

MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT	NONPROFIT AGENCY AGREEMENT FOR HISPANIC AMERICAN ALLIANCE, INC.	TYPE AGENDA ITEM	CONSENT
DATE REQUESTED	JANUARY 23, 2001	DATE SUBMITTED/REVISED	JANUARY 12, 2001
BRIEFINGS?/WHO?	NONE REQUIRED	CONSEQUENCES IF DEFERRED	OWNERS INABILITY TO DEVELOP PROPERTY
DEPARTMENT/DIVISION	COMMUNITY SERVICES HUMAN SERVICES	AUTHORIZED BY TITLE	FREDERICK J. LOVELAND DIRECTOR <i>Crc for gyz</i>
CONTACT PERSON TELEPHONE/EXTENSION	CHERI CORYEA/DENISE THOMAS EXT. 3030	PRESENTER/TITLE TELEPHONE/EXTENSION	CHERI CORYEA, MANAGER HUMAN SERVICES - EXT. 3030
ADMINISTRATIVE APPROVAL	<i>[Signature]</i>		

ACTION DESIRED

INDICATE WHETHER "REPORT" or "DISCUSSION," "FORM OF MOTION," or "OTHER ACTION REQUIRED."

AUTHORIZATION FOR THE COUNTY TO ENTER INTO NONPROFIT AGENCY AGREEMENTS, EXECUTE LAND USE RESTRICTION AGREEMENTS AND EXECUTE CONSTRUCTION LOAN AGREEMENTS WITH THE HISPANIC AMERICAN ALLIANCE, INC., FOR DEVELOPMENT OF THE BELOW LISTED PROPERTIES FOR SPECIAL NEEDS CLIENT RENTAL HOUSING IN THE TOTAL AMOUNT OF \$123,000,

- ▶ LOT 2, BLOCK I, T.A. HOWZE SUBDIVISION
511 11TH STREET DRIVE WEST
PALMETTO, FLORIDA
- ▶ LOT 3, BLOCK I, T.A. HOWZE SUBDIVISION
XXX 11TH STREET DRIVE WEST
PALMETTO, FLORIDA
- ▶ LOT 7, BLOCK I, T.A. HOWZE SUBDIVISION
512 11TH STREET WEST
PALMETTO, FLORIDA

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy.)

13.1.4. EFFICIENCY IN SERVICE DELIVERY

BACKGROUND/DISCUSSION

CONTINUED ON PAGE 2

HAS COUNTY ATTORNEY REVIEW BEEN REQUESTED? Indicate "NO" or "YES" @ right. (If "NO," proceed to 1) Below and if "YES," proceed to 2) Below) NO

1) IF "NO" TO ABOVE,

A) PLEASE EXPLAIN BELOW: (see also following section 1B) re: contract, agreement, lease, etc.:

ALL THREE OF THE MAIN DOCUMENTS HAVE PREVIOUSLY BEEN APPROVED BY COUNTY ATTORNEY'S OFFICE.

B) IF A CONTRACT, AGREEMENT, LEASE OR OTHER DOCUMENT WAS PREVIOUSLY APPROVED, STATE YEAR OF LAST USE @ RIGHT: 2000

2) IF "YES" TO FIRST QUESTION IN THIS SECTION,

A) HAS ENTIRE MATTER, OR ONLY A PORTION, BEEN REVIEWED? IF ONLY A PORTION, WHICH PORTION?

B) HAVE ALL COMMENTS/SUGGESTIONS RAISED BY COUNTY ATTORNEY BEEN ADDRESSED/INCORPORATED; IF NOT, PLEASE EXPLAIN. A COPY OF FINAL COUNTY ATTORNEY MEMO RE THIS MATTER **MUST BE ATTACHED** (if comments were verbal, so indicate.)

APPROVED IN OPEN SESSION

JAN 23 2001

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

1AVE1901.wpd last revised on 12/19/00 @ 8:11 AM by: DLT 3646

4.

ATTACHMENTS: (List in order as attached) ONE SET OF 3 DOCUMENTS FOR EACH PARCEL: NONPROFIT AGREEMENTS LAND USE RESTRICTION AGREEMENTS CONSTRUCTION LOAN AGREEMENTS	INSTRUCTIONS TO BOARD RECORDS: ORIGINALS FOR BOARD RECORDS, ONE CERTIFIED COPY FOR COUNTY SERVICES
COST \$120,000.00 (SHIP) \$3,000.00 (General Fund)	SOURCE (ACCT# & NAME) 115.9003806 SHIP
COMMENTS	AMT./FREQ. OF RECURRING COSTS (ATTACH FISCAL IMPACT STATEMENT)

BACKGROUND/DISCUSSION (Continued from Page 1):

- THE HISPANIC AMERICAN ALLIANCE, INC., A NON-PROFIT ORGANIZATION, HAS APPLIED TO MANATEE COUNTY GOVERNMENT FOR STATE HOUSING INITIATIVE PARTNERSHIP (SHIP) ASSISTANCE. THIS ORGANIZATION'S MISSION IS DIRECTED TOWARD PROVIDING AFFORDABLE RENTAL HOUSING FOR SPECIAL NEEDS PERSONS TO ASSIST THEM IN MAINTAINING THEIR INDEPENDENCE.
- THE HISPANIC AMERICAN ALLIANCE, INC. IS REQUESTING A FUNDING ALLOCATION IN THE AMOUNT OF \$120,000 TO ACQUIRE AND CONSTRUCT THREE (3) SINGLE FAMILY STRUCTURES ON POTENTIALLY VACANT PARCELS WITHIN UNINCORPORATED MANATEE COUNTY.
- IN ORDER TO PROVIDE A MECHANISM TO DISBURSE FUNDING, A NON-PROFIT AGENCY FUNDING AGREEMENT IS BEING BROUGHT TO THE COMMISSION FOR APPROVAL OF THE PROPERTY.
- ADDITIONALLY, A LAND USE RESTRICTION AGREEMENT (LURA) AND A CONSTRUCTION LOAN AGREEMENT ARE ALSO BEING ATTACHED TO THE NONPROFIT AGREEMENT AND BROUGHT TO THE COMMISSION FOR APPROVAL AND EXECUTION ON EACH PROPERTY IN ORDER TO STIPULATE REQUIREMENTS PLACED UPON THE APPLICANT FOR USE OF SHIP FUNDING.



Office of
**MANATEE COUNTY
ATTORNEY**

Tedd N. Williams, Jr., County Attorney

William C. Henry, Chief Assistant County Attorney
Jeffrey N. Steinsnyder, Deputy Chief Assistant County
Attorney for Land Use and Environmental Law*
Patricia McVoy, Senior Assistant County Attorney*
James A. Minix, Senior Assistant County Attorney†
Maureen S. Sikora, Senior Assistant County Attorney*
Michael H. Rosen, Assistant County Attorney
Robert M. Eschenfelder, Assistant County Attorney
Stephanie A. Crossman, Associate County Attorney

MEMORANDUM

DATE: January 22, 2001

TO: Frederick J. Loveland, Director, Community Services Department

THRU: Tedd N. Williams, Jr., County Attorney *TNW 1/22/01*

FROM: Patricia McVoy, Senior Assistant County Attorney *PM 1/22/01*

RE: **Hispanic American Alliance, Inc. – Agreements and Documents Related to
Rental Housing; RLS-01-88; CAO File 1030-040**

Attached please find blacklined revisions to the following documents:

- ▶ Funding Agreement
- ▶ Construction Loan Agreement
- ▶ Contractor's Consent and Acknowledgment
- ▶ Land Use Restriction Agreement
- ▶ Mortgage
- ▶ Promissory Note

Most of the changes have been made to provide for single family detached rental housing. The enforcement and remedies section has been rewritten to provide clarity and conform to the legal requirements related to a liquidated damage clause. A termination and expiration date has been added to the Land Use Restriction Agreement.

I believe the changes are self-apparent in the blacklined drafts. Please contact me if you have any questions or if I can be of further assistance.

PM/klm
Attachments – as stated

* Board Certified City, County & Local Government Law

† Board Certified Civil Trial

**FUNDING AGREEMENT BETWEEN
MANATEE COUNTY
AND
HISPANIC AMERICAN ALLIANCE, INC.**

THIS IS AN AGREEMENT by and between the COUNTY OF MANATEE, a political subdivision of the State of Florida, hereinafter referred to as "County," and Hispanic American Alliance, Inc., a Florida not-for-profit corporation with its local place of business located at 731 North Lime Avenue, Sarasota, Florida 34237, hereinafter referred to as "Corporation."

