

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: September 09, 2008 [X] Consent [] Regular

Department: Housing and Community Development

Submitted By: Housing and Community Development

Submitted For: Commission on Affordable Housing

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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A Conditional Grant Agreement with Brook's Subdivision, LLC, a Florida Limited Liability Corporation, for \$700,000 in State Housing Initiative Partnership (SHIP) Homeownership Development Program funds.

Summary: Palm Beach County Housing and Community Development (HCD) through its Commission of Affordable Housing (CAH) provides SHIP financing to local developers to facilitate increased affordable homeownership opportunities. This Agreement provides \$700,000 towards site acquisition and construction of eighteen (18) single family homes reserved for households of very low, low and moderate income. As a result, the purchase price of each home will be reduced by \$38,888.89. Ten (10) of these homes will be exclusively reserved for very low and low income households allocating five (5) units in each income category. The other eight (8) homes may be sold to households of up to (but not to exceed) moderate income. This CAH financing is a conditional grant which will encumber the entire project until all housing units are sold to eligible homebuyers. Default provisions apply if Brook's Subdivision, LLC fails to acquire the property by December 31, 2008, and if the 18 single-family homes have not been completed and conveyed to eligible households by December 31, 2010. If any of the milestones are not met, immediate repayment is required. Brook's Subdivision project was reviewed by the Commission on Affordable Housing's Advisory Committee on November 16, 2006 and conceptually approved by the Palm Beach County Board of County Commissioners (BCC) on December 5, 2006. The total project cost is \$6,410,000. These are State Fund which requires no local match. District 2 (TKF)

Background and Justification: On May 18, 1993, the BCC adopted its Affordable Housing Ordinance (No. 93-8 as amended) pursuant to the SHP regulations outlined by the Florida Housing Finance Corporation. The County's Commission on Affordable Housing (CAH) was established by the BCC in 1990 to administer the Robert E. Pinchuck Memorial Housing Trust Fund. The current SHIP Local Housing Assistance Plan adopted by the BCC on April 25, 2006 (R2006-0735) established how local SHIP program funds are to be allocated. The SHIP funds are used to facilitate the rehabilitation, acquisition, construction and preservation of affordable single-family and multi-family/rental housing in Palm Beach County. Additionally, SHIP funding is also used locally for: foreclosure prevention, utility connection and impact-fee payments; and architectural barrier removal for the disabled.

ATTACHMENTS:

A. Loan Agreement with Brook's Subdivision, LLC with Exhibits "A thru "F"

Recommended by: Edward W. Pomp
Department Director

8/14/08
Date

Approved By: Sharon B. By
Assistant County Administrator

8/25/08
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$700,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>\$700,000</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>N/A</u>	_____	_____	_____	_____

Is Item Included In Current Budget? Yes X No _____ Budget Account No.:

Fund 1100 - Dept 143 - Unit 7508 - Object 8201 - Program Code/Period RFS54/GY07

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

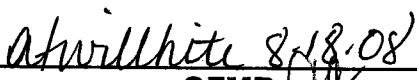
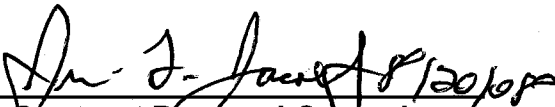
Approval of this agenda item will appropriate \$700,000 to the Brooks Subdivision, LLC for site acquisition and the construction of eighteen (18) single family homes. \$700,000 of SHIP program income will be allocated from SHIP operating reserves.

C. Departmental Fiscal Review:


Shairette Major, Fiscal Manager I

III. REVIEW COMMENTS

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

<p> OFMB 8/18/08</p>	<p> Contract Dev. and Control 8/20/08</p>
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B. Legal Sufficiency:

This item complies with current County policies.


Assistant County Attorney

C. Other Department Review:

Department Director

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

CONDITIONAL GRANT AGREEMENT

THIS AGREEMENT, dated as of this ____ day of _____, 2008, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter referred to as the "County") and Brook's Subdivision, LLC, a Florida limited liability company, whose Federal I.D. number is 65-0352491, (the "Grantee").

1. RECITALS.

(a) Grantee has applied to the County for a Conditional Grant in the principal amount of \$700,000.00 (the "Conditional Grant") to be used by Grantee to acquire four (4) parcels of real property located in Riviera Beach, Palm Beach County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof, (the "Premises") and for the construction of eighteen (18) single-family homes on such Premises. Grantee intends to construct, eighteen (18) single family homes for very-low and moderate income households of which a minimum of five (5) homes will be reserved for very-low income households and a minimum of five (5) homes will be reserved for low-income households. The funds requested from County will be used solely for the purpose of acquiring the Premises and for the construction of the single family homes, which are intended for very low, low and moderate income households.

(c) Grantee and the County have negotiated the terms and conditions of, and wish to enter into, this Agreement in order to set forth the terms and conditions for the disbursement of the Conditional Grant.

(d) The Local Initiative Support Corporation has agreed to finance at least \$5,710,000 for the construction of the Premises pursuant to a loan to Grantee, secured by a mortgage encumbering the premises (the "First Mortgage").

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants and agreements set forth below the receipt and sufficiency of which is hereby acknowledged, Grantee and the County agree as follows:

2. THE CONDITIONAL GRANT. The County shall make the Conditional Grant to Grantee in an amount not to exceed \$700,000.00 upon the terms and conditions set forth herein, the Declaration of Restrictions attached hereto as Exhibit "B" the Promissory Note attached hereto as Exhibit C and the Mortgage and Security Agreement attached hereto as Exhibit D, and Grantee shall take the Conditional Grant and expressly agrees to comply with and to perform all of the terms and conditions of the Conditional Grant Agreement, the Declaration of Restrictive Covenants the Promissory Note, the Mortgage and Security Agreement and any other documents evidencing and securing the Conditional Grant (collectively hereinafter referred to as the "Conditional Grant Documents"). The closing of the Conditional Grant shall occur at the office of the County Attorney or such other mutually agreed upon site no later than December 19, 2008.

3. RIGHT TO AUDIT. The Grantee shall maintain adequate records to justify all charges, expenses and costs incurred for the acquisition of the Premises and the completion of the Improvements for at least three (3) years after completion. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Grantee's place of business.

4. CONDITIONS PRECEDENT TO CLOSING. The conditions listed below are a condition precedent to the County's acceptance of the Declaration of Restrictive Covenants and disbursement of funds and shall be complied with in form and substance satisfactory to the County prior to the closing:

(a) Title Insurance:

(i) Within thirty (30) days of the effective date hereof, Grantee shall

deliver to County a title commitment issued by a title insurance company qualified to do business in the State of Florida and acceptable to County, agreeing to issue to County upon recordation of the Declaration of Restrictions a Lender's Title Insurance Policy in the amount of the Grant, subject only to the Permitted Exceptions listed on Exhibit "E" attached hereto and made a part hereof. Said commitment shall have attached to it copies of all exceptions referred to in the title commitment. The cost of said title commitment and policy and any premium therefore shall be borne by Grantee.

(ii) County shall have fifteen (15) days after receipt of the title insurance commitment in which to review the same. In the event the title insurance commitment shall show as an exception any matter other than the Permitted Exceptions, County shall notify Grantee of its objections there to and Grantee shall act to remove such exceptions, which exception shall be deemed to constitute title defects. The Grantee shall be entitled to thirty (30) days from the day of notification (with the extension of the Closing Date if necessary) within which to cure such defects or make arrangements with the title insurer for the removal of any such objections from the commitment. If the defect shall not have been so cured or removed from the commitment by endorsement thereto with the termination of said thirty (30) day period, the County shall have the option of accepting title as it then exists or terminating the Conditional Grant Agreement, by giving written notice thereof to Grantee, in which event the parties shall be relieved of all further obligations hereunder.

(iii) The title insurance commitment shall be endorsed at closing to remove any and all requirements or pre-conditions to the issuance of a Lender's Title Insurance Policy, and to delete any exceptions for: (a) any rights or claims of parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Premises; (c) unrecorded easements and claims of liens; (d) taxes for the year of closing and all prior years; (e) matters arising or attaching subsequent to the effective date of the commitment but before the Declaration of Restrictive Covenants becomes recorded in the Public Records.

