

Department: Housing and Community Development

Submitted By: Housing and Community Development

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: an Agreement with NOAH Development Corporation, in the amount of \$1,496,414, for the period of April 15, 2010, to September 16, 2010.

Summary: This Agreement provides funding under the 2005 Disaster Recovery Initiative (DRI) Program for the continuation of a project that has commenced under Agreement (R2009-0998) which expired with the expiration of the DRI Grant Agreement with the Florida Department of Community Affairs. The \$1,500,000 funded through the expired Agreement, less funds expended on the project to date, are being recommitted to the project through this Agreement. Under this Agreement, NOAH Development Corporation (NOAH) will receive the remaining \$1,496,414, for hurricane hardening at Covenant Villas and South Bay Villas. NOAH has received bids and awarded a construction contract for the work. Approval of the Agreement will allow work to proceed. The project experienced delays related to the preparation of contract documents and specifications and related to permit approvals by the building departments with jurisdiction. The DRI Grant Agreement with the Florida Department of Community Affairs has now been extended to September 16, 2010. The expiration date of this Agreement coincides with the new expiration of the Grant Agreement with the State. The County Administrator executed this Agreement under the authority provided by the Palm Beach County Board of County Commissioners on July 18, 2006, via Resolution No. R2006-1351. These are Federal Community Development Block Grant funds that require no local match. District 6 (TKF)

Background and Justification: On April 1, 2009, Palm Beach County entered into an Agreement (R2009-0998) with the NOAH Development Corporation, for this project. The aforesaid Agreement was amended by Amendment No. 001 (R2009-1975) on November 17, 2009, and further amended by Amendment No. 002 (R2010-0291) on February 23, 2010, to extend the expiration date to March 15, 2010. This Agreement with NOAH Development Corporation will provide hurricane hardening in the form of hurricane impact windows and doors, and structural improvements to their low and moderate income housing developments. One-hundred and forty-four (144) units at Covenant Villas in Belle Glade, as well as sixty-five (65) units at South Bay Villas in South Bay, will benefit from these improvements.

The 2005 Disaster Recovery Initiative (DRI) Program provides funds made available to DCA by the U.S. Department of Housing and Urban Development from Community Development Block Grant (CDBG) Disaster Recovery Funding to assist in recovery efforts from the Federally declared disasters (Hurricanes Katrina and Wilma) that occurred between August 25, 2005 and October 24, 2005.

Attachments:

1. Agreement with NOAH Development Corporation with Exhibits A to E.

Recommended by: Edward W. Romo 5/24/2010
Department Director Date

Approved By: Sharon B. [Signature] 6/4/2010
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Grants + Aids	\$1,496,414.00				
Operating Costs					
External Revenues	(\$1,496,414.00)				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes XX No ____
Budget Account No.:

NOAH Development Corporation - South Bay Villas
Fund: 1106 Dept: 143 Unit: 1421 Object: 8201 Program Code/Period: DRI214A-GY06: \$465,053.60

NOAH Development Corporation - Covenant Villas
Fund: 1106 Dept: 143 Unit: 1421 Object: 8201 Program Code/Period: DRI214B-GY06: \$1,031,360.40

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Approval of this agenda item will allocate \$1,496,414 to NOAH Development Corporation for hurricane hardening at Covenant Villas and South Bay Villas.

C. Departmental Fiscal Review: Shairette Major 5-21-10
Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB 5/28/10
5/27/10
5/27/10

Contract Development and Control 6/1/10

B. Legal Sufficiency:

6/2/10
Senior Assistant County Attorney

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

AGREEMENT BETWEEN PALM BEACH COUNTY

AND

NOAH DEVELOPMENT CORPORATION

THIS AGREEMENT, entered into this APR 15 2010 day of _____, 20____, by and between Palm Beach County, a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and the NOAH Development Corporation, a non-profit corporation duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 601 Covenant Drive, P.O. Box 13, Belle Glade, FL 33430, and its Federal Tax Identification number as 59-2570434.

WHEREAS, Palm Beach County has entered into a Contract number 07DB-3V-10-60-01-Z07 with the State of Florida, Department of Community Affairs, in connection with the State's 2005 Disaster Recovery Initiative Program which the State is implementing for the use of grant funds provided by the United States Department of Housing and Urban Development under its Community Development Block Grant Program; and

WHEREAS, NOAH Development Corporation was allocated certain funds under said Contract to implement specified activities under the 2005 Disaster Recovery Initiative Program; and

WHEREAS, Palm Beach County desires to engage NOAH Development Corporation to implement the activities associated with the funds allocated to it.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

PART I

DEFINITIONS, PURPOSE AND APPLICABLE CONDITIONS

1. DEFINITIONS

- (1) "County" means Palm Beach County.
- (2) "CDBG" means the Community Development Block Grant Program of the United States Department of Housing and Urban Development.
- (3) "HCD" means Palm Beach County Housing and Community Development.
- (4) "Agency" means the NOAH Development Corporation.
- (5) "State" means the State of Florida, Department of Community Affairs.
- (6) "Contract" means Contract number 07DB-3V-10-60-01-Z07 between Palm Beach County and the State of Florida, Department of Community Affairs.
- (6) "HCD Approval" means the written approval of the HCD Director or his designee.
- (7) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.

2. PURPOSE

The purpose of this Agreement is to state the covenants and conditions under which the Agency will implement the Scope of Services set forth in Part II of this Agreement.

3. APPLICABLE CONDITIONS

The Agency shall be bound by the Contract to the extent applicable to this Agreement. Furthermore, the conditions applicable to the activities undertaken in connection with this Agreement shall include but not be limited to those listed below (as they may be amended from time to time). Palm Beach County's failure to list verbatim or make reference to a regulation, statute, ordinance, reference, or any other document affecting the Agency, shall not relieve the Agency of compliance with any applicable regulation, statute, ordinance, or any other document not listed below. The County reserves the right, but not the obligation, to inform the Agency of any such applicable regulation, statute, ordinance, or any other document, and to require the Agency to comply with the same.