WHEREAS, the Board of County Commissioners of Manatee County, Florida, found that a need existed to produce and preserve affordable housing as determined in Ordinance 93-22; and

WHEREAS, the Board of County Commissioners participates in the State Housing Initiative Partnership (SHIP) Program to aid in the production and preservation of affordable housing as adopted in Resolution R-00-89 (the "SHIP Plan"); and

WHEREAS, the SHIP Plan identifies specific strategies to be addressed with SHIP funds, such as acquisition of rental housing for the Special Needs Population through collaboration with not-for-profit agencies which assist with the needs of the Special Needs Population; and

WHEREAS, Corporation has applied to County for \$120,000.00 in funding to acquire and construct affordable housing properties to provide rental housing to Special Needs Persons who meet the criteria of low and/or very low income persons and who meet the definition of "Person Who Have Special Housing Needs Population" in Manatee County, as defined in Attachment A; and

WHEREAS, Corporation has provided to County evidence of tax-exempt ruling from the IRS under Section 501c of the Internal Revenue Code; and

WHEREAS, the SHIP Plan for FY2000-2003, adopted by the Manatee County Board of County Commissioners on May 2, 2000, provides up to \$274,321.30 for special needs housing in the Housing Delivery Goals Chart for FY2000-2001; and

WHEREAS, County is satisfied that such funding is required and is in furtherance of the public interests, health and welfare.

NOW, THEREFORE, the parties agree as follows:

1. Corporation agrees to acquire and construct, pursuant to the terms and conditions of the Construction Loan Agreement attached hereto as Attachment B and the contract for sale of real estate attached hereto as Attachment C (the "Contract"), a detached single family dwelling unit (the "Structure") on property located at 511 11th Street Drive West, Palmetto, Florida, described as follows:

Lot 2, Block I, T.A. Howze's Subdivision, as per plat thereof recorded in Plat Book 1, Page 202A, of the Public Records of Manatee County.

hereinafter the "Property."

2. Total cost to acquire and construct the structure is \$78,250.00 dollars. County shall provide \$40,000.00 in SHIP funding toward construction on the Property in accordance with the terms and conditions of this Agreement, and Corporation shall provide the balance. County shall pay demolition costs in an amount not to exceed \$3,000.00 upon compliance with this Agreement and after the existing Structure has been demolished and removed.

3. Payments during construction shall be made by County in accordance with the terms and conditions of the Construction Loan Agreement executed between Manatee County, ~~the~~ and Corporation and the Contractor if all conditions of this Agreement have been met. Following closing, Corporation shall submit to County a copy of the final closing statement and a copy of the executed and recorded deed.

4. County Representative shall attend the closing on the acquisition of the Property (hereinafter the "Closing") and conduct an inspection of the Property.

5. Corporation shall provide, if requested in writing by the County, all Corporation records pertaining to the acquisition and construction of the structure, including floor plans, at no additional cost to County.

6. Corporation shall indemnify, keep and save harmless County, its agents, officials and employees against all claims, liabilities, judgments, costs, attorney fees, and other expenses which may accrue against the County arising out of, or related to the acquisition and/or construction of the structure and, if any judgment shall be rendered against County in any action, Corporation shall, at its own expense, satisfy and discharge the same. The indemnity hereunder shall continue until such time as any and all claims arising under this Agreement have been finally settled, regardless of when such claims are made.

7. Corporation covenants and agrees that the structure shall be used to provide rental housing to the Special Housing Needs Population who are very low and low income persons as described in Attachment A.

8. To receive funds, Corporation shall comply with all of the following:
- a. The Property shall be in compliance with any applicable law or code, including but not limited to zoning, land use and building codes.
 - b. Corporation must provide in advance a completed settlement statement (HUD-1), an appraisal report, a title insurance commitment and copies of any and all documents relating to title conditions or exceptions.
 - c. Corporation must provide a fully executed Land Use Restriction Agreement and Deed Restrictions as shown in Attachment A at the time of closing.
 - d. Corporation must provide a fully executed Construction Loan Agreement as shown in Attachment B at the time of closing.

- e. Corporation shall require that the title insurer delete from the final title insurance policy the following: "unrecorded rights or claims of parties in possession, survey matters (subject to specific matters shown on the survey and approved by County), unrecorded easements or claims of easements and unrecorded mechanic's liens", and provide County with a marked-up title insurance commitment at the closing.
- f. County must be satisfied that Corporation shall take title to the Property free and clear of all claims, liens, encumbrances and exceptions and restrictions, including deed restrictions that would limit or interfere with the use of the Property in accordance with the SHIP Plan and rules, and this Agreement, including Attachment A and Attachment B, and reviewed and finally approved by the County Administrator's designee.
- g. County's Corporation's closing agent must agree to attach the land use restriction agreement and deed restrictions to the deed for recording immediately following the deed and to file any reports related to the sale of the Property with the Internal Revenue Service.

9. County may withhold payment upon determining that Corporation has failed to comply with the terms of this Agreement. The County Administrator or his designee may authorize withholding of payment upon written notification to Corporation as to the reason therefore. Payment shall be reinstated upon correction of unsatisfactory performance by the Corporation. Notification of intent to withhold funds shall be in writing. The notice shall specify the manner in which and the extent to which the Corporation has failed to comply with the terms and conditions of the Agreement. If funds are withheld for failure to comply with the conditions of this Agreement, payment will be made as promptly as possible after Corporation has complied with the condition.

10. This Agreement shall become effective on January 9 23, 2001.

11. Termination. This Agreement may be terminated by County if the acquisition has not been completed within ninety (90) days.

12. Notices. All notice or written communications required or permitted hereunder shall be deemed to have been given when deposited in the U.S. mail, postage paid and addressed as follows:

If mailed to Corporation: Hispanic American Alliance, Inc.
 Attn: Yolanda Beltran-Halstead
 731 North Lime Avenue
 Sarasota, Florida 34237

If mailed to County: Manatee County Community Services Department
 Attn: Director
 P. O. Box 1000
 Bradenton, Florida 34206

Any notices of termination or withholding of payment shall be by certified or registered mail, return receipt requested, or hand-delivery.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

WITNESSES:

CORPORATION

Sign Name: _____

By: _____

Print Name: _____

Print Name: _____

Sign Name: _____

Title: _____

Print Name: _____

Phone Number: _____

Date of Execution: _____

ATTEST: R. B. SHORE

COUNTY

COUNTY OF MANATEE, FLORIDA
by and through its
Board of County Commissioners

By: _____
Clerk of the Circuit Court

By: _____
Chairman

Date of Execution: _____

ATTACHMENT B

CONSTRUCTION LOAN AGREEMENT

DATE: January 9, 2001

In consideration of the mutual agreements contained in this Construction Loan Agreement (this "Agreement"), the County and Owner agree as follows:

ARTICLE I. DEFINITIONS

1.01 Completion Date: means the date on which the Improvements are fully complete in accordance with the Plan (as defined in Section 1.11 below), including the issuance of a Certificate of Occupancy for the Improvements by Manatee County Government, which date must be on or before the last day of the Construction Period.

1.02 Construction Period: means the period of time commencing within thirty (30) days after the date hereof and expiring 210 days thereafter.

1.03 Contractor: means David P. Lewis, having an address of 323 10th Avenue West, Palmetto, Florida 34221, a fully licensed general, building or residential contractor.

1.04 County: means Manatee County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners and officers and agents, and having an address of 1112 Manatee Avenue West, Bradenton, Florida 34206. County also means Lender and the maker of the Loan as defined in Section 1.07 below.

1.05 Improvements: means a single family home, and all other Improvements described in the Plan (as defined in Section 1.11 below).

1.06 Additional Lender: means Liberty Savings Bank whose address is: 544 South Washington Blvd., Sarasota, Florida 34236.

1.07 Loan: means the public funding made through State or Federal or County funds, or a combination thereof pursuant to the provisions of 24 C.F.R. Part 92, or §420.907, Florida Statutes, et seq., or a combination thereof, and the ordinances and policies of the County, from County to Owner (as defined in Section 1.10 below), evidenced by a promissory note in the original principal amount of \$40,000.00, and all renewals, extensions, modifications, future advancements, and replacements thereof.

1.08 Loan Documents: means all documents and instruments executed or submitted in connection with the Loan, including but not limited to this Agreement, the loan commitment, if any, the promissory note, the Mortgage, borrower's affidavit, and all other documents executed by Owner.

1.09 Mortgage: means the Mortgage executed simultaneously herewith securing the Loan.

1.10 Owner: means the borrower of the Loan with a current mailing address of 731 North Lime Avenue, Sarasota, Florida 34237 during the construction period.