(b) Survey: Grantee shall deliver to the County a current certified survey prepared by a surveyor acceptable to the County of the Premises showing the following:

(i) the location of the perimeter of the Premises by courses and distances and perimeter footings in place, and by reference to Township, Range, Section:

(ii) the location of and the identification by reference to recording data of all easements, rights-of-way, conditions and restrictions on or appurtenant to the Premises:

(iii) the location of all building setback lines:

(iv) the lines of the streets abutting the Premises and the width thereof;

(v) all encroachments, and the extent thereof in feet and inches upon the Premises;

(vi) if the Premises are described as being on a filed map, a legend relating the plat of survey to such map;

(vii) flood zone certification; and

(viii) any other notations required for the deletion of the survey exception from the Title Insurance Policy to be issued in accordance with paragraph 4(a) above and any other requirements requested by the County.

(c) Note: The Note, in a form substantially similar to Exhibit "C" attached hereto, and acceptable to the County Attorney, shall be duly authorized, executed and delivered to the County;

(d) Mortgage: The Mortgage, in a form acceptable to the County Attorney, shall be duly authorized, executed, acknowledged, delivered to the County, and when recorded, shall be a valid mortgage lien on the Premises and on all fixtures and personal property owned by Borrower to be used in connection with the Improvements.

(e) Mortgagor's Affidavit: An affidavit of Borrower shall be executed and delivered to the County as required by the Title Insurer as noted above, certifying to all such facts as are required to delete the Standard Exceptions from the Lenders Title Insurance Policy and certifying that no liens exist on the Premises for taxes not yet due and payable and that no other parties are entitled to possession except as otherwise provided herein.

(f) Public Requirements: Grantee shall deliver to the County:

(i) letters from local utility companies or municipal authorities stating that electricity, telephone, sewer and water facilities will be available to the Premises upon the completion of the intended Improvements,

(ii) a letter from the appropriate Zoning Department certifying as to compliance with all zoning and land use regulations including but not limited to compliance with parking requirements, a copy of the applicable zoning ordinances certified by an appropriate official to be a complete and accurate statement thereof, and an up-to-date zoning map similarly certified,

(iii) evidence satisfactory to the County that all roads necessary for the full utilization of the intended Improvements for their intended purposes have either been acquired by the appropriate governmental authorities or have been dedicated to public use and accepted by such governmental authorities and that all necessary steps have been taken by Grantee and such governmental authorities to assure the complete construction and installation thereof,

(iv) copies of subdivision plats, restrictive covenants, plans of developments, and all other documents required by the local zoning and subdivision ordinances, and such other documents required by and satisfactory to the County; and evidence satisfactory to the County and its counsel that the Final Plans conform to all federal, state, and local laws, ordinances, rules and regulations, including, but not limited to, laws of the State of Florida regulating air and water pollution and land use,

(v) copies of all necessary approvals from appropriate environmental protection agencies, and

(vi) satisfactory soil test report;

(g) Corporate Documents: Grantee shall deliver to the County the following documents:

(i) the Articles of Organization of the Grantee and all amendments thereof, certified by the appropriate official of the State of Florida, together with certificates of such official to the effect that Grantee is in good standing therein;

(ii) certified resolutions of the Grantee authorizing the execution and delivery of the Conditional Grant Documents and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement;

(h) Flood Insurance: Grantee shall deliver to the County evidence

satisfactory to the County either that the Premises are not within a hazardous flood area as designated by the Department of Housing and Urban Development and any other governmental authority, or if the Premises are within such a hazardous area, that the Premises are covered by flood insurance supplied by the federal Insurance Administration to the maximum amount available, all as provided in the Flood Disaster Protection Act of 1973, as amended, together with appropriate endorsements thereto providing for the County's interests in the same manner as the Builder's Risk Insurance, including without limitation that such insurance will not be canceled without 30 days notice to the County.

(i) Opinion of Grantee's Counsel: Grantee shall deliver to the County an opinion of counsel for Grantee and addressed to the County, such counsel to be reasonably satisfactory to the County, to the effect that:

(i) This Conditional Grant Agreement, the Promissory Note, the Mortgage and Security Agreement and any other documents required to be delivered hereunder have been duly authorized, executed and delivered and are valid, binding and enforceable in accordance with their terms.

(ii) that Grantee is a Florida limited liability corporation in good standing under the laws of the State of Florida and has all the necessary power and authority to undertake its obligations hereunder,

(iii) that Grantee is in compliance with all laws, regulations, ordinances and orders of all governmental authorities, including, but not limited to, if applicable, the Interstate Land Sales Full Disclosure Act, all applicable federal and state securities laws, and all laws of the State of Florida, applicable to the type of development contemplated hereunder,

(iv) that there is no charter or bylaw of Grantee and no provision of any existing mortgage, indenture, contract or agreement known to such counsel binding on Grantee or affecting its property which could conflict with or in any way prevent the execution, delivery and carrying out of the terms of this Agreement,

(v) that to counsel's knowledge there are no proceedings pending or threatened before any court or administrative agency which will materially adversely affect the financial condition or operation of Grantee or the Premises, including but not limited to bankruptcy, reorganization or insolvency proceeding or any other debtor-creditor proceedings under the Bankruptcy Code or any similar statute, nor to counsel's knowledge are there any finance circumstances within counsel's knowledge which could lead to such proceedings,

(vi) that the Declaration of Restrictive Covenants will be a valid encumbrance on the Premises.

(vii) that the lien of the Mortgage is a valid lien on the Premises and the Security interests described in the mortgage are good and valid security interests.

(viii) such other matters as the County may reasonable require.

(h) Expenses: Grantee shall have paid all those fees and charges due and payable or ordered paid by the County as provided herein under Paragraph 6 of this Grant Agreement entitled Expenses;

(i) Other Documents: Grantee shall deliver to the County such other documents and information as the County may reasonably require; and

(j) Representations and Warranties: The representations and warranties of Grantee as set forth in this Agreement and the other documents required hereunder are true and correct.

5. **DISBURSEMENT OF GRANT FUNDS:** The Grant funds will be used solely for the purposes of acquiring the Premises and constructing the eighteen (18) single-family affordable housing units. The County shall disburse the Grant funds to Grantee in an amount not to exceed \$700,000.00 upon receipt of documentation evidencing payment of acquisition and construction costs. Payment will not be made hereunder for any other purpose or purposes except with prior written approval of the Board of County Commissioners of Palm Beach County.

6. **EXPENSES:** Grantee shall pay fees and charges incurred in the procuring and making of this Grant if applicable, and other expenses incurred by the County during the term of the Grant including the Title Insurance Company's fees and premiums, charges for examination of title to the Premises, expenses of surveys, Florida Documentary Stamp Taxes, recording expenses, any and all insurance premiums, taxes, assessments, water rates, sewer rates and other charges, liens and encumbrances upon the Premises, and any other amounts necessary for the payment of the costs of Improvements.

7. **SPECIAL PROVISIONS:** Grantee expressly agrees to the following terms and conditions:

(a) Grantee agrees that the Improvements will consist of twenty-two (22) single-family affordable homes constructed on the Premises in which eighteen (18) single-family homes shall be reserved for households who have very low, low, or moderate income pursuant to U.S. Government HUD guidelines for a period of thirty (30) years. A minimum of five (5) single-family homes shall be reserved for households who have very low income and a minimum of five (5) single-family homes shall be reserved for households who have low income.

(b) The Grantee shall not discriminate on the basis of race, creed, religion, color, sex, marital status, sexual orientation, national origin, age, familial status or handicap in the use, or occupancy of any housing constructed on the Premises.

(c) Grantee agrees that the affordable housing units in the project will:

- (i) provide energy efficient heating and cooling;
- (ii) provide ceiling fans in at least one living area and bedroom;
- (iii) provide awnings, blinds, sun screening or similar window treatment;
- (iv) provide high efficiency appliances over 8 SEER;
- (v) provide high efficiency water heater;
- (vi) provide wall insulation R-13 or better (wood) or R-7 or better (CBS);
- (vii) roof ventilation by mechanical means;
- (viii) provide washer and dryer hook-up in each unit;
- (ix) provide safe pedestrian paths;
- (x) outdoor living areas attached to each unit;
- (xi) paved driveways;
- (xii) provide first-time homebuyer education;
- (xiii) provide financial counseling;

(xiv) provide resident activities;

(d) Grantee agrees to execute and record the Declaration of Restrictive Covenants and abide by its terms and conditions upon disbursement of the Grant funds.

