

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: July 21, 2015 Consent Regular
 Ordinance Public Hearing

Department: Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Settlement Agreement with the U.S. Department of Housing and Urban Development (HUD) regarding Federal HOME Investments Partnership (HOME) Program expenditures on the Village Centre project.

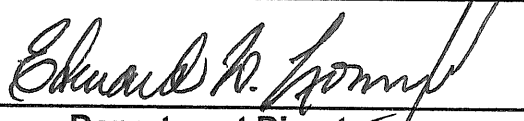

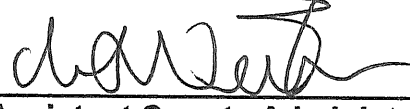
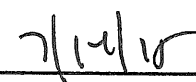
Summary: On March 14, 2006 (R2006-0469), the Board of County Commissioners (the Board) awarded a \$900,000 HOME loan to the Village Centre Apartments, Ltd. (general partner Northwood Renaissance, Inc.) for the development of 84 rental apartments to be located at 500 25th Street, West Palm Beach. The County's mortgage was subordinate to a first mortgage in favor of the Local Initiatives Support Corporation (LISC) in the amount of \$2,433,535. Initially, the project was supported by the City of West Palm Beach (the City) and included participation by its Community Redevelopment Agency (CRA). After a change in leadership at the CRA, the City required various modifications to the project including a total redesign from apartments to condominiums and a reduction in the number of units. Subsequently, due to delays in the development approval process, Northwood Renaissance missed the IRS deadline to close on its Low Income Housing Tax Credits, and lost the \$10M allocation which constituted the majority of project financing. Although the developer attempted to raise alternate financing, lending had become restrictive with the collapse of the housing market, and they were unsuccessful. The project site was foreclosed upon by the first mortgage lender and the properties sold at auction. Northwood Renaissance initiated litigation against the City, but eventually settled out of court.

Because the project did not result in affordable housing, HUD is requiring the repayment of the \$900,000 in HOME funds. The failure of the project was beyond the control of the County. Contributing factors included the substantial rise in construction costs during the planning stage, repeated delays in the development approval process, and the downturn in the housing market. The County's funding was utilized for land acquisition and predevelopment costs. The Settlement Agreement requires the refunding of the County's HOME Trust Fund Account in the amount of \$900,000 from non-Federal funds to the County's local HOME Trust Fund Account, beginning with a payment of \$400,000 of non-Ad Valorem Program Income due no later than August 15, 2015, and followed by two (2) additional payments of \$250,000 each due no later than July 31, 2016 and July 31, 2017. The subsequent repayments are anticipated to be funded with non-Federal program income. **After repayment to the County's local HOME Trust Fund Account, the funds are available to the County for expenditure on new activities in accordance with HOME Program requirements. (DES Administration) District 7 (JB)**

Background and Justification: HUD provides Federal HOME Program funds to local jurisdictions to strengthen public-private partnerships and expand the supply of affordable housing for low and very-low income families. **(Continued on Page 3)**

Attachment:

- 1. Settlement Agreement

Recommended By:			
	Department Director		Date
Approved By:			
	Assistant County Administrator		Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs	400,000	250,000	250,000		
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	400,000	250,000	250,000		

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

Fund 1101 Dept 143 Unit 1436 Object 8201 Program Code/Period HFPI/GY03: \$390,000
 Fund 1100 Dept 143 Unit 7176 Object 8201 Program Code/Period ADMIN01/GY12: \$10,000

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

Approval of this agenda item will appropriate \$390,000 in Universal Housing Trust program income and \$10,000 of developer fee income to repay the local HOME Trust Fund account.