1.11 Plans: means the schedule of values, plans and specifications for the Improvements prepared by David P. Lewis, and dated October 2, 2000, all attached to Contractor's Acknowledgment and Consent required herein and incorporated as part of this Agreement, and all amendments and modifications thereto which are approved in writing by County.

1.12 Real Estate: means the real property encumbered by the Mortgage, and more specifically described therein with an address of 512 11th Street West, Palmetto, Florida 34221.

ARTICLE II. REPRESENTATIONS AND WARRANTIES OF OWNER

For and in consideration of the money to be paid by County, Owner represents and warrants provides the following representations and warranties, as of the date hereof and as of the date of each advance by County hereunder, which representations and warranties shall survive the making of each advance and the termination of this Agreement.

2.01 As of the date and time of the recording of the Mortgage, no work (including clearing and grading) has been done on the Real Estate by the Owner or anyone acting for or on behalf of the Owner, and no materials have been placed on the Real Estate by any material supplier.

2.02 As of the date and time of the recording of the Mortgage, no Notice of Commencement has been recorded concerning the Real Estate.

2.03 The Plans do, and the Improvements when constructed will, comply with all restrictive covenants affecting the Real Estate, zoning ordinances, building laws and codes, and all other governmental regulations and requirements.

2.04 The Improvements shall be completed in accordance with the Plans and such changes to the Plans as may be approved in writing by County, and the construction of the Improvements shall be complete and a Certificate of Occupancy shall be issued for the Improvements on or before the last day of the Construction Period.

2.05 Each advance made under this Agreement shall be used solely for the construction on the Real Estate and payment for materials, labor, services, costs and expenses incurred in connection with the construction of the improvements.

2.06 Monies to be advanced to Contractor on behalf of Owner under this Agreement, together with such other funds in the amount of \$32,000* available from Additional Lender or Owner, are sufficient to complete and pay for the construction of the Improvements.

(* \$32,000 from Liberty Savings Bank)

2.07 There are no pending lawsuits or judgments against Owner which may in any way impair the ability of Owner to fully perform all agreements contained in this Agreement or which may affect the Real Estate or the loan documents.

2.08 All utilities services necessary for the construction and full utilization of the property for its intended purpose are presently available at the Real Estate through public or unencumbered private easements of rights-of-way.

2.09 There are no encroachments onto the Real Estate of any Improvements on any adjoining real property.

2.10 No defect or condition of the Real Estate or the soil or geology thereof exists which will impair the planned use of the Real Estate.

ARTICLE III. DUTIES OF OWNER

Owner agrees to the following:

3.01 ~~Any contract for construction between Owner and Contractor shall include the following:~~

~~A condition precedent to the obligation of either party to proceed with the performance of this Agreement is final execution of a Construction Loan Agreement substantially in accordance with the agreement attached hereto as Exhibit _____ between Owner and Manatee County (hereinafter, the "Loan Agreement"), pursuant to which Manatee County agrees to pay that part of the contract sum specified therein after all other sums due have been paid. Under the terms of the Loan Agreement, Manatee County's designee must issue a notice to proceed prior to the commencement of any work by Contractor.~~

~~Any conflict between the terms of this Agreement and the Loan Agreement shall be superceded by the Loan Agreement and, in the performance of this Agreement, Contractor agrees to comply fully with the final Loan Agreement as executed by County, Building Contractor and Owner.~~

Prior to or at the time of entering into a contract for construction, Owner shall provide Contractor with a copy of this Agreement and obtain Contractor's acknowledgment and consent to the terms of this Agreement and other conditions as may be imposed by County. Contractor's acknowledgment and consent shall comply with Exhibit A.

3.02 Owner shall reimburse County for all expenses above the loan amount of any kind which may be incurred by County in connection with or arising out of this Agreement, and County may deduct from any advance to be paid under this Agreement any amount necessary for the payment of: (1) any fees, expenses, charges, liens or encumbrances related to the construction of the Improvements or upon the Real Estate, and all sums so deducted or applied will be deemed advances from the Loan.

3.03 Owner shall indemnify, defend, and hold County harmless from any and all actions, claims, demands, damages, costs, expenses and other liabilities, including but not limited to reasonable attorneys' and paralegals' fees and costs which County may incur or that in any way relate to or arise out of the construction of the Improvements.

3.04 Owner shall promptly notify County in writing of: (i) any default or event which could possibly constitute a default hereunder, (ii) any litigation or other proceedings before any court or governmental or administrative authority against Owner or affecting Owner's assets (including without limitation of the Real Estate) which would, if successful, materially affect the Owner or Owner's assets, and (iii) any notices of any default under any contract for construction or furnishing of any labor or materials for the Improvements, whether from Contractor, any subcontractor, fabricator of special materials or other material supplier.

3.05 Immediately upon receipt, Owner shall provide County with copies of all notices to Owner, claims of lien, and any other similar notices received by Owner from the Contractor, any subcontractor, fabricator of special materials or other material supplier, or any party who could assert a lien against the Real Estate.

3.06 The Owner accepts full responsibility for selecting the Contractor and all subcontractors, material suppliers, materials, supplies and equipment used in the construction of the Improvements, and the County assumes no responsibility for the completion of the Improvements according to the Plans for the contract price.

3.07 The Owner accepts full responsibility for compliance with Florida's Construction Lien Law and hereby relieves the County from any liability thereunder of any nature.

3.08 The Owner agrees that Owner is fully responsible for determining the performance of the Contractor and whether the Improvements are constructed in accordance with the Plans and all applicable laws and regulations, and whether the construction of the Improvements are of satisfactory quality. Any inspections performed by County or its agents during the construction of the Improvements are for the sole benefit of County, and are not intended to protect the Owner's interest in any way.

3.09 The Owner agrees that County's acceptance of the Contractor, subcontractor or material suppliers, the Plans, and the County's making of advances, in no way represents a warranty that the Improvements are constructed in accordance with the Plans, or that the Improvements are built in accordance with applicable laws or regulations or are suitable for their intended purpose, and the Owner agrees that the County shall have no liability whatsoever concerning such items.

3.10 Owner has provided County with Contractor's Acknowledgment and Consent in a form required by County.

3.11 Owner shall provide evidence of casualty insurance and flood insurance (if required) if the Property is located in a flood zone, acceptable to County, in an amount equal to or greater than the cost

of the Improvements less the actual cost of the Real Estate, with County named as loss payee to the extent of the loan amount.

ARTICLE IV. CONDITIONS PRECEDENT TO COUNTY'S OBLIGATIONS TO MAKE PARTIAL PAYMENT

Payment by County shall be in two partes, including the final payment. County reserves the right to withhold up to ten percent (10%) until construction has been completed and any deficiencies corrected. The making of a partial construction advance by County to Contractor on behalf of Owner is subject to the following conditions precedent:

- 4.01 The Loan Documents shall have been properly executed, acknowledged and delivered to County.
- 4.02 The County shall have received all documents necessary to process a building acceptance review, including without limitation (1) a completed Contractor Information form, (ii) a copy of the Contractor's professional license, (iii) a copy of the Contractor's ~~Instated~~ Liability Insurance, (iv) Public Entity Crime Certification, (v) Drug Free Work Place Certification, (vi) Public Contracting and Environmental Crimes Certification; and County shall have accepted the Contractor, provided that such acceptance shall be for the sole benefit of County and shall not be an endorsement of the Contractor and the County does not thereby in any way warrant the suitability or financial strength of the Contractor or the construction of the Improvements.
- 4.03 A copy of all necessary building permits for the construction of the Improvements.
- 4.04 Delivery of Contractor's Acknowledgment and Consent signed by Contractor substantially in accordance with the form attached hereto as Exhibit A and including a copy of the schedule of values, plans and specifications.
- 4.05 An original survey of the lot or foundation of the Real Estate, whichever is required by Additional Lender, acceptable to Additional Lender, Secondary Insurance Company, Additional Lender's closing agent, and the Owner.
- 4.06 An original termite soil treatment guarantee for the Real Estate.
- 4.07 Builder's all risk insurance policy acceptable to County, in an amount equal to or greater than the cost of the Improvements less the actual cost of the Real Estate, with County named as loss payee to the extent of the loan amount.
- 4.08 The estimated remaining cost of construction in accordance with the Plans does not exceed the remaining balance of the Loan.
- 4.09 The construction of the Improvements shall be completed by the Completion Date.

4.10 All other funds from Additional Lender or Owner have been paid in accordance with the schedule of values and the Contractor has completed at least 50% of the work to be funded from the Loan as determined in accordance with the schedule of values.