1. Community Development Block Grant, Final Rule, 24 C.F.R., Part 570;
2. Florida Small and Minority Business Act, s 288.702-288.714, F.S.;
3. Florida Coastal Zone Protection Act, s 161.52-161.58, F.S.;
4. Local Government Comprehensive Planning and Land Development Regulation Act, Ch. 163, F.S.;
5. Title I of the Housing and Community Development Act of 1974, as amended;
6. Treasury Circular 1075 regarding drawdown of CDBG funds;
7. Sections 290.0401-290.049, F.S.;
8. Rule Chapter 9B-43, Fla Admin. Code.;
9. Department of Community Affairs Technical Memorandums;
10. HUD Circular Memorandums applicable to the Small Cities CDBG Program;
11. Single Audit Act of 1984;
12. National Environmental Policy Act of 1969 and other provisions of law which further the purpose of this Act;
13. National Historic Preservation Act of 1966 (Public Law 89-665) as amended and Protection of Historic Properties (24 C.F.R., part 800);
14. Preservation of Archaeological and Historical Data Act of 1966;
15. Executive Order 11593 - Protection and Enhancement of Cultural Environment;
16. Reservoir Salvage Act;
17. Safe Drinking Water Act of 1974, as amended;
18. Endangered Species Act of 1958, as amended;
19. Executive Order 12898 - Environmental Justice
20. Executive Order 11988 and 24 C.F.R. Part 55- Floodplain Management;
21. The Federal Water Pollution Control Act of 1972, as amended (33 U.S.C., s 1251 et. seq.);
22. Executive Order 11990 - Protection of Wetlands;
23. Coastal Zone Management Act of 1968, as amended;
24. Wild and Scenic Rivers Act of 1968, as amended;
25. Clean Air Act of 1977;
26. HUD Environmental Standards (24 C.F.R. Part 58);
27. Farmland Protection Policy Act of 1981;
28. Clean Water Act of 1977;
29. Davis - Bacon Act;
30. Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. s. 327 et. seq.;
31. The Wildlife Coordination Act of 1958, as amended;
32. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1975 (42 U.S.C., s. 6901 et. seq.;
33. Noise Abatement and Control: Departmental Policy Implementation, Responsibilities and Standards, 24 C.F.R. Part 51, Subpart B;
34. Flood Disaster Protection Act of 1973, P.L. 92-234;
35. Protection of Historic and Cultural Properties under HUD Programs, 24 C.F.R. Part 59;
36. Coastal Zone Management Act of 1972, P.L. 92-583;
37. Architectural and Construction Standards;
38. Architectural Barriers Act of 1968, 42 U.S.C. 4151;
39. Executive Order 11296, relating to the evaluation of flood hazards;
40. Executive Order 11288, relating to prevention, control and abatement of water pollution;
41. Cost-Effective Energy Conservation Standards, 24 C.F.R., Part 39;
42. Section 8 Existing Housing Quality Standards, 24 C.F.R., Part 882;
43. Coastal Barrier Resource Act of 1982;
44. Federal Fair Labor Standards Act, 29 U.S.C. s. 201 et. seq.;
45. Title VI of the Civil Rights Act of 1964 - Non-discrimination;
46. Title VII of the Civil Rights Act of 1968 - Non-discrimination in housing;
47. Age Discrimination Act of 1975;
48. Executive Order 12892 - Fair Housing;
49. Section 109 of the Housing and Community Development Act of 1974, Non-discrimination;
50. Section 504 of the Rehabilitation Act of 1973 and 24 C.F.R., Part 8;
51. Executive Order 11063 - Equal Opportunity in Housing;
52. Executive Order 11246 - Non-discrimination;
53. Section 3 of the Housing and Urban Development Act of 1968, as amended - Employment /Training of Lower Income Residents and Local Business Contracting;
54. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 100-17, and 49 C.F.R. Part 24;
55. Copeland Anti-Kickback Act of 1924;
56. Hatch Act;
57. Title IV Lead-Based Paint Poisoning Prevention Act (42 U.S.C. s. 1251 et. seq.);
58. OMB Circulars A-87, A-122 and A-133, as revised;
59. Administrative Requirements for Grants, 24 C.F.R. Part 85;
60. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 and 24 C.F.R. Part 12;
61. Emergency Rule 9BER05-2, CDBG Disaster Recovery Funds;
62. HUD program requirements for disaster recovery projects as published in Federal Register, Vol. 69, No. 237 (December 10, 2004) [Docket No. FR-4959 - N-01].

PART II**SCOPE OF SERVICES**

The Agency shall, in a satisfactory and proper manner as determined by HCD, perform the tasks necessary to conduct the program outlined in Exhibit "A" as attached hereto and made a part hereof.

PART III**COMPENSATION, TIME OF PERFORMANCE, METHOD, AND CONDITIONS OF PAYMENT****1. MAXIMUM COMPENSATION**

The Agency agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and HCD Director or designee-approved expenditures and encumbrances made by the Agency under this Agreement. Said services shall be performed in a manner satisfactory to HCD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$1,496,414 (Covenant Villas - \$1,031,360.40 and South Bay Villas - \$465,053.60) for the period of April 15, 2010, through and including September 16, 2010. Any funds not obligated by the expiration date of this Agreement shall automatically revert to the County.

2. TIME OF PERFORMANCE

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project under State Contract number 07DB-3V-10-60-01-Z07, and any amendments thereto. If funds cease to be available under said Contract, the County shall be relieved from providing funds under this Agreement. The effective date shall be the date of execution of this Agreement, and the services of the Agency shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the Agency prior to September 16, 2010.

3. METHOD OF PAYMENT

The County agrees to make payments and to reimburse the Agency for all budgeted costs permitted by Federal, State, and County guidelines. The Agency shall not request reimbursement for payments made by the Agency before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Agency or any subcontractors hereunder. The Agency shall request payments or reimbursements from the County by submitting to HCD proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Agency may furnish copies if deemed acceptable by HCD. Each request for payment or reimbursement submitted by the Agency shall be accompanied by a letter from the Agency, provided on the Agency's letterhead, referencing the name of the project funded herein, the date of this Agreement and/or its document number, and containing a statement requesting the payment or reimbursement and its amount, as well as the name and signature of the person making the request. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by HCD. The Agency may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Agency during the term of this Agreement by submitting to HCD the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that HCD has determined that the funds allocated to the Agency through this agreement are still available for payment, and provided that HCD approves such payment.