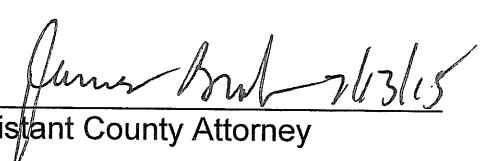
C. Departmental Fiscal Review: 
 Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

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

 _____ OFMB <i>KU MS</i> <i>8/8 7/8</i> <i>7/10</i>	 _____ Contract Development and Control 7-10-15 By <i>Wheeler</i>
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B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

Background and Justification: (continued from Page 1)

Palm Beach County utilizes its annual allocation of HOME funds to undertake housing initiatives including homebuyer assistance, new construction, rehabilitation, and rental assistance. Palm Beach County has successfully expended over \$25M in HOME funds since 2004, and has successfully expended a total of over \$200M in Federal and State housing funds over the past ten (10) years.

On March 14, 2006 (R2006-0469), the Board awarded a \$900,000 HOME loan to Village Centre Apartments, Ltd. for the payment of construction costs of the Village Centre project. The project entailed new construction of 84 affordable rental apartment units. In 2007, the City required that the project be modified from apartments to condominiums and that the number of units be reduced from 84 to 60. On October 16, 2007 (R2007-1868), the Board approved these modifications to the project along with the award of an additional \$400,000 in State Housing Initiative Partnership (SHIP) funds. On July 8, 2008 (R2008-1193), the Board approved expanding the allowable uses of the funds. The HOME funds were expended on land acquisition and predevelopment costs, but the SHIP funds were never expended. On December 28, 2009, LISC, the first mortgage lender, commenced foreclosure proceedings, and on March 29, 2010 a foreclosure judgment was issued in favor of LISC in the amount of \$2,433,535. On April 29, 2010, the HOME-acquired parcels and other properties constituting the project site were auctioned by the court. The properties were purchased by Neighborhood Properties, LLC, dba Neighborhood Properties Sunshine, LLC, an affiliate of LISC. The County's HOME mortgage was in subordinate lien position and did not receive any proceeds from the auction.

SETTLEMENT AGREEMENT

I. PARTIES

This settlement agreement (the "Agreement") is entered into by and between The U.S. Department of Housing and Urban Development ("HUD") and Palm Beach County, Florida (the "County;" hereafter jointly referenced as the "Parties"), through their authorized representatives.

II. PREAMBLE

WHEREAS, this Agreement arises out of the County's application for and receipt of federal funds pursuant to HUD's HOME Investment Partnerships ("HOME") program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, at 42 U.S.C. 12701 *et seq.* and the program implementing regulations at 24 C.F.R. Part 92;

WHEREAS, the County is required by federal law to use federal grant monies in accordance with the requirements of the specified grant program;

WHEREAS, HUD conducted a remote monitoring review that resulted in the issuance of a finding letter on November 18, 2012, concluding that the Village Center Apartments, IDIS Activity 1840 (the HOME-Funded Project") was terminated before completion as follows:

In 2007, the County committed \$900,000 of HOME funds to develop 11 HOME-assisted units and expended the funds to purchase the land for the project. However, no HOME-assisted affordable housing units were developed. The HOME regulations at 24 CFR 92.503(b) require that a participating jurisdiction that expends HOME funds on a project that does not result in the development of HOME-assisted units must repay its Local HOME Trust Fund Account from non-federal funds. In its January 27, 2014, letter, HUD instructed the County to repay \$900,000 to the County's Local HOME Trust Fund account.

WHEREAS, HUD disallowed costs in the total of \$900,000 in connection with the finding identified above;

WHEREAS, the County acknowledges both its receipt of reasonable notice from HUD of the allegations contained in the Monitoring Review Letter that it failed to comply with the provisions of 24 C.F.R. Part 92.

III. AGREEMENT

NOW, THEREFORE, in order to avoid the delay, uncertainty, inconvenience and expenses of protracted litigation in connection with the HOME-Funded Project described herein, and in consideration of the mutual obligations of the Parties set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. This Agreement shall become effective upon the date of its execution by the U.S. Department of Housing and Urban Development ("Effective Date"). HUD properly disallowed expenditures by the County in connection with the HOME-Funded Project defined and described herein related to one or more of the requirements of the HOME program, as set forth above.