4.11 County has received the following in form and substance satisfactory to County.

(a) A written requisition, in such form as required by County and approved and authorized by Owner, specifying in detail the cost of all labor and materials furnished in connection with the construction of the Improvements, such requisition accompanied by invoices, receipts, certificates and other documents, if required by County:

(b) A partial Release of Lien from each subcontractor, material supplier and any other party who may have the right to a lien on the Real Estate and/or the Improvements, and a Progress Payment Affidavit and Partial Release of Lien of the contractor, in such form as required by County; and

(c) An inspection report, satisfactory to County, prepared by County's inspector of the Improvements.

4.12 The receipt by County of all other documents or items reasonably required by County, to evidence work completed and compliance with this Agreement.

ARTICLE V. CONDITIONS PRECEDENT TO FINAL CONSTRUCTION PAYMENT

The making of the final construction payment is subject to the following conditions precedent:

5.01 All provisions of Article IV have been met.

5.02 The Real Estate and the Improvements are free and clear of all liens and encumbrances, except for County's Mortgage and Additional Lender's Mortgage.

5.03 Where applicable, all bills received prior to the previous advance for labor, materials and fixtures used, or on hand and to be used, in the construction of Improvements have been paid, and no one is asserting or is in a position to assert a lien with respect thereto.

5.04 The construction of the Improvements has been in accordance with the Plans and satisfactory evidence thereof has been furnished to County, and any change orders for construction of the Improvements have been approved in writing by County.

5.05 County has received the following in form and substance satisfactory to County:

(a) A written requisition, in such form as required by the County and approved and authorized by the Owner, specifying in detail the cost of all labor and materials furnished in connection with the construction of the Improvement since the date of the last requisition in the event of a partial payment

under Article IV, each such requisition accompanied by invoices, receipts, certificates and other documents, if required by County;

- (b) A Final Release of Lien from each subcontractor, material supplier, and any other party who may have the right to a lien on the Real Estate and/or the Improvements, and a Final Contractor Affidavit and Final Reconciliation, in such form as required by County;
- (c) A final inspection report, satisfactory to County, prepared by County's inspector of the Improvement;
- (d) An update to County's title insurance policy, reflecting no liens or other adverse matters concerning the Real Estate, if required by County;
- (e) The issuance of a final Certificate of Occupancy for the Improvements by Manatee County Government;
- (f) The completion in full of the Improvements in accordance with the Plans.
- (g) Copy of original final survey showing all of the Improvements, certified as the boundary survey when required by Additional Lender.

5.06 The receipt by County of all other documents or items reasonably required by County.

ARTICLE VI. CONSTRUCTION PROCESS

Owner and County agree that the following provisions are applicable throughout the construction process:

6.01 Advance from the Loan shall be ~~exhausted~~ provided following the disbursement of any funds from Additional Lender's Loan in Process Account, including any additional funds which Additional Lender has required Owner to place therein.

6.02 Advances from the Loan shall be made in accordance with the schedule of values attached hereto as Exhibit 2, which has been agreed upon by County and Owner.

6.03 Notwithstanding anything to the contrary contained in this Agreement, County shall not be obligated to make any advances under the following conditions:

- (a) If Owner is in default under this Agreement or the Loan Documents, or if any party is in default under the construction contract between Owner and Contractor, or, if an event exists under any such documents which, with the giving of notice or the passage of time, would be a default.
- (b) A Notice to Owner from a subcontractor or material supplier has been received by County and County has not received an appropriate release of lien from such party.
- (c) A lien has been filed against the Real Estate and/or the Improvements.

(d) The construction of the Improvements is behind schedule so that it shall not be accomplished on or before the last day of the Construction Period, unless an extension request has been submitted and approved by County prior to construction expiration period.

(e) A "red tag" or other evidence that the construction does not meet code has been issued concerning any part of the Improvements.

(f) County's inspector has not approved any part of the Improvements.

(g) Contractor has ceased construction of the Improvements, been terminated by Owner, or there is otherwise a dispute between Owner and Contractor.

6.04 County shall have the right to disapprove defective work and materials and shall withhold advances until defects are corrected.

6.05 County shall have the unrestricted right of making inspections of the Improvements by its authorized agent from time to time during the period of construction, but such inspection shall be for the sole benefit of County.

6.06 Prior to the making of any advances, Owner shall inspect and approve all work completed. Owner will be required to sign all payment requests submitted by Contractor prior to County processing payment request.

6.07 In the event County has not received copies of any notices to Owner or claims of lien at the time of any advance under the Loan, County may disburse as provided in this Agreement without notice to Owner and without regard to the provisions of Florida's Construction Lien Law, and without responsibility or liability to the Owner, Contractor, subcontractors, laborers, materialmen or any other lienors.

ARTICLE VII. NO LIABILITY OF COUNTY

7.01 County shall have no liability or obligation, either express or implied, to Owner, to Contractor or to any third parties in connection with the Improvements or the construction thereof, including without limitation, the obligation to verify that advances made pursuant to this Agreement are actually used to pay for labor or materials used in the construction of the Improvements.

7.02 If more than one person is named as Owner herein, County may make advances upon the authorization of any one of such persons. Advances shall be made directly to the Contractor, and the execution of this Agreement by Owner constitutes an irrevocable direction and authorization for County to so disburse the proceeds of the Loan.

7.03 It is expressly agreed that all inspection and other services rendered by the County's officers or agents shall be rendered solely for the protection and benefit of the county and the Owner shall not be entitled to claim any loss or damage, either against the County, its officers or agents. County shall

not be liable for the failure of any dealer, Contractor, craftsman or laborer to deliver the goods or perform the services to be delivered or performed by them.

ARTICLE VIII. EVENTS OF DEFAULT

8.01 The occurrence of any one of the following events shall constitute an event of default hereunder:

- (a) Any covenant, agreement or condition in this Agreement that is not fully and timely performed, observed or kept.
- (b) The failure to construct the Improvements with reasonable dispatch or the discontinuance of construction at any time for a period of ten (10) consecutive days.
- (c) Owner is unable to satisfy any condition of its right to the receipt of any advance hereunder for a period in excess of thirty (30) days.
- (d) The default by any party under the construction contract between Owner and Contractor.
- (e) Any legal or equitable proceeding is commenced or threatened against Owner which, if adversely determined, could reasonably be expected to impair substantially the ability of Owner to perform each and every obligation under the Loan Documents and this Agreement.
- (f) Any statement, representation or warranty in this Agreement or any other Loan Document or in any financial statement delivered to County in connection with the Loan is false, misleading or erroneous in any material respect.
- (g) A petition shall have been filed by Owner under any of the provisions of the Federal Bankruptcy Code, as amended, or any other federal or state insolvency or similar law; or a petition shall have been filed against Owner or a receiver shall have been appointed in debtor's proceeding for Owner or for the Real Estate or the Improvements.
- (h) Owner shall have made an assignment for the benefit of its creditors.
- (i) A judgment shall have been imposed upon the Real Estate or the Improvements.
- (j) A claim of lien shall have been filed against the Real Estate or the Improvements.
- (k) The commencement of any litigation or administrative proceeding challenging, or attempting to restrict the right of Owner to construct the improvements and operate the Real Estate and Improvements for their intended purpose.
- (l) If the Improvements shall be or have been destroyed or, in the judgement of County, materially damaged and, in the judgment of County, the destroyed or damaged portion of the Improvements cannot be repaired or restored with available insurance proceeds and any additional funds deposited

by Owner with County to be disbursed in accordance herewith, in order to complete the Improvements by the last day of the Construction Period regardless of whether the Improvements have been completed at the time of such destruction or material damage.

- (m) Any material adverse change in the financial condition of Owner.
- (n) A default by Owner under any note, mortgage, guarantee or other instrument of indebtedness now or hereafter executed by Owner in favor of County or Additional Lender.
- (o) The death of any one or more of the individuals named as Owner herein.
- (p) The construction of the Improvements is not complete on or before the last day of the Construction Period or extended Construction Period.
- (q) In the sole and absolute judgment of County, the construction of the Improvements will not be complete by the last day of the Construction Period or extended Construction Period.
- (r) The existence of any default under any one or more of the loan documents.