4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT**(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES**

The Agency shall implement this Agreement in accordance with applicable Federal, State, and County laws, ordinances and codes and with the procedures outlined in HCD Policies and Procedures memoranda. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by HCD. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the HCD Director or designee. Should a project receive additional funding after the commencement of this Agreement, the Agency shall notify HCD in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the HCD Director or designee within forty-five (45) days of said official notification.

- (2) FINANCIAL ACCOUNTABILITY
The County may have a financial systems analysis and/or an audit of the Agency, or of any of its subcontractors, by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.
- (3) SUBCONTRACTS
Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be submitted by the Agency to HCD and approved by HCD prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and U.S. HUD. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts. All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Contract." Reimbursables will be at cost. None of the work or services covered by this Agreement, including, but not limited to, consultant work or services, shall be subcontracted or reimbursed without prior written approval of the HCD Director or his designee.
- (4) PURCHASING
All purchasing for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed by the Palm Beach County Purchasing Code, as well as Federal Management Circulars A-110, A-122, and 24CFR Part 84, which are incorporated herein by reference.
- (5) REPORTS, AUDITS, AND EVALUATIONS
Payment will be contingent on the timely receipt of complete and accurate reports required by this Agreement, and on the resolution of monitoring or audit findings identified pursuant to this Agreement.
- (6) ADDITIONAL HCD, COUNTY, AND U.S. HUD REQUIREMENTS
HCD shall have the right under this Agreement to suspend or terminate payments if after 15 days written notice the Agency has not complied with any additional conditions that may be imposed, at any time, by HCD, the County, the State, or U.S. HUD.
- (7) PRIOR WRITTEN APPROVALS-SUMMARY
The following activities among others require the prior written approval of the HCD Director or designee to be eligible for reimbursement or payment:
 - (a) All subcontracts and agreements pursuant to this Agreement;
 - (b) All change orders;
 - (c) All requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit A.
- (8) PROGRAM-GENERATED INCOME
All income earned by the Agency from activities financed in whole or in part by funds provided hereunder must be reported to HCD. Such income would include, but not be limited to, income from service fees, sale of commodities, and rental or usage fees. Such income shall only be used to undertake the activities authorized by this Agreement. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.

PART IV

GENERAL CONDITIONS1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Agency agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, familial status, marital status, sexual orientation, gender, or gender identity or expression, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the project. The Agency shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

2. OPPORTUNITIES FOR SMALL AND MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the Agency shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible these small business and minority/women-owned business enterprises shall be located in or owned by residents of the CDBG areas designated by Palm Beach County in the CDBG Annual Consolidated Plan approved by U.S. HUD.

3. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the beneficiaries of the project funded through this Agreement must be low- and moderate- income persons. The project funded under this Agreement shall assist the above beneficiaries for the time period designated in this Agreement and its exhibits. The Agency shall maintain documentation in its files demonstrating that it has met the above requirement and provide written verification of compliance to HCD upon HCD's request.

4. EVALUATION AND MONITORING

The Agency agrees that HCD will carry out periodic monitoring and evaluation activities as determined necessary by HCD or the County and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Agency agrees to furnish upon request to HCD, the County, or the County's designees copies of transcriptions of such records and information as is determined necessary by HCD or the County. The Agency shall submit status reports required under this Agreement on forms approved by HCD to enable HCD to evaluate progress. The Agency shall provide information as requested by HCD to enable HCD to complete reports required by the County, the State, or HUD. The Agency shall allow HCD, the County, or HUD to monitor the Agency on site. Such visits may be scheduled or unscheduled as determined by HCD, the State, or HUD.

5. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as HCD, the County, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Agency to HCD, the County, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement.

If during the year, the Agency expends over \$500,000 of Federal awards, the Agency shall comply with the provisions of OMB Circular A-133. The Agency shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-110, A-122, A-133, and other applicable regulations within the earlier of, 30 days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period in which HCD-administered funds are expended. Said audit shall be made by a Certified Public Accountant of the Agency's choosing, subject to the County's approval. In the event the Agency anticipates a delay in producing such audit, the Agency shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Agency. In the event the Agency is exempt from having an audit conducted under A-133, the Agency shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the Agency as defined by A-133. The County will be responsible for providing technical assistance to the Agency, as deemed necessary by the County.

6. UNIFORM ADMINISTRATIVE REQUIREMENTS

The Agency agrees to comply with the applicable uniform administrative requirements as described in Federal Community Development Block Grant Regulations 24 CFR 570.502.

7. REVERSION OF ASSETS

Upon expiration of this Agreement, the Agency shall transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Any real property under the Agency's control upon expiration of this Agreement which was acquired or improved in whole or part with CDBG in the excess of \$25,000 must either be used to meet one of the national objectives in Federal Community Development Block Grant Regulations 24 CFR 570.508 for a period of five years after expiration of this Agreement (unless a longer period is specified elsewhere in this Agreement), or, the Agency shall pay the County an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

8. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Agency for the purpose of this Agreement shall be made available to the County by the Agency at any time upon request by the County or HCD. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to HCD if requested. In any event the Agency shall keep all documents and records for six (6) years after expiration of this Agreement.

9. INDEMNIFICATION

The Agency shall protect, defend, reimburse, indemnify and hold the County and the State, their agents, their employees and elected officers harmless from and against any and all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during the performance of the terms of this Agreement, or due to the acts or omissions of the Agency. Agency's aforesaid indemnity and hold harmless obligation, or portion or applications thereof, shall apply to the fullest extent permitted by law. The Agency will hold the County harmless and will indemnify the County for funds which the County is obligated to refund the State or the Federal Government arising out of the conduct of activities and administration of Agency.

10. INSURANCE

Unless otherwise specified in this Agreement, the Agency shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein as to types and limits, as well as the County's review or acceptance of insurance maintained by the Agency, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Agency under this Agreement.

(1) COMMERCIAL GENERAL LIABILITY

The Agency shall agree to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted by the County's Risk Management Department. The Agency agrees this coverage shall be provided on a primary basis.

