

This Instrument Prepared By  
and Return To:  
Ilene Temchin, Esq.  
City of Miami  
Office of the City Attorney  
444 S.W. 2<sup>nd</sup> Avenue  
Miami, Florida 33130-1910

### **NOTE AND MORTGAGE MODIFICATION AGREEMENT**

The attached Note and Mortgage Modification Agreement dated as of August 20, 2008, by and between Madison Housing, Ltd., a Florida limited partnership ("Madison I"), and Madison Housing II, Ltd., a Florida limited partnership (Madison II"), both with offices at c/o The Gatehouse Group, Inc., Cabot Business Park, 120 Forbes Boulevard, Mansfield, MA 02048 ("jointly referred to as "Madison") and the City of Miami, a municipal corporation of the State of Florida (hereinafter referred to as the "City"), with an address at 444 S.W. 2<sup>nd</sup> Avenue, Miami, FL 33130 modifies the following Mortgage (the "Mortgage"):

Mortgage and Security Agreement given by BAME Development Corporation of South Florida, Inc., a Florida not-for-profit corporation, as Mortgagor, to the City, as Mortgagee, dated September 3, 2003, recorded in Official Records Book 22006, Page 235 of the Public Records of Miami-Dade County, Florida.

This Instrument Prepared By  
And Return To:  
Ilene Temchin, Esq.  
City of Miami  
Office of the City Attorney  
444 S.W. 2<sup>nd</sup> Avenue  
Miami, Florida 33130-1910

### **NOTE AND MORTGAGE MODIFICATION AGREEMENT**

THIS NOTE AND MORTGAGE MODIFICATION AGREEMENT (the "Modification Agreement") is made and entered into as of this 20<sup>th</sup> day of August, 2008, by and between Madison Housing, Ltd., a Florida limited partnership ("Madison I"), and Madison Housing II, Ltd., a Florida limited partnership (Madison II"), both with offices at c/o The Gatehouse Group, Inc., Cabot Business Park, 120 Forbes Boulevard, Mansfield, MA 02048 ("jointly referred to as "Madison") and the City of Miami, a municipal corporation of the State of Florida (hereinafter referred to as the "City"), with an address at 444 S.W. 2<sup>nd</sup> Avenue, Miami, FL 33130.

WHEREAS, on March 22, 2007, the City of Miami City Commission adopted Resolution Nos. 07-0173 and 07-0174, authorizing the conveyance, with parcel reverter provisions, of certain City owned parcels to Madison (the "Property", as legally described on " A") for the development of affordable housing for eligible low income persons; and

WHEREAS, Madison intends to build an affordable rental housing project consisting of not less than one hundred and fifteen (115) apartments on the Property (the "Project"); and

WHEREAS, the land to be conveyed to Madison secures mortgage loans from the City to BAME Development Corporation of South Florida, Inc., a Florida not-for-profit corporation ("BAME"), pursuant to the following documents: (a) that certain HOME Investments Partnership Program Loan Agreement, (b) that certain Promissory Note, in the principal face amount of One Million Four Hundred Sixty Two Thousand Four Hundred and Forty Five Dollars and 57/100 (\$1,462,445.57; the "Note"), and (c) that certain Mortgage and Security Agreement given by BAME, as Mortgagor, to the City, as Mortgagee, recorded in Official Records Book 22006, Page 235 of the Public Records of Miami-Dade County, Florida, (the "Mortgage"), all dated September 3, 2003 and executed and delivered by BAME in favor of City. (The Note and the Mortgage may hereinafter jointly be referred to as the "Loan Documents"); and

WHEREAS, in consideration for the conveyance of the Property to Madison, and by virtue of those certain Assumption Agreements executed simultaneously herewith, Madison has assumed all obligations and agreed to perform all covenants, conditions, duties and obligations of the Mortgagor under the Note and the Mortgage, and has agreed to assume the City's additional investment in the Property; and

WHEREAS, to effectuate the foregoing, Madison and the City have agreed to modify the Note and the Mortgage as hereinafter set forth and have agreed to the additional terms and conditions hereinafter provided;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Madison and the City hereby agree as follows:

1. Each and every of the above recitals is true and correct.
2. Madison acknowledges that the outstanding principal balance on the Note is One Million Four Hundred Sixty Two Thousand Four Hundred and Forty Five Dollars and 57/100 (\$1,462,445.57).
3. Madison I agrees that construction of seventy five (75) rental apartments shall commence on that portion of the Property known as Tracts B and D within twelve (12) months from the date of this Modification Agreement, and shall be completed, as evidenced by the issuance of all required certificates of occupancy for all such apartments, no later than twenty four (24) months from the date hereof.
4. Madison II agrees that construction of forty (40) rental apartments shall commence shall commence on that portion of the Property known as Tracts A and C within twelve (12) months from the date of this Modification Agreement, and shall be completed, as evidenced by the issuance of all required certificates of occupancy for all such apartments, no later than twenty four (24) months from the date hereof.
5. Madison agrees to each and all of the following:
  - (a) All such apartments shall be rented to persons earning no greater than eighty percent (80%) of the area median income for Miami-Dade County, Florida.
  - (b) For thirty (30) years (the "Affordability Period"), the Project will be used exclusively for the purpose of providing affordable rental housing for Low Income households.
  - (c) Throughout the Affordability Period, Madison shall furnish signage identifying the Project and shall acknowledge the contribution of the City by incorporating the seal of the City and the names of the City commissioners and officials in all Project documents, literature, pamphlets, advertisements, and signage, permanent or otherwise. All such acknowledgments shall be in a form acceptable to the City, as provided on Exhibit "B" hereto.

All publicity and advertisements prepared and released by Madison related to the Project, such as pamphlets and news releases, and all events carried out to publicize the Project, shall recognize the City as one of the Project's contributing sources.

- (d) Madison shall report to the City annually on all actions taken to comply with the affirmative marketing requirements provided in Exhibit "C" hereto.
- (e) Until completion of the Project, as evidenced by the issuance of all required certificates of occupancy, Madison shall obtain and furnish evidence of such insurance coverage the City may require relating to the Project and/or the Property, including, but not limited to, that described on " D" hereto. All such policies shall provide the City with mandatory written notice of cancellation or material change from the insurer not less than thirty (30) days prior to any such cancellation or material change. All such policies shall be written by insurance companies satisfactory to the City. All such insurance shall insure the City as an additional insured, with a loss payable clause in favor of the City.
- (f) Madison shall allow City inspectors, agents and/or representatives the ability to monitor its compliance with safety precautions as required by federal, state or local laws, rules, regulations and ordinances. By performing these inspections the City, and its agents, and/or representatives shall not assume any liability by virtue of such laws, rules, regulations and ordinances. Madison shall have no recourse against the City, its agents, and/or representatives for the occurrence, non-occurrence or result of such inspection(s).
- (g) Prior to the commencement of Project construction, Madison shall contact the City's Risk Management Department Safety Unit in writing to coordinate such inspection(s).
- (h) Madison shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA"), including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability) and all other applicable ADA regulations, guidelines and standards. Additionally, Madison shall take affirmative steps to ensure nondiscrimination in the employment of disabled persons.
- (i) Madison shall comply with the applicable requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.

6. The City agrees that, upon the request of Madison, the Mortgage shall be subordinated, to a third lien position, to construction financing reasonably required by Madison to develop the Project. To that end, the City agrees to execute its standard form of subordination agreement to further effectuate the provisions of this paragraph.

7. The Note is hereby amended:

A. To provide that sums due are payable as follows:

The outstanding principal balance and all interest accrued thereon shall become due and payable on August 20, 2040, provided, however, that in the event that Madison shall: (i) meet all of its obligations under the Loan Documents, this Modification Agreement, and any other documents executed in connection

herewith, (ii) within twelve (12) months from the date of this Modification Agreement, commence construction, to the satisfaction of the City in its sole judgment, of one hundred fifteen (115) Project apartments, (iii) within twenty four (24) months from the date hereof, obtain all required certificates of occupancy for the Project, (iv) until August 20, 2040, rent all Project units to persons earning no greater than eighty percent (80%) of the area median income for Miami-Dade County, Florida, then, in such event, the City shall assign the Note and the Mortgage to Madison Housing, LLC, a Florida limited liability company.

B. By modifying any and all references to the Mortgage to refer to the Mortgage as amended by this Modification Agreement.

8. The Mortgage is hereby amended by modifying any and all references to the Note to refer to the Note as amended by this Modification Agreement.