8.02 Upon the happening of any such event of default, County, at its election, but without obligation to do so, without notice, may:

- (a) Exercise any remedy available to County at law and at equity.
- (b) Declare immediately due and payable all monies advanced under the Loan and/or pursuant to this Agreement which are then unpaid, together with any and all interest and other sums due, and accordingly accelerate payment thereof notwithstanding contrary terms of payment stated therein.
- (c) Cease making any additional advances under this Agreement.
- (d) Terminate this commitment to lend under this Agreement.
- (e) In its own name or in the name of Owner enter into possession of the Real Estate and perform any and all work and labor necessary to complete the Improvements substantially in accordance with the Plans, and all sums expended by County for such purposes shall be deemed to have been paid to Owner and shall be added to the outstanding loan balance secured by the Mortgage.

8.03 For this the purpose of Section 8.02(e), Owner hereby appoints County its true and lawful attorney-in-fact with full power of substitution to complete the Improvements in the name of the Owner, and hereby empowers said attorney-in-fact as follows:

- (a) To use any funds held in the Loan Account and any funds which may remain unadvanced thereunder, for the purpose of completing the Improvements.

- (b) To make such additions and changes and corrections in the Plans which shall be necessary or desirable to complete the Improvements in substantially the manner contemplated by the Plans, subject to adjustments required due to deficiencies in the Loan Account.
- (c) To employ such Contractors, subcontractors, agents, architects and inspectors as shall be required for said purposes.
- (d) To pay, settle or compromise all existing bills and claims which are or may become liens against the Real Estate or may be necessary or desirable for the completion of the Improvements or the clearance of title.
- (e) To execute all applications and certificates in the name of Owner which may be required concerning the construction of the Improvements.
- (f) To do each and every act with respect to construction of the Improvements which Owner may do in Owner's behalf.

It is understood and agreed that this power of attorney shall be deemed to be a power of attorney coupled with an interest which cannot be revoked. Said attorney-in-fact shall also have the power to prosecute and defend all actions or proceedings in connection with the construction of the Improvements and to take such action and require such performance as is deemed necessary.

ARTICLE IX. MISCELLANEOUS

9.01 This Agreement shall be for the benefit of Owner and may not be assigned, and may be executed in several counterparts, each of which will be an original.

9.02 All rights, powers and remedies of County contained in this Agreement are cumulative and in addition to all other rights, powers and remedies created in any other document or existing under the law. Failure by County to exercise or enforce any right, power or remedy under this Agreement shall not constitute a waiver of any such right, power or remedy. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed given and received on the date three days after being mailed (by first class, postage prepaid) to the address indicated above for each respective party or on the date delivered if delivered in person.

9.03 This Agreement may be amended only by contemporaneous or subsequent written agreement. In the event any part or provision of this Agreement is held unenforceable or void, the enforceability or validity of the remaining parts and provisions shall remain unaffected.

9.04 This Agreement is for the sole protection and benefit of County and Owner and no other person or entity shall have any right as a third party beneficiary hereunder nor any right to bring an action hereon or claim the proceeds or the Loan.

9.05 In the event Owner consists of more than one person or the obligations and liabilities hereunder of each of such persons shall be joint and several, the word "Owner" shall mean all or some or any of

them. For purposes of this Agreement, the singular shall be deemed to include the plural and the neutral shall be deemed to include the masculine and feminine, or vice versa, as the context may require. The captions preceding the text of the paragraphs of this Agreement are inserted only for convenience of reference and do not constitute a part of this Agreement, nor shall they in any way affect its meaning, construction or effect.

ARTICLE X. WAIVER OF JURY TRIAL

COUNTY AND OWNER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR FINANCING CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY PARTIES HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR COUNTY ENTERING INTO THIS AGREEMENT.

The parties have executed this Agreement as of the date set forth above.

WITNESSES:

CORPORATION

Sign Name: _____

By: _____

Print Name: _____

Print Name: _____

Sign Name: _____

Title: _____

Print Name: _____

Phone Number: _____

Date of Execution: _____

COUNTY

ATTEST: R. B. SHORE

COUNTY OF MANATEE, FLORIDA
by and through its
Board of County Commissioners

By: _____
Clerk of the Circuit Court

By: _____
Chairman

Date of Execution: _____

CONTRACTOR'S ACKNOWLEDGMENT AND CONSENT

This Contractor's Acknowledgment and Consent is made by David P. Lewis of David P. Lewis, the Owner having an address of 323 10th Avenue West, Palmetto, Florida 34221 (the "Contractor").

In consideration for Manatee County, having an address of 1112 Manatee Avenue West, Bradenton, FL 34205, ("County") making a Loan to Hispanic American Alliance, Inc., (the "Owner"), with whom Contractor has executed a construction contract (the "Contract"), Contractor acknowledges and agrees as follows:

1. Contractor has received a copy of the Construction Loan Agreement between County and Owner, signed or to be signed by County the _____ day of _____, 200 (hereinafter the "Loan Agreement"), pursuant to which Manatee County agrees to pay the sum specified in the Loan Agreement after all other sums due have been paid.

2. Contractor acknowledges that Contractor must not begin construction until County's designee issues a notice to proceed and that in the event of a conflict between the Loan Agreement and the Construction Contract, the Construction Contract shall be superceded by the terms of the Loan Agreement.

3. Contractor agrees to comply fully with the Loan Agreement.

4. The Contractor hereby certifies that it has entered into a Contract with Owner for the construction of improvements (the "Improvements") to be located on the Owner's real estate (the "Real Estate"), which Improvements are described on the plans and specifications for such Improvements (the "Plans") attached as Exhibit 1, and the total contract sum for the construction of the Improvements is \$54,000.00.

5. The Contractor agrees that the loan from County to Owner (the "Loan") shall be funded in accordance with the Schedule of Values attached hereto as Exhibit 2, and the Contractor agrees to be bound by such Schedule of Values, regardless of the fact that the terms of the Schedule of Values conflict with the Contract.

6. The Contractor hereby subordinates its right to place a lien on the Real Estate and the Improvements to the lien of County Mortgage encumbering the Real Estate and the Improvements.

7. The Contractor agrees that in the event any of the Loan proceeds are disbursed directly to Contractor, such sums shall be received as a trust fund for the purpose of paying the cost of the Improvements, and the Contractor shall only apply the Loan proceeds for such purposes.

8. The Contractor agrees that in the event of Owner's default under the Loan, Contractor shall, at County written request, continue performance of the Contract in accordance with its terms provided that Contractor is paid in accordance with the Schedule of Values for all services, labor and/or materials provided by Contractor after the date County directs the Contractor to provide such work.

9. The Contractor agrees to give County written notice, at the address of the County as set forth herein, of any default by the Owner under the Contract to give the County, at the sole option of County, the right to cure defaults by the Owner within thirty (30) days (or such longer time, if any, as permitted by the Contract for the curing of any such defaults) after receipt by county of written notice of the default.

10. The Contractor agrees that County shall have no liability whatsoever to Contractor under the Contract, the Construction Loan Agreement between Owner, Contractor and County, or under any other document for any other reason. The Contractor further agrees that Contractor shall not be deemed to be in privity with County.

11. The Contractor hereby waives the right to ten (10) days prior written notice of direct payments to providers of labor, services and/or provided in Florida Statutes 713.06, and Contractor authorizes the Owner and County to directly pay all providers of labor, services, and/or materials to the Improvements who have served notices to Owner without the giving of such notice to Contractor.

12. The Contractor hereby represents and warrants that it has full authority under all state and local laws and regulations to perform its obligations under the Contract, and that Contractor is fully and currently licensed as a general, building or residential Contractor by the State of Florida.

13. Contractor agrees to comply with the general conditions attached hereto as Exhibit 3.

14. Contractor acknowledges that should Contractor fail to comply with the requirements of the Loan Agreement, the Contract and the terms and conditions provided herein, Contractor shall not be accepted or approved for work under any future County programs.

15. The individual executing this instrument on behalf of Contractor hereby personally represents and warrants that the undersigned has the authority to execute this instrument on behalf of the Contractor.

CONTRACTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS DOCUMENT, THE CONTRACT, THE LOAN OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN), OR ACTIONS OF ANY OF THE CONTRACTOR, OWNER OR COUNTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR COUNTY TO MAKE THE LOAN TO OWNER.

By: David P. Lewis
Its: Owner

ATTACHMENT A

**LAND USE RESTRICTION AGREEMENT
AND DEED RESTRICTIONS
FOR: HISPANIC AMERICAN ALLIANCE, INC.**

THIS LAND USE RESTRICTION Agreement and DEED RESTRICTIONS (hereinafter Agreement) is made and entered into by and between the County of Manatee, a County existing by and under the laws of the State of Florida (hereinafter referred to as the "County") and Hispanic American Alliance, Inc., (hereinafter referred to as the "Owner").