(2) BUSINESS AUTOMOBILE LIABILITY

The Agency shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event the Agency does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Agency to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. The Agency shall agree this coverage shall be provided on a primary basis.

(3) WORKERS COMPENSATION INSURANCE

The Agency shall agree to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440. The Agency agrees this coverage shall be provided on a primary basis.

- (4) ADDITIONAL INSURED
 The Agency shall agree to endorse the County as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Housing and Community Development". The Agency shall agree the Additional Insured endorsements provide coverage on a primary basis.
- (5) CERTIFICATE OF INSURANCE
 The Agency shall agree to deliver to the County a certificate(s) of insurance evidencing the required insurance is in full force and effect within thirty (30) calendar days prior to the execution of this Agreement by the County. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be included on the certificate(s). The Agency shall deliver the certificate(s) to HCD at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.
- (6) RIGHT TO REVIEW AND ADJUST
 The Agency shall agree that the County, by and through its Risk Management Department, in cooperation with the Department of Housing and Community Development, reserves the right to periodically review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Agreement. The County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.
11. MAINTENANCE OF EFFORT
 The intent and purpose of this Agreement is to increase the availability of the Agency's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Agency. The Agency agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.
12. CONFLICT OF INTEREST
 The Agency covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the Agency. Any possible conflict of interest on the part of the Agency or its employees shall be disclosed in writing to HCD provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project target area.
13. CITIZEN PARTICIPATION
 The Agency shall cooperate with HCD in the implementation of the Citizen Participation Plan by establishing a citizen participation process to keep residents informed of the activities the Agency is undertaking in carrying out the provisions of this Agreement. Representatives of the Agency shall attend meetings and assist HCD in the implementation of the Citizen Participation Plan, as requested by HCD.
14. RECOGNITION
 All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Agency will include a reference to the financial support herein provided by HCD in all publications and publicity. In addition, the Agency will make a good faith effort to recognize HCD's support for all activities made possible with funds made available under this Agreement.
15. AGREEMENT DOCUMENTS
 The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

 - (1) This Agreement, including its Exhibits;
 - (2) Office of Management and Budget Circulars A-110, A-122, A-133, and 24CFR Part 84
 - (3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;

- (4) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
- (5) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (6) Florida Statutes, Chapter 112;
- (7) Palm Beach County Purchasing Code;
- (8) Federal Community Development Block Grant Regulations (24 CFR Part 570), as amended;
- (9) The Agency's personnel policies and job descriptions;
- (10) The Agency's incorporation Certificate and Articles of Incorporation;
- (11) The Agency's By-laws;
- (12) The Agency's Certificate of Insurance;
- (13) Current list of the Agency's officers and members of its Board of Directors; and (14) Proof of the Agency's 501(c)(3) certification from the Internal Revenue Service.
- (15) Contract number 07DB-3V-10-60-01-Z07 between Palm Beach County and the State of Florida, Department of Community Affairs.

All of these documents will be maintained on file at HCD. The Agency shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

16. TERMINATION

In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Agency with funds under this Agreement shall be returned to HCD or the County.

In the event of termination, the Agency shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Agency, and the County may withhold any payment to the Agency for set-off purposes until such time as the exact amount of damages due to the County from the Agency is determined.

(1) TERMINATION FOR CAUSE

If through any cause either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination.

(2) TERMINATION DUE TO CESSATION

In the event the grant to the County under the Contract is suspended or terminated, this Agreement shall be suspended or terminated effective on the date the State specifies.

17. 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.

18. AMENDMENTS

The County may, at its discretion, amend this Agreement to conform with changes required by Federal, State, County, or U.S. HUD guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and signed by both parties.

19. NOTICES

All notices required to be given under this Agreement shall be sufficient when delivered to HCD at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Agency when delivered to its office at the address listed on page one (1) of this Agreement.

20. INDEPENDENT AGENT AND EMPLOYEES

The Agency agrees that, in all matters relating to this Agreement, it will be acting as an independent agent and that its employees are not Palm Beach County employees and are not

NOAH Development Corporation

subject to the County provisions of the law applicable to County employees relative to employment, hours of work, rates of compensation, leave, unemployment compensation and employee benefits.

21. NO FORFEITURE

The rights of the County under this Agreement shall be cumulative and failure on the part of the County to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

22. PUBLIC ENTITY CRIMES

As provided in F.S. 287.133 by entering into this Agreement or performing any work in furtherance hereof, the Agency certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

23. COUNTERPARTS OF THE AGREEMENT

This Agreement, consisting of twenty two (22) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

24. ENTIRE UNDERSTANDING

This Agreement and its provisions merge any prior agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

WITNESS our Hands and Seals on this _____ day of _____, 20____.

(AGENCY SEAL BELOW)

NOAH DEVELOPMENT CORPORATION

BY:

Edna O. McClendon, President

BY:

~~Dorothy G. Gilbert, Secretary~~

BY:

Attorney for Agency
(Signature Optional)

**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida**

FOR ITS BOARD OF COUNTY COMMISSIONERS

By: _____

Robert Weisman, County Administrator

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing and Community Development

By:

Tammy K. Fields
Senior Assistant County Attorney

By:

Amin Houry, Manager
Housing and Capital Improvements

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EXHIBIT A
WORK PROGRAM NARRATIVE

I. THE PARTIES AGREE THAT:

- A. **PRIOR AGREEMENT:** The project contained in this Agreement is a continuation of the project contained in a prior agreement between the Agency and the County (R2009-0998) dated June 16, 2009, as amended by Amendment 001 (R2009-1975) on November 17, 2009 and further amended by Amendment 002 (R2010-0291) dated February 23, 2010 (collectively hereinafter the "First Agreement"). The terms and conditions of said First Agreement are incorporated herein by reference.
- B. **ELIGIBLE PAYMENTS AND/OR REIMBURSEMENTS:** All payments and/or reimbursements deemed eligible under the First Agreement shall be eligible under this Agreement.
- C. **PROJECT ACCOMPLISHMENTS:** The project requirements contained in the First Agreement are repeated herein in substantial form. Changes have been made in order to update these requirements for this Agreement. The parties recognize that the following project activities have been accomplished, and where indicated below, the County has paid and/or reimbursed the Agency for such project activities:
- (a) The Agency has retained the services of an architect to prepare plans and specifications, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractors, and provide other professional services customarily provided for similar projects.
 - (b) The Agency has obtained HCD approval to solicit bids for the project, then the Agency obtained HCD approval to award the construction contract to Edgewater Construction Group, Inc., in the amount of \$831,918.00. (Covenant Villas @ \$576,422 and South Bay Villas @ \$255,496.00). Agency has provided HCD with a copy of the executed construction contract.
 - (c) The County has procured an asbestos survey for each property. HCD paid \$3,586 for the asbestos surveys (\$2,127.60 was deducted from the project budget for Covenant Villas, and \$1,458.40 was deducted from the project budget for South Bay Villas). There are no asbestos issues at either site.