(e) Grantee agrees that Subject Affordable Housing Units will each be sold for less than the following:

3 bedrooms, two baths with 1688 sq. ft. under air, with garage - \$280,000 (seven (7) units)

3 bedrooms, two baths with 1,445 sq. ft. under air - \$240,000 (eleven (11) units)

(f) The Grantee acknowledges that eligible homebuyers will be eligible to apply for additional SHIP subsidies from Palm Beach County, but maximum eligibility for such subsidies shall be reduced by \$38,888.89 per unit.

Grantee further agrees that the units will be sold at a price which reflects the County's grant for this project. Accordingly, Grantee will provide documentation to the County that the sales price to eligible homebuyers is at least \$38,888.89 below the cost of acquisition development and construction of the Subject Affordable Housing Units.

Conditions (a-c) above shall, upon closing become covenants running with the land and shall survive the closing. These conditions and covenants will be recorded in the land records of Palm Beach County, Florida by inclusion in the Declaration of Restrictive Covenants and/or any separate document satisfactory to the County's Attorney citing the funding of this grant as consideration.

8. AFFIRMATIVE MARKETING: In furtherance of Palm Beach County's commitment to non-discrimination and equal opportunity in housing, the County's Department of Housing and Community Development (HCD) has established policies and procedures to affirmatively market housing units produced under the HOME, Community Development Block Grant (CDBG), and the State Housing Initiatives Partnership (SHIP) Programs.

These affirmative marketing procedures are implemented comprehensively for all the above housing programs through the County's Department of HCD and aim to effect greater participation of eligible persons from all racial, ethnic and gender-based minorities.

Palm Beach County will take the necessary steps to affirmatively market its housing programs through organized neighborhood meetings, distribution of literature, provision of information, press releases and other "good faith" efforts.

Palm Beach County Department of HCD, therefore, ensures that housing programs (geared toward existing homeowners and first-time home buyers) are advertised periodically through general circulation and minority newspapers, as well as through community information meetings at various locations, County-wide.

Borrower, in order to carry out the requirements and procedures of HCD's Affirmative Marketing Program, must comply with the following procedures:

(i) The Equal Opportunity logo or slogan will be used in advertisements;

(ii) Borrower will be requested to solicit applications from persons in the housing market area who are not likely to apply for housing without special

outreach. Borrower satisfies this requirement by posting a notice of vacancies in any or all of the following:

- Community Organizations
- Fair Housing Groups
- Housing Counseling Agencies
- Commercial Media
- Employment Centers
- Local Public Housing Authorities (PHA's)
or Other Similar Agencies

(iii) Palm Beach County HCD will keep records of their efforts to affirmatively market units and will require Borrower to provide copies of its records, including advertisements, minutes of meetings, income documentation, and census tract information as applicable.

(iv) Affirmative marketing records of the participants in the program will be monitored on-site annually, and a report will be compiled to assess their efforts in adhering to the requirements. These records will include, but not be limited to: copies of brochures, news clippings, press releases, sign-in logs from community meetings, and any letters of inquiry written to or from prospective clients. Borrower will be informed of their responsibility to adhere to the said requirements. Borrower will be required to submit monthly or quarterly reports using measures such as number of housing units provided, and number of families assisted. These measures will be used to determine the success of the program.

(v) The County will also assess the affirmative marketing program annually to determine the success of affirmative marketing actions (such as advertisements, etc.), and address the potential necessity for corrective actions, making distinctions between failures based upon marketing/targeting problems, those based on systemic (program eligibility) factors or lack of interest. Affirmative marketing success will be specifically tracked through the various program applications by notations of racial/ethnic/gender distinctions on program documents. The Department recognizes that the volume of response from racial/ethnic/gender groups may not be an indication of affirmative marketing efforts, and, therefore, it will make periodic adjustments in its affirmative marketing techniques with consultation from specialized Equal Housing Opportunity, fair housing and racial- and gender-based minority groups.

9. REPRESENTATIONS AND WARRANTIES OF GRANTEE. Grantee represents and warrants (which representations and warranties shall be deemed continuing) as follows:

(a) Organization Status. Grantee is a Florida limited liability company duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein. Grantee is duly authorized to receive from County the principal sum of \$700,000.00 and execute all Grant documents pertaining thereto.

(b) Financial Statements. The Financial statements of Grantee heretofore reviewed with the County are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Grantee since the date thereof;

(c) Authority to Enter into Grant Documents. The Grantee has full power and authority to enter into the Grant Documents and consummate the transactions contemplated hereby, and the facts and matters expressed or implied in the opinions of its legal counsel are true and correct;

(d) **Validity of Grant Documents.** The Grant Documents have been approved by those persons having proper authority, and to the best of Grantee's knowledge are in all respects legal, valid and binding according to their terms;

(e) **Conflicting Transactions of Grantee.** The consummation of the transaction hereby contemplated and the performance of the obligations of Grantee under and by virtue of the Grant Documents will not result in any breach of, or constitute a default under, any other Agreement to which Grantee is a party or by which it may be bound or affected;

(f) **Pending Litigation.** There are no actions, suits or proceedings pending before any court or law equity, or any Administrative Board, or, to the knowledge of the Grantee, threaten against or affecting it or the Premises, or, involving the validity or enforceability of the Grant Agreement, or the Declaration of Restrictions.

(g) **Availability of Utilities.** All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are or will be available at the boundaries of the Premises, including water supply, storm and sanitary sewer facilities, and electric and telephone facilities, and Grantee has obtained all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the intended Improvements;

(h) **Condition of Premises.** The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, and to Grantee's knowledge there are no soil conditions which would materially interfere with the construction of the Improvements;

(i) **Availability of Roads.** All roads necessary for the full utilization of the intended Improvements for their intended purposes have either been completed or the necessary rights of way therefore have either been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Grantee and such local authorities to assure the complete construction and installation thereof;

(j) **No Default.** There is no default on the part of the Grantee under this Grant Agreement or the Declaration of Restrictions, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute a default under any provision thereof; and

(k) **Advertising.** During the period of the construction of the Improvements, the County shall have the right to install and maintain on the Premises one or more signs identifying the County, or to be identified on such signs installed by others, as one of the institutions financing the Premises. Sign or signs will be provided by the County and erected at Grantee's expense.

(l) **Hazardous Waste.** Grantee is in compliance with all provisions of the federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980 and Solid Waste Disposal Act, Florida Statutes, Chapter 376, and other similar federal, state and local statutory schemes imposing liability on Grantee relating to the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and order issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by the Grantee. Grantee has paid any environmental excise taxes

imposed pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

(m) The Grantee has filed all Federal, State and local tax reports and returns required by any law or regulation to be filed by them, and have either duly paid all taxes, duties and charges indicated due on the basis of such returns and reports, or made adequate provisions for the payment thereof, and the assessment of any material amount of additional taxes in excess of those paid and reported is not reasonably expected.

10. **ADDITIONAL COVENANTS OF GRANTEE.** Grantee covenants and agrees with the County as follows:

(a) **Mechanics' Liens.** Grantee (i) will allow no work or construction to be commenced on the Premises, or goods specially fabricated for incorporation therein, which has not been fully paid for prior to the recording of the Declaration of Restrictions and Notice of Commencement or which could constitute a lien on the Premises (ii) will cause a certified copy of the Notice of Commencement to be posted as required by Chapter 713, Florida Statutes, as soon as possible after recording the Notice of Commencement, (iii) shall notify the County of any and all Notices to Grantee as Owner as that term is defined in Chapter 713, Florida Statutes, within five (5) days of receipt thereof, and (iv) will comply with all provisions of the Florida Mechanics' Lien Law, including but not limited to, payment and notice provisions contained therein. Grantee shall indemnify and hold the County harmless from the claims of any mechanics' lien or equitable lien and pay promptly upon demand any loss or losses which the County may incur as a result of the filing of any such lien, including the reasonable cost of defending same and the County's reasonable attorneys' fees in connection therewith.

In addition, Grantee agrees, at its sole cost and expense, to have any mechanics' lien or equitable lien which may be filed against the Premises or undisbursed funds of this Grant released, bonded or insured over within sixty (60) days of the date of filing same, time being of the essence. The County shall be under no obligation to make further disbursements while any such lien remains outstanding against the Premises.

Grantee hereby authorizes the County to demand, on Grantee's behalf, the statement of account referred to in Section 713.16(2) of the Florida Statutes, of any potential lienor filing a Notice to Owner. It is specifically understood and agreed, however, that the County's right to request such statements of account will in no way impose any obligation on the County to use such authority, and the exercise of such authority on one or more occasion shall not create or imply any obligation on such party to exercise such authority on subsequent occasions.