Recitals

WHEREAS, the Owner owns certain land described in Exhibit "A" attached hereto and incorporated herein by reference, hereinafter referred to as the "Property"; and

WHEREAS, the Owner agrees to comply with certain occupancy, rent and resale restrictions for the remaining useful life of the Property as provided herein; and

WHEREAS, the Owner is composed of the parties Owner's Board of Directors is listed on Exhibit "B" attached hereto, and incorporated herein by reference; and

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Definitions

Section 1.1 General. Capitalized terms used in this Agreement shall have, unless the context clearly states otherwise, the meaning specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

- (a) "**Agreement**" means this Land Use Restriction Agreement and the Deed Restriction Agreement, as it may from time to time be amended.
- (b) "**Dwelling Unit**" means a single family residential dwelling containing separate and complete living facilities.
- (c) "**Elderly**" describes a person 62 years of age or older.
- (e) "**Elderly Household**" describes a household wherein at least one-half of the residents are elderly.

- (f) **"Family Household"** describes a household of two or more eligible persons.
- (g) **"Low Income Households"** shall mean one (1) or more persons or a family, with a total annual gross income above 50% and up to 80% of the Median Household Income, as calculated based upon the number of persons residing in the Dwelling Unit.
- (h) **"Median Household Income"** means the Housing and Urban Development (HUD) established standard for Manatee County. This may be updated from time to time by HUD and confirmed by Manatee County.
- (i) **"Project"** means the residential unit located on the Property described in Exhibit A, with a maximum of one (1) Dwelling Unit.
- (j) **"Rental Housing"** means Dwelling Units made available for rental and not for home ownership.
- (k) **"Special Housing Needs Population"** shall mean individuals who have incomes not exceeding low-income and, because of particular social, economic, or health-related circumstances, may have greater difficulty acquiring or maintaining affordable housing. Such persons may have, for example, encountered resistance to their residing in particular communities, and may have suffered increased housing costs resulting from their unique needs and high risk of institutionalization. Such individuals shall be limited to persons with developmental disabilities; persons with mental illnesses; chemical dependency; persons with Acquired Immune Deficiency Syndrome ("AIDS") and Human Immunodeficiency Virus ("HIV") disease; runaway and abandoned youth; public assistance recipients; migrant and seasonal farm workers; refugees and entrants; the elderly; homeless; victims of domestic violence; and disabled adults.
- (l) **"Supported Living Assistance"** shall mean services provided by an individual or an organization in an effort to assist the Special Housing Needs Population in the enhancement of independent residency in a Dwelling unit.
- (m) **"Very Low Income Households"** shall mean one (1) or more persons or a family, with a total annual gross income at or below 50% of the Median household Income, as calculated based on the number of persons residing in the Dwelling Unit.

ARTICLE II

Use, sale and Occupancy of the Property

Section 2.1 The Owner, in receipt of State Housing Initiative Partnership (SHIP) funding in an amount not to exceed \$40,000, hereby agrees to purchase the Property and construct a single family structure for occupancy by Special Housing Needs Population. The Owner shall maintain the Property as rental housing and shall rent and hold available 100% of the total Dwelling Unit for the life of the Agreement to Low or Very Low Income household who are also a part of the Special Housing Needs Population. Monthly rents for Dwelling Units may not exceed thirty (30) percent of 1/12th of the total gross annual income based upon the number of persons residing in the Dwelling Unit.

The Owner, for and in consideration of the amount of *not exceeding* \$40,000.00 of State Housing Initiative Partnership (SHIP) funding *and \$3,000.00 from Manatee County general funds* has purchased the Property and agreed to construct a detached, single family Dwelling Unit thereon for rent to and occupancy by Special Housing Needs Population. Monthly rent shall not exceed *thirty percent (30%) of 1/12th of the total gross annual income of all persons residing in the Dwelling Unit the maximum authorized pursuant to the State Housing Initiative Partnership Act.* Owner shall, upon occupancy of the Property initially or by any new occupant thereafter, and once annually in the event of continuing occupancy, provide certification to County of the household income, *the rent charged*, and such other information as may reasonably be required by County to verify compliance with this Agreement. The certification and other information shall be provided in such manner and on such forms as provided or approved by County. Nothing in this Section 2.1 shall be deemed to limit the rights otherwise herein reserved by County to audit, monitor, inspect, and make investigations to determine compliance with this Agreement.

Section 2.2 For purposes of complying with the requirements set forth in Section 2.1 above, if the income of the household in a Dwelling Unit did not exceed the applicable income limit (adjusted for the number of persons residing in the Dwelling Unit) at the commencement of such resident's occupancy, such person(s) or family may be treated as continuing to be very low or low income households as defined under Special Housing Needs Population for a period of one year from the initial date of occupancy if the composition of the household does not change. Except as provided in the preceding sentence, any household in a Dwelling Unit which exceeds the applicable income limit shall, upon vacancy, vacate the Dwelling Unit, which shall

be rented to a household with the appropriate very low or low income limits who meet the requirements of 2.1, above.

Section 2.3 The property is currently zoned RM-6 (Multiple Family Residential). ~~The project was specifically approved by the County for the purpose of providing for single family dwelling units at appropriate locations and with densities not to exceed 10 dwelling units per acre~~ The Property shall include a detached single family Dwelling Unit and the project shall be managed and operated as rental housing for Special Housing Needs Population.

Section 2.4 The Owner shall maintain the Project Property in a condition which is consistent and complies with all applicable Land Development, Building and Housing Codes.

Section 2.5 The Owner shall not unlawfully discriminate against any person on the basis of race, creed, religion, color, sex, familial status, national origin or handicap in the lease, use or occupancy of the Project. Age discrimination and discrimination against minor dependents, except when units are specifically being held for the elderly, are not permitted.

Section 2.6 The Owner hereby covenants and agrees that it will immediately withdraw from circulation any advertisement determined by the County to violate or be inconsistent with its policies, with respect to promoting rental housing.

ARTICLE III

Administration

Section 3.1 The Owner or the Owner's successors and assigns shall submit an Annual Report to the Manatee County Department of Community Services. Said report shall be submitted in accordance with the schedule established by the County.

Section 3.2 Should a transfer of ownership for all or any part of the Project Property take place, owner must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible recipients {F.S. 420.9075(3)(f)}. Upon transfer of ownership, the use shall not change and transferee shall maintain the property for continued occupancy pursuant to Article II of this Agreement. Information relating to the new Owner, including name, address and telephone number, shall be forwarded by letter to the Director of the Department of Community Services.

- Section 3.3** This Agreement shall become effective upon approval by the Manatee County Board of County Commissioners and shall run with the land. Funding under this agreement shall be provided to Owner in the form of a zero percent(0%) interest deferred loan. If all units the Property continues to be used pursuant to Article II until the termination of this Agreement, the loan shall not be required to be paid back to the County.
- Section 3.4** The omission of any County requirement in this Agreement shall not relieve the Owner from the necessity of complying with any and all applicable State, County and Federal laws, rules and regulations.
- Section 3.5** Pursuant to Section 1302.2 of the Manatee County Land Development Code, the Department of Community Services shall review the Project at least every twelve (12) months to determine compliance with the terms of this Agreement. Failure of the Department of Community Services to conduct said review or identify violations of this Agreement shall not prevent subsequent enforcement.
- Section 3.6** The County shall have the right to review and audit the records of the Owner or any successor relating to the Property as the County deems appropriate to determine compliance with Section 2.1. The Owner shall be required upon written notification, to provide the necessary information to perform an audit to the satisfaction of the County. This information may include but shall not be limited to all tenant lists, applications, leases, waiting lists, income examinations and re-examination relating to the Project. These materials shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained in reasonable condition for proper audit, and subject to examination and photocopying during business hours by representatives of the County. Manatee County shall provide at least five (5) days prior written notice before performing such audit or examination.
- Section 3.7** County periodically will monitor Owner's compliance with the requirements of this Agreement. In conducting its compliance review, County will rely primarily on information obtained from owner's records and reports, including those prepared for other governmental agencies, findings from on-site monitoring and audit reports. County may consider relevant information gained from other sources, including litigation and citizen complaints.

ARTICLE IV

Enforcement and Remedies

~~Section 4.1~~ If Owner defaults in the performance of obligations under this Agreement and the restrictions set forth herein, and if such default remains uncured for a period of sixty (60) days after notice thereof has been given by Manatee County, Manatee County shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for the appointment of a receiver or successor to take over and operate the Property in accordance with the terms of this Agreement, to foreclose Manatee County's mortgage if in effect and unsatisfied, or for such other relief including monetary, as may be appropriate.