II. THE AGENCY AGREES TO:

- A. **PROJECT SCOPE :** The scope of this project subject to funding availability shall include improvements to achieve hurricane protection and storm mitigation at the following two locations:
- **Covenant Villas:** 601 Covenant Drive, in Belle Glade, Florida, consisting of 18 buildings that contain 144 dwelling units.
 - **South Bay Villas:** 134 SW 9th Avenue, in South Bay, Florida, consisting of 9 buildings that contain 65 dwelling units.

Hurricane protection and storm mitigation measures as follows:

Supply and installation of hurricane protection measures which includes the removal and replacement of exterior doors and windows, as well as any repairs (on the inside and outside) to the walls surrounding these exterior doors and windows that may be necessitated from their removal and replacement, or that may be necessitated in order to meet applicable building code requirements associated with this work.

Porch strengthening and anchoring to resist uplift from hurricane wind forces.

The above described work may affect approximately 616 windows, 144 exterior doors, and 36 porches at Covenant Villas, and approximately 297 windows, 65 exterior doors, and 33 porches at South Bay Villas.

Furthermore, the Agency's consultant shall inspect all 27 buildings to determine if their roofs are sufficiently attached to withstand storm conditions. The scope of this project shall include all necessary hurricane mitigation measures involving these roofs as established by the consultant pursuant to the inspection.

The maximum project cost allowed under this Agreement for South Bay Villas shall be \$465,053.60 and the maximum project cost allowed under this Agreement for Covenant Villas shall be \$1,031,360.40. Should the execution of the work specified above in the scope of this project reveal the need for work, on any of the above mentioned 27 buildings, that is other than that described above, as determined by the building department(s) with jurisdiction, then the Agency shall pay for all such other work that is not in the scope of this project.

NOTE 1: The Agency hereby declares that all of the housing units at Covenant Villas and South Bay are occupied by residential tenants of the Agency, and that the Agency does not anticipate that any of these tenants will be temporarily or permanently displaced as a result of the construction work being funded under this Agreement. The Agency acknowledges that the funds made available under this Agreement are Federal CDBG funds, and that the use of these funds for the project described herein renders the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) applicable to this project. Accordingly, the Agency shall immediately provide all affected tenants at Covenant Villas and South Bay Villas a General Information Notice as required by the URA whereby such notice shall at least: a) inform these tenants of the intended project described herein and the anticipated dates when the work will be undertaken, b) advise these tenants that they will not be required to relocate as a result of the project, and c) provide these tenants contact information (name and phone) of HCD personnel, to be identified at a later date by HCD, that they may contact for questions or concerns. The Agency shall provide HCD with a copy of such notice.

Should the construction work being funded under this Agreement cause the temporary or permanent displacement of any tenant of the Agency, then the Agency shall provide each such tenant with relocation assistance as required by the URA, document its files accordingly, and provide HCD copies of such documents. All such relocation assistance payments shall be paid by the Agency from its own resources. The Agency understands, that should the temporary or permanent displacement of any tenant become necessary, then HCD may withhold its final payment under this Agreement until HCD is assured that the Agency has complied with URA.

NOTE 2: The Agency shall assure that neither the prime contractor nor any subcontractor shall be allowed to perform one hundred percent (100%) of their work on this project on nights, weekends, or County recognized holidays, and shall assure that the prime contractor and all subcontractors shall, at a minimum, perform work on this project for the duration of one regular working day. The Agency may request HCD for a waiver to the above requirement should the nature of the project so necessitate, and in such instance, HCD may, at its discretion, grant the Agency such waiver.

NOTE 3: Should the construction contract amount for this project exceed the amount to be funded by the County for construction costs through this Agreement, then the Agency shall fund all amounts in excess of the amount to be funded by the County. The Agency shall not request the County for reimbursement of any of the County's funds for construction costs until after it has expended all amounts in excess of the amount to be funded by the County. The Agency shall obtain HCD approval prior to executing any change orders to the construction contract.

NOTE 4: The Agency shall not request reimbursement from HCD for materials or equipment received and stored on the project site or elsewhere. The Agency shall only request reimbursement for materials and equipment that have been installed.

NOTE 5: Upon completion of the project, the Agency shall cause its architectural/engineering consultant to provide HCD a written certification. Such certification shall indicate that the project has met the specifications of the design, as may have been amended by change order, and the date of completion of construction.

The Agency further agrees that HCD, in consultation with any parties it deems necessary, shall be the final arbiter on the Agency's compliance with the above.

- B. **INCOME QUALIFICATIONS AND CERTIFICATIONS:** During the term of this Agreement, the Agency shall assure that at least fifty-one percent (51%) of the dwelling units found in the Covenant Villas development must be occupied by low income households whose household incomes are at 80%, or less, of the median income for the West Palm Beach - Boca Raton Metropolitan Statistical Area adjusted by family size, as determined by HCD in its sole discretion.

In addition, during the term of this Agreement, the Agency shall assure that at least fifty-one percent (51%) of the dwelling units found in the South Bay Villas development must be occupied by low income households whose household incomes are at 80%, or less, of the median income for the West Palm Beach - Boca Raton Metropolitan Statistical Area adjusted by family size, as determined by HCD in its sole discretion.