9. Madison individually and collectively represents, warrants and confirms to the City that: (i) the Note as modified hereby is a valid obligation enforceable in accordance with its terms and is binding upon Madison, and its successors, assigns and administrators without any claim, defense of off-set or other sum due, pending or existing; (ii) except as modified hereby, all of the terms, covenants, conditions, representations, warranties and agreements contained in the Note are hereby ratified and confirmed in all respects; (iii) the Note shall continue to be secured by the Mortgage without novation or interruption; (iv) the Mortgage as modified hereby is a valid obligation of Madison enforceable in accordance with its terms and is binding upon Madison, and its successors, assigns and administrators without any claim, defense of off-set or other sum due, pending or existing; and (v) all of the terms, covenants, conditions, representations, warranties and agreements contained in the Mortgage are hereby ratified and confirmed in all respects.

10. In the event an unresolved dispute exists between any of the parties hereto with regard any matter arising pursuant to this Modification Agreement or relating to the Note and/or the Mortgage, the City shall refer the issue, including the views of all interested parties and the recommendation of the City, to the City Manager, his designee, or such other official of the City who shall be authorized to exercise the authority of the City Manager in this regard (the "City Manager") for determination. The City Manager will issue a determination within thirty (30) calendar days of receipt of a written request for resolution of the dispute and so advise the parties hereto. In the event additional time is necessary, the City Manager will notify the parties within the thirty (30) day period that additional time is necessary. The parties hereto agree that the City Manager's determination shall be final and binding on all parties, subject only to judicial review.

11. This Modification Agreement shall be effective the date on which the City Clerk affixes her attestation.

12. All notices under this Modification Agreement shall be in writing and addressed as follows:

TO THE CITY: City of Miami  
Department of Community Development  
444 Southwest 2nd Avenue, Suite 239  
Miami, Florida 33130  
Attention: George Mensah, Director

WITH COPY TO: City Attorney's Office  
444 Southwest 2nd Avenue, Suite 945  
Miami, Florida 33130  
Attention: Ilene Temchin, Esq.

TO MADISON: Madison Housing II, Ltd.  
Madison Housing, Ltd.  
c/o The Gatehouse Group, Inc  
Cabot Business Park  
120 Forbes Boulevard  
Mansfield, MA 02048  
Attention: Marc Plonskier

WITH COPY TO: Brian McDonough, Esq.  
Stearns Weaver Miller  
150 West Flagler Street, Suite 2200  
Miami, FL 33130

Notice shall be deemed given upon hand delivery or five (5) business days after depositing the same with the U.S. Postal Service. The address or designated representative of the parties may be changed by notice given in accordance with this section.

13. Except as modified herein, all terms and conditions of the Note and the Mortgage shall remain in full force and effect.

14. This Modification Agreement shall be recorded in the Public Records of Miami-Dade County, Florida.

15. If any provision of this Modification Agreement conflicts with any applicable law or regulation, only the conflicting provision shall be deemed by the parties hereto to be modified, or to be deleted if modification is inappropriate, to cause the provision to be consistent with the law or regulation. However, the obligations under this Modification Agreement shall continue and all other provisions of this Modification Agreement shall remain in full force and effect.

16. This Modification Agreement shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Florida.

17. This Modification Agreement sets forth the entire agreement between the parties and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral between the parties relating to the subject matter herein.

18. All capitalized terms not defined herein shall have the meanings provided in the 24 C.F.R. Part 92.

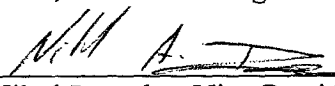
19. Waiver of Jury Trial. The parties hereto shall not seek a jury trial in any lawsuit, proceeding, counterclaim or any other litigation procedure based upon or arising out of the Note, the Mortgage and/or this Modification Agreement, or the dealings or the relationship between or among such persons or entities, or any of them, or seek to consolidate any such action in which a jury trial has been waived with any other action. The provisions of this paragraph have been fully discussed by the parties hereto, and the provisions hereof shall be subject to no exceptions. No party to this Modification Agreement has in any manner agreed with or represented to any other party that the provisions of this paragraph will not be fully enforced in all instances.

IN WITNESS WHEREOF, the parties have hereunto signed and sealed these presents the day and year first above written.