(b) **No Transfer of Premises.** Except as specifically set forth in the Declaration of Restrictions or herein, the Premises or any part thereof shall not be sold, leased, conveyed, mortgaged or encumbered in any way without the prior written consent of the County and other mortgage lien holder except as provided elsewhere herein in the Declaration of Restrictive Covenants or other mortgage documents, it being understood and agreed that part of the consideration for the Grant is the obligation of Grantee.

(c) **Compliance with Laws.** Grantee will comply promptly with all federal, state and local laws, ordinances and regulations relating to the construction, use, and leasing of the Premises, and will obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for construction and use of the Improvements.

(d) **Brokerage Commissions.** Grantee will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to this Grant, and Grantee will indemnify and hold County harmless from the claims of any broker(s) arising by reason of the execution hereof or

the consummation of the transactions contemplated hereby.

(e) **Financial Statements to be Furnished.** Grantee shall furnish to the County:

(i) Upon the County's request, a complete and current financial statement of all assets and liabilities, contingent or otherwise, prepared in accordance with generally accepted accounting principles and verified by affidavit of Grantee and, at the request of the County, certified (in form satisfactory to the County) by an independent certified public accountant acceptable to the County;

(ii) Promptly, from time to time, such other information regarding the operations, business, affairs and financial condition of Grantee as the County may reasonably request.

(f) **Grantee to Maintain Bookkeeping System.** Grantee shall, if required by the County, maintain a bookkeeping system to the construction project in form and content sufficient for the County and Inspector to conduct reviews, inspections, certifications and reports required by this Agreement. The County shall have full access, as allowed under the Public Records Law, at any reasonable time to the books, records and contracts pertaining to the Premises and Grantee.

(g) **Insurance Proceeds.** The Grantee shall keep the Premises continually insured in an amount not less than full insurable value of the Premises, which coverage shall insure the Premises against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the County, in its sole discretion shall from time to time require, for the benefit of the County. All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to the County, with loss, if any, payable to the County, as its interest may appear, which shall be satisfactory to the County; and forthwith upon the issuance of such policies they will deliver to the County copies of receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies. Any policies furnished the County shall become its property in the event the County becomes the owner of the Premises by foreclosure or otherwise. Subject to the provisions of the Mortgage, should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Premises, then in such event, County, and Grantee may jointly elect to use the proceeds for the reconstruction and repair of the Premises or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not.

(h) **Indebtedness.** With respect to the Premises encumbered by the Grantee of even date herewith, Grantee will not incur, create, assume or permit to exist any indebtedness constituting the deferred purchase price of any property or assets, or any indebtedness or liability evidenced by notes, bonds, debentures or similar obligations without the written approval of the County, except indebtedness owed the County and the aforementioned First Mortgage; provided however, that the First Mortgage shall not exceed the amounts contained in the recitals incorporated in this Grant Agreement. Grantor agrees to execute any documents necessary to subordinate its Mortgage to the First Mortgage.

(i) **Further Assurances and Preservation of Premises.** Grantee will do all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Grant Agreement, as the County shall reasonably require from time to time, and will do such other acts necessary or desirable to preserve and protect the Premises to secure the Note, as the County may reasonably require.

(j) **No Assignment.** Grantee shall not assign this Grant Agreement or any interest therein and any such assignment is void and of no effect.

11. **INSPECTIONS.** Grantee will permit County, or its representatives to enter upon the Premises, inspecting Improvements and all materials to be used in the construction thereof, and to examine all details, plans and shop drawings which are

kept at the construction site, and will cooperate, and cause Grantee's general contractor and subcontractors to cooperate with the County's representative.

12. **DEFAULT.** The following events shall be deemed Events of Default:

(a) **Bankruptcy.** If there is filed by or against Grantee a petition in bankruptcy or a petition for the appointment of a receiver or trustee of the property of Grantee and any such petition not filed by Grantee is not dismissed within sixty (60) days of the date of filing, or if Grantee files a petition for reorganization under any of the provisions of the Bankruptcy Code or of any assignment for the benefit of creditors or makes any insolvency assignment or is adjusted insolvent by any court of competent jurisdiction; or

(b) **Breach of Covenants, Warranties and Representations.** If any warranty or representation made by Grantee in this Grant Agreement or in any other Grant Document shall at any time be false or misleading in any material respect, or if Grantee shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Grant Agreement and any other document given in connection with the Grant or development of the Improvement (provided, that with respect to non-monetary defaults, the County shall give written notice to Grantee, who shall have thirty (30) days to cure), or is unwilling to meet its obligations thereunder; or

(c) **Material Adverse Change of Grantee.** If any material adverse change shall occur in the financial condition of Grantee at any time during the term of the Mortgage from the financial condition revealed in statements already presented to and accepted by the County; or

(d) Grantee shall fail to use all funds under this Grant Agreement for costs associated with the acquisition of the Premises by December 31, 2008. In the event Grantee fails to use all funds by December 31, 2008, all remaining funds shall revert to the County and the County may reallocate for other projects or needs.

(e) Grantee shall fail to complete construction of the Improvements and secure a Certificate of Occupancy for the improvements by December 31, 2010.

(f) Grantee shall default under the First Mortgage, or this Mortgage which default is not cured within applicable cure periods.

13. **REMEDIES OF LENDER.** Upon the happening of an Event of Default, then the County may, at its option, upon written notice to Grantee:

(a) Cancel this Grant Agreement;

(b) Commence an appropriate legal or equitable action to enforce performance of this Grant Agreement;

(c) Exercise any other rights or remedies the County may have under the Grant Agreement executed in connection with the Grant or which may be available under applicable law.

14. **GENERAL TERMS.** The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

(a) **Rights of Third Parties.** All conditions of the County hereunder are imposed solely and exclusively for the benefit of the County and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that the County will make Disbursements in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Grant Agreement or the Grant Documents, any provisions of which may be freely waived in whole or in part by the County at any time if, in its sole discretion, it deems it desirable to do so. In particular, the County makes no representations and assumes no duties or obligations as to third

parties concerning the quality of the construction by Grantee of the Improvements or the absence thereof of defects.

(b) Grantee is not the County's Agent. Nothing in this Agreement, or any other Grant Document shall be construed to make the Grantee the County's agent for any purpose whatsoever, or the Grantee and the County partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

(c) The County Not Liable for Damage or Loss. All inspections and other services rendered by or on behalf of the County pursuant to this Grant Agreement shall be rendered solely for the protection and benefit of the County. Neither Grantee nor other third persons shall be entitled to claim any loss or damage against the County or against its agents or employees for failure to properly conduct inspections and other such services contemplated by this Grant Agreement.

(d) The County Not Obligated to Ensure Proper Disbursement of Funds to Third Parties. Nothing contained in this Agreement, or any Loan documents, shall impose upon the County any obligation to oversee the proper use or application of any disbursements and disbursements of funds made hereunder.

(e) Indemnification from Third Party Claims. Grantee shall indemnify and hold County harmless from any liability, claims or losses resulting from the disbursement of the Grant proceeds to Grantee or from the condition of the Premises, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Grant. This provision shall survive the repayment of the Grant and shall continue in a full force and effect so long as the possibility of such liability, claims, or losses exists.

(f) Rights of Subcontractors, Laborers and Materialmen. In no event shall this Agreement be construed to make the County, Title Company or agent of the County liable to Grantee's Contractor or any subcontractors, laborers, materialmen, craftsmen, or others for labor, materials, or services delivered to the Premises or goods specially fabricated for incorporation therein, or for debts or liens accruing or arising to such persons or parties against Grantee or Grantee's Contractor. It is distinctly understood and agreed that there is no relation of any type whatsoever, contractual or otherwise, whether express or implied, between the County and Grantee's Contractor, any materialman, subcontractor, craftsman, laborer or any other person or entity supplying any labor, materials or services to the Premises or specially fabricating goods to be incorporated therein. Except as otherwise specifically provided herein, no such person or entities are intended to be third party beneficiaries of this Agreement or any document or instrument related to the Grant or to have any claim or claims in or to any undisbursed or retained Grant proceeds.

(g) Evidence of Satisfaction of Conditions. The County shall, at all time, be free independently to establish to its good faith and satisfaction, and in its absolute discretion, the existence or nonexistence of a fact of facts which are disclosed in documents or other evidence required by the terms of this Agreement.

(h) Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.