Within ten (10) days from the date of this Agreement, the Agency shall submit to HCD, copies of its most recent quarterly Certifications of Continuing Program Compliance which the Agency submits to the Palm Beach County Housing Finance Authority for both Covenant Villas and South Bay Villas. The Agency shall transmit said copies to HCD by means of a letter, signed by the Agency's Executive Director, which letter shall specify the beginning date and ending date of the quarter covered by the Certifications of Continuing Program Compliance being transmitted. Thereafter, the Agency shall transmit to HCD in the same manner, and on a quarterly basis, copies of its above described quarterly Certifications of Continuing Program Compliance. The Agency shall continue to transmit these copies to HCD in the same manner such that they cover the period ending with the expiration date of this Agreement, as may be amended from time to time.

The Agency's failure to comply with its above obligations, may be regarded as a basis for termination of this Agreement, and may be regarded as a default under the Declarations of Restriction attached hereto. In the event of a default under the Declaration of Restrictions, Agency shall pay to County an amount equal to the amount of funds expended by County on the location which is the subject of the default.

- C. DAVIS-BACON ACT: The Agency shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Agency shall incorporate a copy of the Davis-Bacon wage decision and disclose the requirements of the Davis-Bacon Act in its construction bid solicitation and contract.
- D. BONDING REQUIREMENTS: The Agency shall comply with the requirements of OMB Circular A-110 and 24CFR Part 84 in regard to bid guarantees, performance bonds, and payment bonds.
- E. CONSTRUCTION PAYMENT RETAINAGE: The Agency shall apply a retainage of at least 5% on all construction draws which retainages shall be released in conjunction with the final draw upon satisfactory completion of the project. The Agency agrees not to release such retainages until it has obtained approval from the County that the contractor and subcontractors have complied with the requirements of the Davis-Bacon Act.
- F. FORMER PROJECTS: The Agency shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.
- G. WORK SCHEDULE: The time frame for completion of the outlined activities shall be September 16, 2010
- H. REPORTS: The Agency shall submit to HCD reports as described below:
 - (a) MONTHLY REPORT: The Agency shall submit to HCD detailed monthly progress reports in the form provided as Exhibit B to this Agreement. Each report must account for the total activity for which the Agency is funded under this Agreement. The progress reports shall be used by HCD to assess the Agency's progress in implementing the project.
 - (b) SEMI-ANNUAL REPORT: The Agency shall submit to HCD detailed semi-annual reports in the form provided as Exhibit C to this Agreement. During the term of this Agreement, the Agency shall each 31st day of March submit such report for the prior six month period beginning on the preceding 1st day of October, and ending on said 31st day of March. In addition, during the term of this Agreement, the Agency shall each 30th day of September submit such report for the prior six month period beginning on the preceding 1st day of April, and ending on said 30th day of September.
 - (c) OTHER REPORTS: The Agency agrees to submit to HCD any other reports required by the State in connection with activities undertaken through this Agreement including, but not limited to, reports associated with Section 3.

- I. **USE OF THE PROJECT FACILITY:** The Agency agrees in regard to the use of the facility whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that it will comply with the provision of Exhibits D and E. Upon execution of this Agreement the Agency shall execute and deliver to the County Exhibits D and E, which the County shall record in the public records. Recording fees associated with these Exhibits shall be charged to the project budget identified in this Agreement.
- J. **SECTION 3 REQUIREMENTS:** The Agency agrees to comply with all Section 3 requirements applicable to contracts funded through this Agreement. Information on Section 3 is available at HCD upon request. The Agency shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract for every Section 3 covered project:

Section 3 Clause

- (a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

III. THE COUNTY AGREES TO:

- A. Provide funding for the above specified improvements as described above in "Project Scope", during the term of this Agreement, in the amount of \$1,496,414 (South Bay Villas at \$465,053.60, and Covenant Villas at \$1,031,360.40). However, the County shall not provide any funding for the construction work until the Agency provides documentation showing that sufficient funds are available to complete the project.
- B. Provide project administration and inspection to the Agency to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.

- C. Monitor the Agency at any time during the term of this Agreement. Visits may be scheduled or unscheduled as determined by HCD, be conducted by HCD staff or its contractor, and will serve to ensure compliance with State and U.S. Department of HUD regulations, that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to HCD on program activities.
- D. The County shall perform an environmental review of the project, and review and approve project design and bids submitted for the work. The County shall also perform Davis Bacon Act Labor Standards monitoring and enforcement. Environmental review costs incurred by the County may be charged to the project budget identified above.
- E. Allowable costs that may be paid by the County under this Agreement in addition to those stated in II.A above:
 - (a) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
 - (b) Costs of any other services customarily associated with projects of the nature of the project contemplated by this Agreement.

The County shall review requests by the Agency for expenditures on the above items prior to undertaking the services associated with them, and approve any such expenditures it deems appropriate for this project.

EXHIBIT B

PALM BEACH COUNTY HOUSING & COMMUNITY DEVELOPMENT

MONTHLY NARRATIVE REPORT

Report For:	Month: _____ Year: _____		
Subrecipient Name:	NOAH Development Corporation		
Project Name:	Covenant Villas & South Bay Villas - Hurricane Hardening		
Report Prepared By:	_____ Name Signature Date		

BUDGETING AND EXPENDITURES

Amounts Expended this Reporting Period: CDBG Funds:\$_____ Other Funds:\$_____

Amounts Expended to Date:

////////////////////////////////////	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	\$	\$	%
Other Funds:_____	\$	\$	%
Other Funds:_____	\$	\$	%
TOTAL:	\$	\$	%

Describe any changes in budgeted amounts during this reporting period and the source of funds:

Describe your efforts to obtain any additional funds for the project during this reporting period (if your project is underfunded): _____

PROJECT ACTIVITIES

Describe your accomplishments during the reporting period: _____

Describe any problems encountered during this reporting period: _____

Other comments: _____

Send report to: Amin Houry
Department fo Housing and Community Development
100 Australian Avenue, Suite 500, West Palm Beach, FL 33406

NOAH Development Corporation

EXHIBIT C

PALM BEACH COUNTY

HOUSING & COMMUNITY DEVELOPMENT

CONTRACTUAL OBLIGATIONS AND MBE REPORT

Project Name:	NOAH Development Corporation - Covenant Villas & South Bay Villas - Hurricane Hardening	Report Date:		Page ____ of ____ Pages
Report Period:	[] October 1, 200__, to March 31, 200__. [] April 1, 200__, to September 30, 200__.		Prepared By:	