~~Section 4.2~~ In addition to the provisions of Section 4.1, if the Owner defaults in the performance of obligations under Sections 3.1 or 3.6 of this Agreement, and if such default remains uncured for a period of sixty (60) days after notice thereof has been given by Manatee County, Manatee County may elect, at its sole option, to be paid ~~the amount of \$750.00 per month per Dwelling Unit.~~ In addition to the remedies provided in section 4.1 of this Agreement, if Owner fails to comply with section 2.1, above County shall be entitled to recover as a proper measure of liquidated damages ~~the above remedies for each calendar month for which a violation of the~~ aforementioned Sections occurred. Liquidated damages, as set forth in this Section 4.2, shall be adjusted in amounts based on the percentage change in the Consumer Price Index for the Urban Consumers using the effective date of this Agreement as the base date (See example given below). Every violation of either Section 3.1 or 3.6 shall be considered a violation for all Dwelling Units. Any such payment under this Section shall be made by cashier's check, deposited in the County's Affordable Housing Trust Fund (AHTF), or other cost center utilized for aiding in the development of Affordable Housing. Sums paid under this Section shall not represent payment of a penalty.

~~Section 4.3~~ Owner agrees to complete construction of the property no later than August 9, 2001, and Owner shall commence use of the Property as set forth 2.1 of this Agreement. Should owner fail to have Dwelling unit occupied based on the terms and conditions of this Agreement for any period of more than ninety (90) days, County upon due notice to Owner shall have the right pursue the remedies as set forth in 4.1 above.

EXAMPLE

Violations:

~~The Owner rented two units to households which were determined not to be Very Low or Low Income Households for two months in 2000 and one month in 2001, and charged rent in excess of 30% of the monthly income for a Low Income Household for one month in 2000. In 2002, no annual report is submitted pursuant to Section 3.1.~~

Damages:

<u>Year</u>	<u>Damages</u>	<u>Reason</u>
2000	\$2,250.00*	Two (2) violations relating to occupancy of dwelling units, plus one (1) violation of assessed rent.
2001	\$1,500.00*	Two (2) violations relating to occupancy of dwelling units during year.

~~*Amounts must be adjusted for inflation or deflation based on the percentage of change in the Consumer Price Index for Urban Consumers.~~

Section 4.1 If Owner defaults in the performance of obligations under this Agreement and the restrictions set forth herein, and if such default remains uncured for a period of sixty (60) days after notice thereof has been given by Manatee County, Manatee County shall be entitled to apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for the appointment of a receiver or successor to take over and operate the Property in accordance with the terms of this Agreement, to foreclose Manatee County's mortgage if in effect and unsatisfied, or for such other relief including monetary, as may be appropriate.

Section 4.2 In addition to the provisions of Section 4.1, if the Owner defaults in the performance of obligations provided in 3.1 or 3.6, or fails to provide the certification or other information required under Section 2.1, and if such default or failure remains uncured or uncorrected for a period of sixty (60) days after notice thereof has been given by Manatee County, Manatee County shall be entitled to a presumption that any Dwelling Unit that should have been covered by such report, certification or information was not occupied in accordance with the requirements of this Agreement and to recover damages as provided in Section 4.3.

Section 4.3 In addition to the remedies provided in Section 4.1 of this Agreement, if Owner fails to comply with the occupancy requirements of Section 2.1 above, if Owner fails to

maintain occupancy as required by Section 4.5 4.6 below, or if County is entitled to a presumption of non-compliance pursuant to Section 4.2 above, and such presumption has not been rebutted by evidence furnished by Owner, Owner shall pay to County shall be entitled to recover as liquidated damages for the loss of the public benefit of the program funded by this Agreement the amount of \$750.00 per month for any month, or any portion thereof, per Dwelling Unit. The liquidated damages as set forth in this Section shall be adjusted in amounts based on the percentage change in the Consumer Price Index for Urban Consumers using the effective date of this Agreement as the base date. Any payment under this Section shall be made by cashier's check and deposited in the County's Affordable Housing Trust Fund or other cost center utilized for aiding in the development of affordable housing.

Section 4.4 Owner shall pay to County any rental charges in excess of the limits provided in Section 2.1 above along with interest at the judgment rate. County shall repay such sums to the tenant or lessee, or if such tenant or lessee cannot be located within a one year period after vacating the Dwelling Unit, such sum shall be deposited in the County's Affordable Housing Trust Fund or other cost center utilized for aiding in the development of affordable housing.

Section 4.5 Should Owner fail to comply with any of the restrictions set forth in this Agreement, Owner shall pay to County all costs associated with the enforcement thereof, including but not limited to all costs associated with employee time, all costs for attorneys and paralegals, all court costs, and necessary and reasonable expenses, including those associated with any foreclosure, collection of damages or costs, or other proceedings.

Section 4.5 4.6 Owner agrees to complete construction of the property no later than August 9, 2001, and Owner shall commence use of the Property as set forth 2.1 of this Agreement. Should owner fail to have the Dwelling Unit occupied based on the terms and conditions of this Agreement for any period of more than ninety (90) days after construction completion, County upon due notice to Owner shall have the right pursue the remedies as set forth in Sections 4.1 and 4.3 above.

ARTICLE V

Representations and Warranties of Owner

Section 5.1 Owner has validly executed this Agreement and the same constitutes the binding obligation of the Owner. Owner has full power, authority and capacity to enter into

this Agreement, to carry out the Owner's obligations as described in this Agreement and to assume responsibility for compliance with all applicable Local, State and Federal rules and regulations.

Section 5.2 To the best of Owner's knowledge, the making of this Agreement and the Owner's obligations hereunder:

- (a) will not violate any contractual covenants or restrictions between Owner or any third party, or affecting the Property;
- (b) will not conflict with any of the instruments that create or establish Owner's authority;
- (c) will not conflict with any applicable public or private restrictions;
- (d) do not require any consent or approval of any public or private authority which has not already been obtained; and
- (e) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against Owner, without regard to capacity, any person with Owner may be jointly or severally liable, or the Property or any part thereof.

Section 5.3 There is no litigation pending or proceeding ~~to be~~ known or to the best of any Owner's knowledge, threatened against Owner which, if adversely determined, could individually or in the aggregate have an adverse affect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

Section 5.4 There is not a pending or to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any assignment for the benefit of creditors, or any petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for owner under any present or future federal, state or other statute, law, regulation relating to bankruptcy, insolvency, or relief from debtors.

Section 5.5 Owner agrees to indemnify and hold harmless County from and against all liabilities, losses, claims, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees, through appeal, if necessary) incurred by

County as a result of any inaccuracy in any of the representations and warranties contained in Sections 5.1 through 5.4, inclusive.

Section 5.6 In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided and published by the United States Department of Housing and Urban Development with respect to (i) income limits applicable to low income household and very low income households, (ii) the method for calculating the incomes of such families, and (iii) the maximum rents which may be charged to such families pursuant to Section 2.1 hereof. The Owner shall be responsible for obtaining such information in a timely manner from HUD or County.

Section 5.7 This Agreement may not be amended or modified except by written instrument signed by each party hereto.

Section 5.8 Notices required to be given by this Agreement shall be in writing, certified mail through the United States Postmaster. Mail shall also have return receipt requested, addressed to the persons and places specified for giving notice below. Requirements for such other or additional parties or address as from time to time may be specified by either party shall be subject to the terms and conditions of this Agreement. This in no way impacts the requirement to provide notice to the Board of County Commissioners and to the County Attorney in the manner outlined above.

Notice shall be forwarded to the following:

FOR THE COUNTY:

Chairman
Manatee County Board of County Commissioners
1112 Manatee Avenue West
Post Office Box 1000
Bradenton, FL 34206-1000

with copies by U.S. Mail to:

Office of the County Attorney
Manatee County Government
1112 Manatee Avenue West
Post Office Box 1000
Bradenton, FL 34206-1000

Frederick J. Loveland, Director
Department of Community Services
1112 Manatee Avenue West, Suite 868
Post Office Box 1000
Bradenton, FL 34206-1000

FOR THE OWNER:

Hispanic American Alliance, Inc.
Attn: Yolanda Halstead, Executive Director
731 North Lime Avenue
Sarasota, FL 34237

- Section 5.9** The Owner and County agree that both parties have played an equal and reciprocal part in the drafting of this Agreement and, therefore, no provisions of this Agreement shall be construed by any court or other judicial authority against any party hereto because such party is deemed to have drafted or structured such provisions.
- Section 5.10** In the event any term or provision of this Agreement shall be held invalid, such invalid term or provisions shall not affect the validity of any other term or provision hereof and all such other terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been apart of this Agreement; provided, however, if any term or provision of this agreement is held to be invalid due to the scope or extent hereof, such term or provision shall automatically be deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.
- Section 5.11** This Agreement shall be construed, and the rights and obligations of County and Owner hereunder shall be determined, in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be in Manatee County, Florida, unless prohibited by law.
- Section 5.12** In any litigation between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to recover all fees and costs incurred in such litigation, including reasonable attorneys' fees, through appeal, if necessary.
- Section 5.13** This Agreement shall run with the land and shall be binding on both parties, their heirs, successors and assigns. Further, this Agreement shall be recorded in the Public Records of Manatee County, Florida by Manatee County at the expense of the Owner.