(i) Invalid Provisions to Affect No Others. If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

(j) Application of Interest to Reduce Principal Sums Due. In the event that any charge, interest or late charge is above the maximum rate provided by law, then any excess amount over the lawful rate shall be applied by the County to reduce the principal sum of the Loan or any other amounts due the County hereunder.

(k) Governing Law. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement and the venue shall be in Palm Beach County.

(l) Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.

(m) Agreement. This Grant Agreement constitutes the entire understanding and agreement between the parties with respect the subject matter hereof and may not be modified or amended, except in writing and signed by all parties hereto.

(n) Waiver. If the County shall waive any provisions of the Grant Documents, or shall fail to enforce any of the conditions or provisions of this Grant Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the County shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

(o) Notices. All notice from the Grantee to the County and the County to Grantee required or permitted by any provision of this agreement shall be in writing and sent by registered or certified mail and addressed as follows:

TO LENDER: Board of County Commissioners
c/o Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401
Attn: Tammy K. Fields,
Sr. Assistant County Attorney

TO GRANTEE: Brook's Subdivision, LLC
c/o NORTHWEST RIVIERA BEACH COMMUNITY
REDEVELOPMENT CORPORATION
2001 Broadway, Suite 510
Riviera Beach, FL 33404
Attn: Rev. William H. Burrs, President

Such addresses may be changed by written notice to the other party.

(p) Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors and assigns; but nothing herein shall authorize the assignment hereof by the Grantee.

(q) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.

(r) Waiver of Jury Trial. GRANTEE WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS GRANT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY'S EXTENDING CREDIT TO Grantee AND NO WAIVER OF LIMITATION OF THE COUNTY'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON THE COUNTY'S BEHALF.

15. **EFFECTIVE DATE OF AGREEMENT.** This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners. The Effective Date shall be the date on which this Grant Agreement is executed by the Board of County Commissioners.

16. **ANNUAL / SEMI-ANNUAL REPORTS.** The Grantee shall provide the COUNTY (i.e., to the Palm Beach County Commission on Affordable Housing) with a detailed Progress Report for all construction projects that are not fully completed and occupied by income eligible applicants. This progress report is due semi-annually (by December 31st and June 30th of each year). The progress report shall include an updated timeline for the completion of construction and occupancy of the SHIP assisted units. Once the construction phase is completed and the SHIP assisted units have been occupied, the Grantee shall provide an Annual Report to the Commission on Affordable Housing no later than thirty (30) days following the end of each State Housing Initiative Partnership (SHIP) Program fiscal year (by July 30th). The Annual Report format and spreadsheet is listed as "Exhibit F." An Annual Report will be required for the entire project affordability timeframe

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IN WITNESS WHEREOF, Grantee and the County have caused this Agreement to be executed on the date first above written.

Signed, sealed and delivered in the presence of:

Schiller Ambrose
Dennis Martin

BROOK'S SUBDIVISION, LLC
a Florida limited liability company,

By: NORTHWEST RIVIERA BEACH
COMMUNITY REDEVELOPMENT
CORPORATION, a Florida
Not-for-profit corporation

By: William H. Burr
Rev. William H. Burr,
President

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 22 day of July, 2008 by Rev. William H. Burr, President of Northwest Riviera Beach Community Redevelopment Corporation, the sole member of Brook's Subdivision, LLC, who is personally known to me or who has produced as identification and who did/did not take an oath.

(Signature of Notary)



(Typed, Printed, or Stamped
Name of Notary)

My Commission Expires:

ATTEST:

SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, FLORIDA, a
political subdivision of the
state of Florida

BY ITS BOARD OF COUNTY
COMMISSIONERS

BY: _____
Clerk

BY: _____
Addie L. Greene, Chairperson

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

BY: _____
County Attorney

BY: _____
Department Head

EXHIBIT "A"

LEGAL DESCRIPTION

Lots 1-9 and 14-22, BROOK'S SUBDIVISION, according to the plat recorded in Plat Book 111, Page 1, as recorded in the Public Records of Palm Beach County, Florida.

EXHIBIT "B"

Return to:
Tammy K. Fields
Assistant County Attorney
County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT FOR AFFORDABLE HOUSING (the "Declaration") is made by BROOK'S SUBDIVISION, LLC, a Florida limited liability company, (hereinafter referred to as the "Declarant") as the current owners of the property described on Exhibit "A" attached hereto (the "Property").

1. Definitions: In this Covenant, the following words and phrases shall have the meanings indicated, unless the context requires otherwise.

a. "Adjusted Gross Income" as defined by the Palm Beach County Comprehensive Plan (page 3-HE), means all wages, assets, regular cash or non-cash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code.

b. "Affordable Housing" shall have the meaning contained in the Palm Beach County 1989 Comprehensive Land Use Plan's Housing Element, as of that date or as such term may be modified in future amendments to the Plan. As presently defined (page 2-HE), Affordable Housing means that monthly rents including utilities or monthly mortgage payments including property taxes, insurance and utilities do not exceed thirty-five (35%) percent of that amount which represents the percentage of the median adjusted gross annual income for the households composed of very low-income persons and low-income persons.

c. "Compliance Period" shall mean ten Thirty (30) years from the date of first occupancy of a Subject Affordable Housing Unit.

d. "Declarant" means the entity creating the initial Development, BROOK'S SUBDIVISION, a Florida limited liability company, and its successors and assigns, including any or all successors or assigns holding an interest in a Subject Affordable Housing Unit, which specifically includes Eligible Households.

e. "Development" means a planned unit development of homes in Riviera Beach, Florida, to be known as "Brooks Subdivision".

f. "Eligible Household" means one or more persons living together and sharing living expenses whose combined income does not exceed the limits of very low and low income households as identified in the guidelines of the U.S. Department of Housing and Urban Development (HUD), localized for Palm Beach County, and published annually by the Palm Beach County Department of Housing and Community Development. Eligible very low income household income are those with adjusted gross incomes less than or equal to Fifty (50%) percent of the median adjusted gross income for households within the County. Eligible low income households are those with eighty (80%) percent of the median adjusted gross income for households within the County. Eligible moderate income households are those with 120% of the median adjusted gross income for households within the County. For purposes of this paragraph, one or more persons from this living arrangement will occupy a Subject Affordable Housing Unit on a year-round basis as the primary residence.

g. "Monitoring Entity" shall mean the Palm Beach County Department of Housing and Community Development.

h. "Owner" means the person or entity identified in this covenant as the Declarant and/or any successor or assign holding an interest in a Subject Affordable Housing Unit.

i. "Subject Affordable Housing Unit" means one of the eighteen (18) single-family homes with the Development for which
Thirty (30) year deed restrictions shall be recorded in accordance with this Declaration.

2. **Occupancy.** A Subject Affordable Housing Unit subject to this Declaration shall be occupied only by one who qualifies as an Eligible Household on the date of occupancy of the Unit.

3. **Term of Covenant.** The Term of this covenant shall be for a period of Thirty (30) years from the date of the initial occupancy of the last Subject Affordable Housing Unit.

4. **Restriction.** Declarant shall include in every deed of sale for a Required Affordable Low Income Unit, a restriction stating as follows: "This property is to be sold and occupied by an Eligible Very Low or Low Income Household only, in accordance with the Declaration of Restrictive Covenant for Affordable Housing recorded in ORB _____ Page _____ of the Public Records of Palm Beach County. Said Declaration requires verification by Palm Beach County of the eligible household prior to closing. This restriction shall be in effect for Thirty (30) years from the date of the first occupancy of the Subject Affordable Housing Unit."

5. **Selection of Eligible Households.** The Declarant and the County, their successors and assigns, agree that the procedures for selection of an occupant of an Owner of a Subject Affordable Housing Unit under this paragraph shall not discriminate against any applicant based upon any protected class included in any federal, state or local fair housing law. For so long as Brook's Subdivision, LLC, is the owner of a Subject Affordable Housing Unit, selection of an Eligible Household, evaluation of its income and assignments of Affordable Units shall be performed exclusively by Brook's Subdivision, LLC, according to the expressed terms of this paragraph. Brook's Subdivision, LLC, shall have the unrestricted right to screen all Eligible Household applicants. Such screening shall include, but not be limited to, credit-worthiness, employer references, income and ownership of assets and any other background checks usually made by Brook's Subdivision, LLC on any prospective purchaser's application. Subject to the foregoing, Brook's Subdivision, LLC shall retain the exclusive and absolute right to reject Eligible Household applicants. Once approved by Brook's Subdivision, LLC, the eligible household must be submitted to Palm Beach County for verification of income eligibility prior to closing on that unit. After Brook's Subdivision, LLC conveys the property to an Eligible Household, the Eligible Household shall be responsible for submitting subsequent Eligible Households to Palm Beach County for verification of income eligibility prior to the closing on a unit.