**Madison Housing II, Ltd., a Florida limited partnership**

**By: Madison Housing II LLC, a Florida limited liability company, its managing general partner**

**By: The Gatehouse Group, Inc., a Massachusetts corporation, its sole Manager**

By:   
Nikul Inamdar, Vice President


Date: Aug. 26, 2002


  
Witness  
Don D. PATTERSON  
Print Name

**Madison Housing, Ltd., a Florida limited partnership**

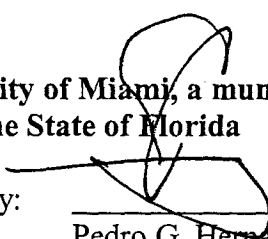
**By: Madison Housing LLC, a Florida limited liability company, its managing general partner**


**By: The Gatehouse Group, Inc., a Massachusetts corporation, its sole Manager**


By:   
Nikul Inamdar, Vice President  
Date: Aug. 26, 2008

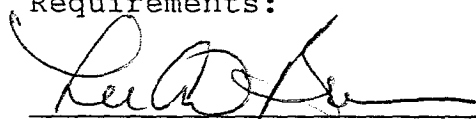
  
Witness Don D. Patterson  
Print Name

**City of Miami, a municipal corporation of the State of Florida**

By:   
Pedro G. Hernandez, City Manager  
Date: 10/6/08

ATTEST:  
  
Priscilla A. Thompson, City Clerk  
Date: 10-8-08

Approved As To Form And Correctness:  
  
Julie O. Bru  
City Attorney

Approved As To Insurance Requirements:  
  
LeeAnn Brehm  
Risk Management Administrator

STATE OF )  
COUNTY OF )

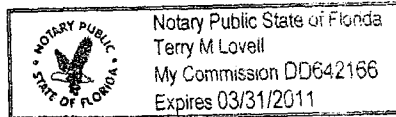
Before me, the undersigned authority, personally appeared Nickel Jordan, as Vice President of The Hudson Group, Inc., to me well known to be the person described in and who executed the foregoing instrument and who acknowledged to and before me that he/she executed said instrument under oath, and for the purposes therein expressed.

Witness my hand and official seal in the County and State last aforesaid this 26<sup>th</sup> day of Aug., 2008. *as sole manager of Madison Haven, LLC, the manager general partner of Madison Haven, LLC.*

PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

Did Take An Oath  
 Did Not Take An Oath  
 Personally Known  
 Produced I.D.  
Type of I.D. Produced:



My Commission Expires:

STATE OF )  
COUNTY OF )

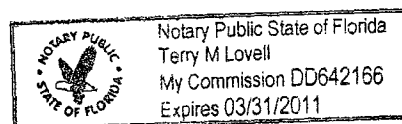
Before me, the undersigned authority, personally appeared Nickel Jordan, as Vice President of The Hudson Group, Inc., to me well known to be the person described in and who executed the foregoing instrument and who acknowledged to and before me that he/she executed said instrument under oath, and for the purposes therein expressed. *as sole manager of Madison Haven II, LLC, the manager general partner of Madison Haven II, LLC.*

Witness my hand and official seal in the County and State last aforesaid this 26<sup>th</sup> day of Aug., 2008.

PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

Did Take An Oath  
 Did Not Take An Oath  
 Personally Known  
 Produced I.D.  
Type of I.D. Produced:



My Commission Expires:

STATE OF FLORIDA)  
COUNTY OF MIAMI-DADE )

Before me, the undersigned authority, personally appeared Pedro Hernandez, as City Manager of City of Miami, to me well known to be the person described in and who executed the foregoing instrument and who acknowledged to and before me that he/she executed said instrument under oath, and for the purposes therein expressed.

Witness my hand and official seal in the County and State last aforesaid this 6 day of Oct., 2008.

\_\_\_\_\_  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

Regina Jones  
\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

\_\_\_\_\_  
Did Take An Oath  
\_\_\_\_\_  
Did Not Take An Oath  
 Personally Known  
\_\_\_\_\_  
Produced I.D.  
Type of I.D. Produced:



\_\_\_\_\_  
My Commission Expires:

EXHIBIT A

**Legal Description of the Property to be Conveyed to Madison Housing, Ltd.**

Tracts B and D, New Hope Overtown, according to the Plat thereof, as recorded in Plat Book 157, at Page 14, of the Public Records of Miami-Dade County, Florida

**Legal Description of the Property to be Conveyed to Madison Housing II, Ltd.**

Tracts A and C, New Hope Overtown, according to the Plat thereof, as recorded in Plat Book 157, at Page 14, of the Public Records of Miami-Dade County, Florida