Page ____ of ____

(1) Contractor/Subcontractor name and address (fill in for each contractor or subcontractor) Include all professional services such as consultants, engineers, architects, etc. that are funded under the agreement for this project. All contractors and subcontractors (with contracts over \$10,000) that are paid with CDBG funds must be included. Do not list previously reported information.	(2) Prime Contractor Employer Identification Number*	(3) Subcontractor Employer Identification Number* (see below)	(4) Amount of Contract or Subcontract	(5) Type of Trade Code (1 thru 3) (see below)	(6) Contractor or Subcontractor Racial/Ethnic Code (1 thru 6) (see below)	(7) WBE (yes or no)	(8) Section 3 (yes or no)
Name: Street: City: State& Zip Code:							
Name: Street: City: State& Zip Code:							
Name: Street: City: State& Zip Code:							
Name: Street: City: State& Zip Code:							
Name: Street: City: State& Zip Code:							
(3) When subcontractor employer identification number is used, information in columns 4 through 8 must reflect the subcontractor information, not the prime contractor's information; also include the prime contractor's employer identification number. * Employer identification number or social security number		(5) Type of Trade Codes: 1 = New construction (including rehab, water, and sewer) 2 = Education/Training 3 = Other (including supply, professional services and other activities except construction and education/training)		(6) Racial/Ethnic Code: 1 = White American 4 = Hispanic American 2 = Black American 5 = Asian/Pacific American 3 = Native American 6 = Hasidic Jews (7) WBE = Women Business Enterprise			

EXHIBIT D

Return to:
Palm Beach County
Housing & Community Development
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: Tammy K. Fields,
Senior Assistant County Attorney
Attention: Amin Houry

DECLARATION OF RESTRICTIONS

Covenant Villas

The undersigned, NOAH Development Corporation, a not for profit corporation duly organized and existing under the laws of the State of Florida, having its principal office at 601 Covenant Drive, P.O. Box 13, Belle Glade, FL 33430 hereinafter referred to as "Declarant", for the property described below, in consideration of funding in the amount of One Million Thirty Three Thousand Four Hundred Eight Eight Dollars (\$1,033,488) received from the Palm Beach County Board of County Commissioners (the "County") does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, and described as:

Lots 17 through 63, both inclusive, of Royal Palm Subdivision according to the plat thereof, on file in the office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, in Plat Book 16, at Page 41.

Parcel Control Number: 04-37-43-31-01-021-0020

1. These restrictions shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and executed with the same formalities as this document.
2. In consideration of the County's grant in the amount of \$1,033,488 (in CDBG dollars) as provided through a grant Agreement with the County dated _____, 2010, the Declarant hereby covenants and agrees for a period of 10 years commencing with the expiration date of said grant Agreement (as may be amended from time to time) to use the subject property as described in the Declarant's funding application to the County, and as described in said grant Agreement, and the Declarant further agrees to maintain insurance as required in the grant Agreement.
3. The Declarant agrees in regard to the use of the facility/property whose acquisition or improvements were funded through the grant Agreement that for a period of ten (10) years after the expiration date of said Agreement (as may be amended from time to time):
 - (a) The Declarant may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements were made, unless the Declarant provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
 1. The new use of the facility/property, in the opinion of the County, qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government;
or
 2. The requirements of paragraph 3(b) of this section are met.
 - (b) If the Declarant determines after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under Paragraph 3(a)(1) of this section or discontinue use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.

- (c) Following the reimbursement of CDBG funds by the Declarant to the County pursuant to Paragraph 3(b) above, the facility/property will then no longer be subject to these restrictions, and the County shall then release these restrictions as described above.

In the event of any proposed sale, conveyance or transfer of the subject property, the Declarant must obtain approval of the County, through its Housing and Community Development Department. Any approved sale or conveyance of the subject property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the provisions of Paragraph 3(b) above, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this Declaration.

Notwithstanding the foregoing, the restrictions set forth herein shall run with the land whether or not such commitment is obtained from a subsequent owner.

4. The Declarant agrees to notify the County of any liens, judgements or pending foreclosure on the subject property within five (5) working days of the receipt of said notice by the Declarant.

5. The Declarant acknowledges and covenants that the provisions specified below constitute a default under this Declaration for which there may be a forfeiture of the Declarant's title to the Property:

- (a) Failure of the Declarant to perform any covenant, agreement, term, or condition contained herein or in the Agreement referenced in Section 2 above.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, the County may, from time to time, at its sole discretion, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County, at its sole discretion, determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property which may be foreclosed if not discharged and satisfied within three (3) months of expenditure of such funds by the County. The County shall also become subrogated to whatever rights the holders of a prior lien might have under such instrument.

6. If the Declarant fails, neglects or refuses to perform any of the provisions, terms and conditions set forth herein, for any breach of this Declaration, the County shall have the right to file in court of competent jurisdiction an action for:

- (a) Forfeiture of all the Declarant's right, title, and interest in the Property for a breach of the restrictive covenants contained in this Declaration; and
- (b) Collection of due and unpaid real estate taxes, assessments, charges and penalties for which the Declarant is obligated to pay.

In addition to any remedy set forth herein the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. Before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown above. The Declarant shall then have ten (10) working days from the date such notice is given to cure or correct any default.

7. Declarant shall submit to the County once each year a report detailing the Declarant's compliance with the terms of the grant Agreement and this Declaration of Restrictions.

8. Declarant relinquishes all rights to alter, amend, modify, or release these covenants prior to the completion of the ten year period described above.

9. In the event of any litigation necessary to enforce the terms of the Declaration, the Declarant agrees to reimburse the County for attorneys fees and costs associated with litigation.

Executed this _____ day of _____, 20__.

AGENCY NAME

(DO NOT SIGN THIS EXHIBIT)

By: _____
Edna O. McClendon, President

(CORPORATE SEAL ABOVE)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The forgoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, who is personally known to me or has produced _____ as identification and who did (did not) take an oath.