6. **Consideration for Declaration.** Declarant applied for a grant from Palm Beach County in the amount of \$700,000.00 in order to acquire the property upon which the Development is to be constructed. This Declaration is done in consideration of said grant.

Therefore, Declarant covenants as follows:

a. Declarant shall sell eighteen (18) of its homes to Eligible Very Low, Low and Moderate Income Households, of which a minimum five (5) units shall be reserved for Eligible very Low Income Households, and a minimum of five (5) units shall be reserved for Eligible Low Income Households.

b. Beginning on the first anniversary of the first occupancy of the first Subject Affordable Housing Unit within the Development (and then annually until and including the thirtieth anniversary of the first occupancy of the last Subject Affordable Housing Unit) Declarant shall file an Annual Affordable Housing Summary Report with the Monitoring Entity. This report shall provide the Monitoring Entity with documentary evidence showing how many Eligible Very Low, Low, and Moderate Income Households have occupied homes within the development.

c. It is desired that the Subject Affordable Housing Units be occupied at the same rate as other Units. Declarant will document number and location of the Subject Affordable Housing

Units occupied during the year at the time of the annual report.

d. Further, in the event Declarant violates any of the terms and conditions of the Grant Agreement or this Declaration of Restrictive Covenants dated _____, or fails to complete the Subject Affordable Housing Units, Declarant shall pay to the County the amount of \$38,888.89 per unit uncompleted or unconveyed to an Eligible Household.

7. Covenant Compliance. The Declarant, their successors and assigns, shall furnish to the County such information about the Subject Affordable Housing Units as the County may request at each occasion of transfer of title, including, but not limited to the identity of the Declarant, the identity of the Eligible Household, the condition of the unit, the identity of the occupants, and the household income of the occupants, all for the purpose of assuring compliance with this Declaration. Declarant shall include in each lease agreement or other participant agreement the right of County to approve the sale of the unit to an Eligible Household, and the requirement to provide income and other necessary information to the County. The County shall have access to inspect the Affordable Units at reasonable times and upon reasonable prior notice to the Declarant. The Declarant and their successors and assignees, shall include a reference to the Thirty (30) Year Deed Restriction which guarantees the affordability of the unit, and which requires County verification on initial sale and verification of resales to an Eligible Very Low, Low, and Moderate Income Household before closing, and an explanation of the responsibilities resulting from the Thirty (30) Year Deed Restriction upon any subsequent owners, successors and assigns, in any and all sales documents, agreements, etc., and in deeds or other instruments conveying an interest in the Required Low Income Property or any part thereof. It is further agreed that the covenants and restrictions contained herein are for public purposes.

8. Annual Report. The Declarant shall provide a report detailing the Declarant's compliance with the terms of this Covenant, as well as the maintenance of satisfactory occupancy rate for the eighteen (18) Subject Affordable Housing Units for the purpose of assuring compliance with this Covenant.

Not later than (date) June 1st, of each year following the first occupancy of a Subject Affordable Housing Unit, for the term of this covenant, the Declarant shall furnish to the Monitoring Entity, on a form provided by the County, an Annual Report which shall contain, at a minimum, sufficient information and documentation to prove the compliance of the Declarant with this paragraph for each unit.

- a. The identity of the Declarant and/or Owner(s);
- b. The compliance with report requirements explained in Section 16 below.

9. Covenant to Run with the Land. It is intended and agreed that the covenants and restrictions set forth in this Declaration shall run with the land constituting the property and shall be binding upon any owner (s), successors and assigns for the benefit of and shall be enforceable by the County and its successors and assigns, for a period of thirty (30) years from the date of the first occupancy of each Subject Affordable Housing Unit.

10. Deed Restrictions. A deed restriction will be required for each Subject Affordable Housing Unit in order to guarantee the affordability of each of these units for a period of Thirty (30) years from date of first occupancy.

11. Modifications. This Covenant shall not be extinguished, enlarged, modified or replaced during the Thirty (30) Year Term, except with written authorization of Palm Beach County Board of County Commissioners, and shall be binding upon any owner(s), successor(s) and assign(s) for the benefit of and shall be enforceable by County and its successors and assigns during the Term.

12. Fair Housing. The Declarant, their successors and assigns, agree that the sale or rental of all units shall be done in conformity with federal, state and local Fair Housing laws.

13. Enforcement. Without limitation on any other rights or remedies of the County, its successors or assigns, in the event of any occupancy of any Subject Affordable Housing Unit

in violation of the provisions hereof, the County shall be entitled to seek specific performance of the provisions hereof.

14. Release of Restrictions. Restrictions will be automatically released at the expiration of the term of the covenant. Restrictions may also be partially released upon payment of \$38,888.89 to Palm Beach County for each lot upon which a release is sought.

15. Penalties: Remedies for Violations. Should there be found any violation of any of the restrictions, covenants and/or agreements set forth herein, the Declarant or the selling Owner shall be liable to pay to Palm Beach County money damages equaling the incentive offered by the Developer at time of initial sale, but in no event less than \$38,888.89.

16. Notices and Reports. All notices and reports required hereunder shall be sent to the Director of Housing and Community Development Department, 160 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

17. Recorded in the Public Records. This Covenant shall be recorded in the Official Public Records of Palm Beach County. A copy of the recorded Covenant shall be provided to the Director of Housing and Community Development Department, 160 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day of _____, 2008.

Signed, Sealed and Delivered in the Presence of:

Declarant:

BROOK'S SUBDIVISION, LLC, a Florida limited liability company

By: NORTHWEST RIVIERA BEACH COMMUNITY REDEVELOPMENT CORPORATION, a Florida not for profit corporation, its sole member

Print Name

Rev. William H. Burr, President

Print Name

STATE OF FLORIDA }
 } SS
COUNTY OF PALM BEACH }

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by Rev. William H. Burr, as President of Northwest Riviera Beach Community Redevelopment Corporation, the sole member of Brook's Subdivision, LLC, who is personally known to me or has produced _____ as a type of identification.

Notary Signature

Print Name:
Notary Public, State of:
Serial Number, if any:
My commission expires:

PROMISSORY NOTE

\$700,000.00

West Palm Beach, Florida
_____, 2008

FOR VALUE RECEIVED the undersigned, BROOK'S SUBDIVISION, LLC. a Florida limited liability corporation ("Maker"), promises to pay to the order of PALM BEACH COUNTY, a political subdivision of the State of Florida, together with any other holder hereof ("Holder"), at 301 North Olive Avenue, West Palm Beach, Florida 33401, or such other place as Holder may from time to time designate in writing, the principal sum of Seven Hundred Thousand Dollars (\$700,000.00) plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) This Note shall bear interest only computed at the stated rate of three (3%) percent per annum on the outstanding principal balance from time to time remaining unpaid from the date of each disbursement.
- 2) Repayment hereunder shall occur as follows:
 - (a) From the date hereof until **January 1, 2011** no payments will be required and interest will not accrue and be payable at the maturity date.
 - (b) Repayment thereafter shall be dependent upon the successful completion of 18 single-family homes for eligible very low, low and moderate income households (Subject Affordable Housing Units) pursuant to the terms of the Grant Agreement dated _____, **2008**. If all Subject Affordable Housing Units have been completed in accordance with the Grant Agreement and conveyed to eligible households and the Declaration of Restrictive Covenants required under the Grant Agreement has been executed and recorded, then no repayment will be required.
 - (c) In the event the 18 single-family homes have not been completed and conveyed to eligible households on or before **December 31, 2010**, or the Declaration of Restrictive Covenants have not been filed, then repayment will be immediately due and payable at the rate of \$38,888.89 per unit uncompleted or unconveyed to an eligible household.
- 3) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance.
- 4) After maturity or acceleration, this Note shall bear interest at the Default Interest Rate until paid in full.
- 5) All terms hereunder shall be as construed and defined in Chapter 91-28, Florida Administrative Code.

PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA IS EXEMPT FROM PAYMENT OF EXCISE TAX ON DOCUMENTS.