2. The County voluntarily shall repay its Local HOME Trust Fund account the total amount of \$900,000 in the manner set forth below to resolve the disallowed costs described above relating to the HOME-Funded Project.

3. The County shall repay HUD, with non-Federal funds, through deposit in the County's Local HOME Trust Fund account, the amount of \$900,000 for disallowed costs in the following number, amount and timing of installments, from August 15, 2015 to July 31, 2017:

Installment 1: \$400,000 on or before August 15, 2015

Installment 2: \$250,000 on or before July 31, 2016

Installment 3: \$250,000 on or before July 31, 2017

4. The County shall provide written notice to HUD of each repayment on the date that repayment is made by notifying the Director of HUD's Office of Affordable Housing Programs, of its Office of Community Planning and Development at:

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Office of Affordable Housing Programs
451 7th Street, S.W., Room #7162
Washington, DC 20410

and by notifying the Field Office Director, of its Community Planning and Development Division Field Office at:

U.S. Department of Housing and Urban Development
Community Planning and Development Division
Region IV, Miami Field Office
Brickell Plaza Federal Building
909 SE First Avenue, Room 500
Miami, Florida 33131-3042

and also by notifying HUD's Associate General Counsel for Program Enforcement at:

U.S. Department of Housing and Urban Development
Office of General Counsel
1250 Maryland, SW
Suite 200
Washington, DC 20024

5. Payment in full of the County's outstanding repayment obligation of amount as set forth herein, shall constitute full and final discharge of the County's obligations with respect to the specific disallowed costs described herein. Nothing herein prevents HUD from investigating,

reviewing or taking further action with regard to the County's application for or receipt of federal funds for any other projects that are not part of the findings referenced in this Agreement.

6. If the County fails to make a timely installment payment required by this Agreement, in the amount required by this Agreement, HUD shall issue the County a written notice of default and shall permit sixty (60) days to cure the default. If the County fails to cure the default to HUD's reasonable satisfaction within the sixty-day period, HUD shall declare the County in default and, for each year the repayment is insufficient to meet the requirements of this Agreement, shall reduce the County's HOME grant(s) by the amount of the repayment shortfall for the consolidated program year in which the default occurred, as defined at 24 CFR § 91.10. Further, in the event that County's HOME grant funds are insufficient in any calendar year to permit reimbursement to HUD through grant reductions as contemplated by this paragraph, HUD shall recoup those unreimbursed funds from subsequent years' HOME grant funds to the County.

7. The County agrees that HUD may reduce the HOME grant upon a declaration of default as specified in Paragraph 6, authorizes all such grant reductions, waives any right to an opportunity for hearing pursuant to 42 U.S.C. 12753 and 24 C.F.R. § 92.552 on the basis of any such grant reductions, and further waives any other right to legal or administrative review or relief on the basis of any such grant reduction.

8. HUD shall cancel IDIS Activity 1840 within five (5) business days following the effective date of this Agreement.

9. Nothing contained in this Agreement is intended to be construed as limiting either or both Parties in connection with any claims or lawsuits seeking damages unrelated to this Agreement.

10. Nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties hereto and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein.

11. This Agreement may be amended or modified solely upon written consent of the Parties.

12. By signing this Agreement, the undersigned representative of the County represent and warrant that she is authorized by the County to enter into and bind the County to this Agreement.

So Agreed:

Harriet Tregoning, Principal Deputy Assistant Secretary
for Community Planning and Development, D
U.S. Department of Housing and Urban Development

Date

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

BOARD OF COUNTY COMMISSIONERS

The Honorable Shelley Vana
Mayor, Palm Beach County, Florida

Date

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
James Brako
Assistant County Attorney

By: 
Edward W. Lowery, Director