Section 5.14 This Agreement shall be come effective upon its execution by both parties, and recording of the Agreement in the Public Records of Manatee County, Florida pursuant to Section 5.13 above.

ARTICLE VI

Duration

Section 6.1 This Agreement and the restrictions provided herein shall remain in effect for a period of 30 years. Owner may terminate this Agreement at any time after a period of fifteen (15) years provided that the funding referenced in Section 2.1 has been repaid to County.

IN WITNESS WHEREOF, the Owner has read and understands the terms set forth and agrees to meet the obligations contained herein by execution of this Agreement, in duplicate, this ____ day of _____, 20__.

WITNESSES:

OWNER

HISPANIC AMERICAN ALLIANCE, INC.
Telephone: (941) 366-1130
731 North Lime Avenue, Sarasota, FL 34237

By: _____,
As its Executive Director

STATE OF FLORIDA
COUNTY OF MANATEE

SWORN AND SUBSCRIBED before me this _____ day of _____, 20__, by _____, (known as "Owner"), who is personally known to me and/or provided _____ as identification, and who did take an oath (or affirm). If no type of identification is indicated, the above named persons are personally known to me.

(Stamp & Seal)

Signature of Notary Public

Project: Hispanic American Alliance, Inc.
Land Use Restriction Agreement
Page 13

IN WITNESS WHEREOF, the Board of County Commissioners of Manatee County, Florida, has executed this Agreement this _____ day of _____, 20_____.

COUNTY OF MANATEE, FLORIDA
BY AND THROUGH ITS
BOARD OF COUNTY COMMISSIONERS

CHAIRMAN

ATTEST: R.B. SHORE
CLERK OF THE CIRCUIT COURT

THIS INSTRUMENT WAS DRAFTED BY
THE MANATEE COUNTY ATTORNEY'S OFFICE AND PREPARED BY THE
MANATEE COUNTY COMMUNITY
SERVICES DEPARTMENT.

PLEASE RETURN TO:
MANATEE COUNTY COMMUNITY SERVICES DEPARTMENT
P.O. BOX 1000
BRADENTON, FL 34206

MORTGAGE

This purchase money mortgage is made by Hispanic American Alliance, Inc., a Florida not-for-profit corporation who which (is/are) referred to below as "Mortgagor," and whose mailing address is 731 North Lime Avenue, Sarasota, Florida, to Manatee County, a political subdivision of the State of Florida, whose mailing address is P.O. Box 1000, Bradenton, Florida 34206, a political subdivision of the State of Florida, as mortgagee.

Mortgagor, for and in consideration of the loan of \$40,000.00 paid by Manatee County, the receipt of which is acknowledged, hereby grants, bargains and sells to Manatee County, in fee simple, the land, situated in the County of Manatee, State of Florida, which is legally described as:

Lot 2, Block I, T. A. Howze's Subdivision, as per plat thereof recorded in Plat Book 1, Page 202A, of the Public Records of Manatee County.

Mortgagor fully warrants the title to the land, and will defend the same against all claims. This mortgage is intended to secure payment of the above loan and any future advances made by Manatee County to Mortgagor.

This is a second mortgage and is inferior and subordinate to a first mortgage executed this day by Mortgagor herein in favor of Liberty Savings Bank, in the principal amount of \$ 120,000.00 which encumbers the above property and additional parcels described thereunder.

Provided always, that if Mortgagor pays to Manatee County or its assigns all sums due under a certain promissory note, also executed by Mortgagor today and attached hereto as Exhibit B, and performs and abides by all the stipulations, agreements, conditions and covenants of the promissory note and this mortgage, and duly pays all taxes and insurance premiums reasonably required, then this mortgage and the estate created by it shall cease and be null and void.

In the event that Mortgagor defaults on any prior mortgage, so as to cause such prior mortgage to be accelerated and become due and payable during the continuance of this mortgage, or in the event a prior mortgagee commences action to foreclosure its mortgage, or in the event the Mortgagor herein files for bankruptcy, then the entire sums secured by this mortgage, less any amounts forgiven under the terms of the note and any unearned interest, shall become due and payable at the option of Manatee County.

In the event of a foreclosure or a deed in lieu of foreclosure of the First Mortgage, any provision herein or in any collateral agreement restricting the use of the Property or restricting the Borrower's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the Property. Any person, including his successors and assigns (other than the Borrower or a related entity or person to the Borrower), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Mortgage shall receive title to the Property free and clear from such restrictions. Furthermore, if the First Lender acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Second Mortgage Deed shall automatically terminate upon the First Lender's acquisition of title.

On full payment or discharge by time of the obligations secured hereunder, Manatee County shall surrender this mortgage and the note for which this mortgage is given as security, and shall execute and deliver documentation of full satisfaction thereof, to Mortgagor or such other person as is entitled thereto.

Executed and subscribed on _____, 2001, at Bradenton, Florida.

HISPANIC AMERICAN ALLIANCE, INC.

Executed in the presence of:

Mortgagor (Signature)

Witness

Yolanda Beltran-Halstead, Executive Director
(Printed Name)

Witness

SWORN TO and subscribed before me this _____ day of _____, 2001, by Yolanda Beltran-Halstead who is personally known to me or who produced _____ as identification:

Notary Public

Printed Name of Notary

My Commission Expires _____

My Commission No. _____

THIS INSTRUMENT WAS DRAFTED BY
THE MANATEE COUNTY ATTORNEY'S
OFFICE AND PREPARED BY THE
MANATEE COUNTY COMMUNITY
SERVICES DEPARTMENT.

PLEASE RETURN TO:
MANATEE COUNTY COMMUNITY SERVICES DEPARTMENT
P.O. BOX 1000
BRADENTON, FL 34206

EXHIBIT B
DEFERRED PROMISSORY NOTE

\$ 40,000.00

For value received, (I/we) promised to pay to the order of Manatee County \$ 40,000.00, in one lump sum, at such place as Manatee County may specify in writing. The indebtedness evidenced may be prepaid in whole or in part at any time without penalty or premium for such prepayment.

Provided however, that if (I/we) remain owners of the mortgaged premises and comply with all the provisions of the mortgage securing this note and of any superior mortgages and notes on this property, and a previously recorded Land Use Restriction Agreement between the undersigned and Manatee County, no repayment shall be required. But if (I/we) default on any superior mortgages, or sell or otherwise transfer, or lease, vacate, or abandon the residence all sums secured under this note and mortgage shall be immediately due and payable to Manatee County.

Provided further, that if any payment due under a superior mortgage and note is delinquent for thirty (30) days, (I/we) will immediately notify the Manatee County Community Services Department, and will enter into and complete a mortgage default prevention program with an agency designated by Manatee County. If (I/we) fail to give timely notice or to complete a mortgage default prevention program, Manatee County may declare the balance of this note with any and all accrued interest immediately due and payable, and bring action to collect said amounts.

This note is secured by the mortgage executed today. All persons are referred to such mortgage for its effect on this note. (I/we) understand Manatee County may sue to foreclose said mortgage on the property the mortgage encumbers or to sue for a personal judgment for money damages against (me/us) by reason of this note and its execution, or both.

(I/we) waive demand, presentment for payment, protest, and notice of nonpayment and of dishonor. (I/we) agree to pay Manatee County its reasonable attorney's fees, plus court costs, if Manatee County places this note for collection, or sues for damages or foreclosure.

Executed and subscribed on _____, 2001, at Bradenton, Florida.

HISPANIC AMERICAN ALLIANCE, INC.

[Signature]
Yolando Beltran-Halstead, Executive Director

[Printed name]

[Signature]

[Printed name]

Lot 2, Block I, T.A. Howze's Subdivision

Palmetto, Florida 34221

[address]

Subscribed before me this ____ day of _____, 2001, by Yolando Beltran-Halstead, who is personally known to me or who produced _____ as identification:

Notary Public

Print name of Notary

My Commission Expires _____

My Commission No. _____