This Note is executed pursuant to the terms and conditions of that certain Grant Agreement dated _____, **2008** between Maker, as Borrower, and Holder, as Lender, is secured by a Mortgage and Security Agreement (the "Mortgage")

encumbering certain real property located in Palm Beach County, Florida (the "Premises"), all of even date herewith. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Grant Documents including but not limited to the Declaration of Restrictive Covenants."

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Nothing herein contained, nor any transaction related thereto, shall be construed or so operated as to require the Maker to pay interest at a greater rate than is now lawful in such case to contract for, or to make any payment, or to do any act contrary to ethical law. Should any interest or other charges paid by the Maker, or parties liable for the payment of this Note, in connection with the Grant Documents result in the computation or earning of interest in excess of the maximum rate of interest that is legally permitted under applicable law, any and all such excess shall be and the same is hereby waived by the Holder, and any and all such excess shall be automatically credited against and in reduction of the balance due under this indebtedness, and a portion of said excess which exceeds the balance due under this indebtedness shall be paid by the Holder to the Maker.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the occurrence of an Event of Default pursuant to any other Grant Documents now or hereafter evidencing, securing or guarantying payment of this Note. Exercise of this right shall be without notice to Maker or to any other person liable for payment hereof, notice of such exercise being hereby expressly waived.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise) shall bear interest at the highest rate allowed by applicable law from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay holder a late charge of five percent (5%) of any required payment which is not received by Holder when said payment is due pursuant to the Mortgage. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Maker agrees, to pay all costs of collection including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due hereunder, and shall not affect the right of Holder to pursue all remedies available to it under any Grant Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a case of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Grant Documents.

The term "other person liable for payment hereof" shall include any endorser, guarantor, surety or other person now or hereafter primarily or secondarily liable for the payment of this Note, whether by signing this or another grant document.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, all other forms of notice whatsoever, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE BORROWER UNDER THE GRANT REFERENCED HEREIN, THE SOLE REMEDY OF THE HOLDER SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS GRANT, AND IN NO EVENT SHALL THE BORROWER HAVE ANY LIABILITY FOR THE PAYMENT OF THE GRANT OR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE GRANT.

MAKER WAIVES ITS RIGHT TO A TRIAL BY JURY IF ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS NOTE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER'S EXTENDING CREDIT TO MAKER AND NO WAIVER OR LIMITATION OF HOLDER'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

BROOK'S SUBDIVISION, a Florida limited liability company

By: NORTHWEST RIVIERA BEACH
COMMUNITY REDEVELOPMENT
CORPORATION, a Florida
not-for-profit corporation, its sole member

By: _____
Rev. William H. Burr, President

This instrument prepared by
and to be returned to:
Tammy K. Fields, Esq.
Palm Beach County Attorney's Office
P.O. Box 1989
West Palm Beach, FL 33402

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE INDENTURE, executed this ____ day of _____, 2008, by BROOK'S SUBDIVISION, a Florida limited liability company, (the "Mortgagor"), as party of the first part, and PALM BEACH COUNTY, a political subdivision of the State of Florida (the "Mortgagee") (which term as used in every instance shall include the Mortgagee's successors and assigns), as party of the second part;

WITNESSETH:

The Mortgagor is the owner of the premises described in Exhibit "A" attached hereto (hereinafter the "Premises") and made a part hereof. Mortgagee has this date loaned Seven Hundred Thousand Dollars (\$700,000.00) to Mortgagor and in connection therewith Mortgagor has this date executed and delivered to Mortgagee its Promissory Note in that amount (the "Note"). A true copy of the Note is annexed hereto as Exhibit "B" and forms a part hereof.

This Mortgage is given in accordance with that certain Grant Agreement executed on the ____ day of _____, 2008 between Mortgagor and Mortgagee. This Mortgage and Security Agreement, the Note, and the Grant Agreement and the Declaration of Restrictive Covenants shall hereinafter collectively be referred to as the "Loan Documents".

GRANTING CLAUSE:

NOW, THEREFORE, the Mortgagor, in consideration of the premises and in order to secure payment of both the principal of, and the interest and any other sums payable on, the Note or this Mortgage, and the performance and observance of all the provisions hereof, and of the grant documents, hereby gives, leases, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee, all of the Mortgagor's estate, right, title and interest in, to and under any and all of the Premises, improvements (including improvements to be made hereafter), fixtures here and below described and located on the Premises which sometimes collectively referred to hereinafter as the "Mortgaged Property".

TOGETHER with all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor including but not limited to all of Mortgagor's sewer capacity rights, and Mortgagor's rights under contracts, permits, licenses and all other documents and payments affecting the Premises, reserving only the right to the Mortgagor to collect the same so long as the Mortgagor is not in default hereunder and so long as the same are not subjected to garnishment levy, attachment or lien.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in fee simple and has good right to

convey the same, that the same are unencumbered excepting taxes accruing subsequent to 2007 and those certain exceptions appearing on the Mortgagee's Title Insurance Policy given in connection herewith and specifically approved by Mortgagee, and that the Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinafter expressly provided.

Notwithstanding the foregoing, this Mortgage shall be subject and subordinate to separate mortgage and security agreements and related loan documents encumbering the Premises by Mortgagor in favor of Local Initiatives Support Corporation, in an original principal amount of Five Million Seven Hundred and Ten Thousand Dollars (\$5,710,000.00) ("First Mortgage").

PROVIDED ALWAYS that if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note or complied with all conditions of the Note, which Note is in the original principal amount of \$700,000.00 and has a maturity date of December 31, 2010, unless such maturity is accelerated as set forth in the Note, and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Grant Documents, then in such event this Mortgage and Security Agreement and the estate hereby created shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

1.1 Payments of Indebtedness. The Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect to the Note at the time and place and in the manner specified in the Note and/or comply with all conditions of the Note, according to the true intent and meaning thereof, all and any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

1.2 Taxes, Liens and Other Charges.

(a) The Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges and all other public charges, whether of a like or different nature, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee copies of receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

(b) The Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and other persons or entities which, if unpaid, might result in or permit the creation of, a lien on Mortgaged Property or any part hereof, or on the revenues, rents, issues, income and profits arising there from whether such lien is or may become prior or remain inferior to the Mortgage and also, irrespective of the priority of such other lien(s). Mortgagor in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

(c) The Mortgagor shall pay any taxes except income taxes imposed on the Mortgagee by reason of the Mortgagee's ownership of the Note or this Mortgage.

1.3 Insurance. The Mortgagor will keep the Mortgaged Property continuously insured in an amount no less than full insurable value which coverage shall insure the Mortgaged Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the Mortgagee, in its sole

discretion, shall from time to time require, for the benefit of the Mortgagee. All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to the Mortgagee, with loss, if any, payable to the Mortgagee as its interest may appear, pursuant to a noncontributory mortgagee clause which shall be satisfactory to the Mortgagee; and forthwith upon the issuance of such policies they will deliver to the Mortgagee copies of receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies. Any policies furnished the Mortgagee shall become its property in the event the Mortgagee becomes the owner of the Premises by foreclosure or otherwise. The Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property. Each insurance company is hereby authorized and directed to make payment for all such losses to the Mortgagor and the Mortgagee jointly. Should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Mortgaged Property, then in such event, Mortgagee and Mortgagor may jointly elect to use the proceeds for the reconstruction and repair of the Mortgaged Property or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not.

1.4 Care of Premises.

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) If the Premises or any part thereof is damaged by fire or any other cause, the Mortgagee will give immediate written notice of the same to the Mortgagee.

(c) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours.

(d) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(e) If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor will, upon request of the Mortgagee, promptly restore the Premises to the equivalent of its condition immediately prior to such damage, and if a part of the Premises shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Premises in a manner satisfactory to the Mortgagee. Nothing contained herein shall, however, relieve the Mortgagor from its obligation to make payments under the Promissory Note in accordance with its terms.

1.5 Further Assurances; Modifications. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, exercise and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any failure by the Mortgagor so to do the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.6 Expenses. In addition to the expenses described in subparagraph 2.6(b) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs and expenses, including those in connection with appellate proceedings, incurred by the Mortgagee in any proceedings or in any action, legal proceeding or dispute of any kind which relate to or arise from the Mortgage of the interest created

herein, or the Premises, including but not limited to the exercise of the power of sale of this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

1.7 Estoppel Affidavits. The Mortgagor, upon ten days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets or defenses exist against such principal and interest.

1.8 Subrogation. The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.9 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; in the performance of any covenant, term or condition of any leases affecting all or any part of the Premises; or in the performance or observance of any covenant, condition or term of this Mortgage; then the Mortgagee, at its option, may perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the maximum rate provided by law. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgagor.