(DO NOT SIGN THIS EXHIBIT)

Signature: _____

Notary Name: _____
Notary Public - State of Florida

(NOTARY SEAL ABOVE)

EXHIBIT E

Return to:
Palm Beach County
Housing & Community Development
160 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: Tammy K. Fields,
Senior Assistant County Attorney
Attention: Amin Houry

DECLARATION OF RESTRICTIONS

South Bay Villas

The undersigned, NOAH DEVELOPMENT CORPORATION, a not for profit corporation duly organized and existing under the laws of the State of Florida, having its principal office at P.O. Box 13, 601 Covenant Drive, Belle Glade, FL 33430 hereinafter referred to as "Declarant", for the property described below, in consideration of funding in the amount of Four Hundred Sixty Six Thousand Five Hundred Twelve Dollars (\$466,512) received from the Palm Beach County Board of County Commissioners (the "County") does hereby grant to the County the following restrictions against the subject properties, hereinafter referred to as the Property, and described as:

A parcel of land being Tract 35 of the Amended Plat and Re-Subdivision of Section 14, Township 44 South, Range 36 East, and Plat of the Town of South Bay, City of South Bay, Palm Beach County, Florida as recorded in Plat Book 7, Page 46, Palm Beach County Records, less and except the North 33 feet thereof and also less and except the three (3) following parcels of land:

1) Tract 35 of the Amended Plat and Re-Subdivision of Section 14 Township 44 South, Range 36 East, and Plat of the Town of South Bay, City of South Bay, Palm Beach County Florida as recorded in Plat Book 7, Page 46, Palm Beach County Public Records, less and except the North 1217.19 feet thereof. Said tract of land subject to easements of record and subject to prescriptive rights claimed by South Shore Drainage District, lying within the southern 35 feet thereof.

2) The South 581.50 feet of the North 1217.19 feet of Tract 35 of the Amended Plat and Re-Subdivision of Section 14, Township 44 South, Range 36 East, and Plat of the Town of South Bay, City of South Bay, Palm Beach County, Florida as recorded in Plat Book 7, Page 46, Palm Beach County Public Records.

3) The North 183 feet of Tract 35 of the Amended Plat and Re-Subdivision of Section 14, Township 44 South, Range 36 East, and Plat of the Town of South Bay, City of South Bay, Palm Beach County, Florida as recorded in Plat Book 7, Page 46, Palm Beach County Public Records, that is lying east of the southerly prolongation of the easterly right-of-way of Northwest 9th Avenue

Parcel Control Number: 58-36-44-14-15-350-0020

1. These restrictions shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and executed with the same formalities as this document.
2. In consideration of the County's grant in the amount of \$466,512 (in CDBG dollars) as provided through a grant Agreement with the County dated _____, 2010, the Declarant hereby covenants and agrees for a period of 10 years commencing with the expiration date of said grant Agreement (as may be amended from time to time) to use the subject property as described in the Declarant's funding application to the County, and as described in said grant Agreement, and the Declarant further agrees to maintain insurance as required in the grant Agreement.
3. The Declarant agrees in regard to the use of the facility/property whose acquisition or improvements were funded through the grant Agreement that for a period of ten (10) years after the expiration date of said Agreement (as may be amended from time to time):

- (a) The Declarant may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements were made, unless the Declarant provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
 - 1. The new use of the facility/property, in the opinion of the County, qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for general conduct of government; or
 - 2. The requirements of paragraph 3(b) of this section are met.
- (b) If the Declarant determines after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under Paragraph 3(a)(1) of this section or discontinue use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
- (c) Following the reimbursement of CDBG funds by the Declarant to the County pursuant to Paragraph 3(b) above, the facility/property will then no longer be subject to these restrictions, and the County shall then release these restrictions as described above.

In the event of any proposed sale, conveyance or transfer of the subject property, the Declarant must obtain approval of the County, through its Housing and Community Development Department. Any approved sale or conveyance of the subject property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the provisions of Paragraph 3(b) above, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this Declaration.

Notwithstanding the foregoing, the restrictions set forth herein shall run with the land whether or not such commitment is obtained from a subsequent owner.

4. The Declarant agrees to notify the County of any liens, judgements or pending foreclosure on the subject property within five (5) working days of the receipt of said notice by the Declarant.

5. The Declarant acknowledges and covenants that the provisions specified below constitute a default under this Declaration for which there may be a forfeiture of the Declarant's title to the Property:

- (a) Failure of the Declarant to perform any covenant, agreement, term, or condition contained herein or in the Agreement referenced in Section 2 above.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, the County may, from time to time, at its sole discretion, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County, at its sole discretion, determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property which may be foreclosed if not discharged and satisfied within three (3) months of expenditure of such funds by the County. The County shall also become subrogated to whatever rights the holders of a prior lien might have under such instrument.

6. If the Declarant fails, neglects or refuses to perform any of the provisions, terms and conditions set forth herein, for any breach of this Declaration, the County shall have the right to file in court of competent jurisdiction an action for:

- (a) Forfeiture of all the Declarant's right, title, and interest in the Property for a breach of the restrictive covenants contained in this Declaration; and
- (b) Collection of due and unpaid real estate taxes, assessments, charges and penalties for which the Declarant is obligated to pay.

NOAH Development Corporation

In addition to any remedy set forth herein the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. Before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown above. The Declarant shall then have ten (10) working days from the date such notice is given to cure or correct any default.

- 7. Declarant shall submit to the County once each year a report detailing the Declarant's compliance with the terms of the grant Agreement and this Declaration of Restrictions.
- 8. Declarant relinquishes all rights to alter, amend, modify, or release these covenants prior to the completion of the ten year period described above.
- 9. In the event of any litigation necessary to enforce the terms of the Declaration, the Declarant agrees to reimburse the County for attorneys fees and costs associated with litigation.

Executed this _____ day of _____, 20__.

NOAH DEVELOPMENT CORPORATION

(DO NOT SIGN THIS EXHIBIT)

By: _____
Edna O. McClendon, President

(CORPORATE SEAL ABOVE)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The forgoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, who is personally known to me or has produced _____ as identification and who did (did not) take an oath.

(DO NOT SIGN THIS EXHIBIT)

Signature: _____

Notary Name: _____
Notary Public - State of Florida

(NOTARY SEAL ABOVE)