1.10 Condemnation. In the event of a condemnation (which term when used in the Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof) either temporarily or permanently, of any part of the Premises constituting twenty percent (20%) or more of the full value of the Premises, or in the event such condemnation makes the Premises unusable for the purposes contemplated herein and in the Loan Agreement, then in such event, the entire indebtedness secured hereby shall at the option of the Mortgagee, become immediately due and payable. Such events shall be a Condemnation Event ("Condemnation Event"); however, any condemnation for less than twenty percent (20%) of value or not rendering the Premises unusable, shall not be affected by this section. In the event of a Condemnation Event: The Mortgagee shall be entitled to all compensation, awards, and other payments or relief thereof, and is hereby authorized at its option, to commence, appear in, and prosecute, in its own, or the Mortgagor's name, any action or proceeding relating to any condemnation, any to settle or compromise any claim in connection therewith; and all such compensation, awards, damages, claims, rights of action and proceeds, and the right thereto from any Condemnation Event are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting there from, all its expenses, including attorneys fees, may release any monies received by it without further affecting this Mortgage and may apply the same in such manner as the Mortgagee shall determine, to the reduction of the sum secured hereby, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds from a Condemnation Event as the Mortgagee may require.

1.11 Environmental Representations.

(a) The Mortgagor covenants with the Mortgagee that the Premises have not been used and will not be used in whole or in part for the storage of hazardous waste.

(b) No violation of any Federal, State or local environmental regulations now exists regarding the Mortgage Property.

(c) Mortgagor shall comply with all Federal, State and local environmental regulations during the construction of the improvements on the Premises.

(d) Mortgagor shall give written notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any hazardous substances on the Mortgage Property or of any hazardous substances contamination thereon, or of any notices received by Mortgagor that are violations or potential violations of any environmental regulation laws, ordinances, rules or regulations exists on the Mortgage Property.

ARTICLE II.

2.1 Due on Sale or Further Encumbrance Clause. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, found it acceptable and continues to rely upon the same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and continues to rely upon same as the means of maintaining the value of the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress or any kind for all of the terms and conditions of the loan, including this provision. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) could detract from the value of the Premises should Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In the event of a sale, transfer, conveyance or assignment of the Premises or a grant of a security interest in the Premises to anyone other than an Eligible Household, then the Loan, together with accrued interest and any other expenses shall become due and payable. The County may consent to a transfer of the Premises provided the transferee demonstrates to the County that it is creditworthy and has appropriate financial management skills and experience with affordable housing.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

2.2 Default. A default shall have occurred hereunder if:

(a) The Mortgagor shall fail to pay in full within fifteen (15) days from the date due and payable any installment of principal, interest, late charges or escrow deposits as required by the Note, this Mortgage and otherwise; or

(b) The Mortgagor shall fail to duly observe on time any other covenant, condition or agreement of this Mortgage the Grant Documents or of any other instrument evidencing, security or executed in connection with the indebtedness secured hereby, and such failure continues for a period of Thirty (30) days following written notice by the Mortgagee; or

(c) Any warranties or representations made or agreed to be made in any of the Grant Documents shall be breached by the Mortgagor or shall prove to be false or misleading in any material manner and such breach is not cured within Thirty (30) days following notice from Mortgagee; or

(d) Any lien for labor or material or otherwise shall be filed against the Premises, and such lien is not canceled, removed or transferred within sixty (60) days after notice of such lien; or

(e) A levy shall be made under any process on, or a receiver be appointed for, the Premises or any other property of the Mortgagor; or

(f) The Mortgagor shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for the Mortgagor under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtor; or

(g) The Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any part of the Premises or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or

(h) The Mortgagor shall make any general assignment for the benefit of creditors; or

(i) In any legal proceeding the Mortgagor shall be alleged to be insolvent or unable to pay the Mortgagor's debts as they become due and is not dismissed within sixty (60) days of Filing; or

(j) The Mortgagor shall do, or shall omit to do, any act, or any event shall occur, as a result of which any obligation of the Mortgagor, not arising hereunder, may be declared immediately due and payable by the holder thereof; or

(k) A breach by Mortgagor of any covenant, representation, or warranty set forth in the Grant Agreement and the expiration of any applicable grace period, or an Event of Default occurs under the terms of the Grant Agreement or any of the other Loan Documents pertaining to the Note and Mortgage; or

(l) The Mortgagor shall default on the First Mortgage; or

(m) If the Mortgagee shall reasonably believe that any one or more of the defaults enumerated in paragraphs (a) through (k) may occur, then the Mortgagee shall notify the Mortgagor of the specific facts which create the reasonable basis for its belief and shall request the Mortgagor to provide satisfactory evidence to the Mortgagee that such default is not likely to occur or that Mortgagor has taken appropriate steps to cure the default if it should occur.

2.3 Special Conditions.

(a) Upon sale, transfer, or refinancing of the Premises, all available proceeds of the sale shall be applied to pay the following items in order of priority:

- (1) Expenses of the sale;
- (2) First Mortgage debt in full, including fees;
- (3) All accrued, but unpaid interest on the Note;
- (4) Second Mortgage debt in full, including fees.

(b) All of the principal and interest of the indebtedness secured hereby shall be due and payable upon sale, transfer, or refinancing.

(c) The indebtedness secured hereby shall be serviced by the Mortgagee or by a lending institution selected by Mortgagee.

(d) The discrimination provision of §420.516, Florida Statutes, shall apply to the loan secured hereby.

A violation of any of the above stated Special Conditions by Mortgagor shall constitute a default hereunder.

2.4 Acceleration of Maturity. If a default shall have occurred hereunder and not cured within applicable cure periods, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of the Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

2.5 Right of Lender to Enter and Take Possession.

(a) If any default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Premises and if, and to the extent permitted by law, the Mortgagee may enter and take possession of the Premises and may exclude the Mortgagor and the Mortgagor's agents and employees wholly there from. In the event Mortgagee exercises its rights pursuant to this subparagraph (a), the Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Premises.

(b) For the purpose of carrying out the provisions of this paragraph 2.6, the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Premises.

(c) Whenever all such defaults have been cured and satisfied, the Mortgagee shall surrender possession of the Premises to the Mortgagor, provided that the right of the Mortgagee to take possession, from time to time, pursuant to subparagraph 2.6(a) shall exist if any subsequent default shall occur and be continuing.

2.6 Appointment of a Receiver and Foreclosure.

(a) If a default shall have occurred hereunder and not cured within applicable cure periods, then the whole debt secured by this Mortgage, with all interest thereon, and all other amounts hereby secured shall, at the option of Mortgagee, become immediately due and payable, and may forthwith or at any time thereafter be collected by suit at law, foreclosure of or other proceeding upon this Mortgage or by any other proper, real or equitable procedure without declaration of such option and without notice.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication cost and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstract of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses

of the nature in this paragraph mentioned shall become so much additional debt secured hereby and shall be immediately due and payable with interest thereon at the maximum rate provided by law, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

(c) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period.

(d) Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Premises, and in case of foreclosure thereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Premises by reason of such foreclosure.

2.7 Discontinuance of Proceedings and Restoration of the Parties. In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adverse to the Mortgagee, then in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

2.8 Remedies Cumulative. No right, power or remedy conferred upon or reserved by the Mortgagee by this Mortgagee is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.9 Stamp and Excise Tax. If any documentary additional stamp or excise tax shall become applicable with respect to this Mortgage, the Note, any loan or credit extended hereunder, or any security agreement, guaranty, the loan agreement or other document, the Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall hold the Mortgagee harmless with respect thereto. The Mortgagor's liability under this paragraph will survive the repayment of indebtedness under the Note.

ARTICLE III.

3.1 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder

without the prior written consent of the Mortgagee, which shall not be unreasonably withheld.

3.2 Headings. The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only and shall not limit or otherwise affect any of the terms hereof.

3.3 Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by Mortgagor include interest in excess to the reduction of the unpaid principal amount due and pursuant hereto.

3.4 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

ARTICLE IV.

4.1 Notice. Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in person or sent by United States Certified Mail, postage prepaid, to the parties being given such notice at the following addresses:

Mortgagor: BROOK'S SUBDIVISION, LLC
C/o NORTHWEST RIVIERA BEACH COMMUNITY
REDEVELOPMENT CORPORATION
2001 Broadway, Suite 510
Riviera Beach, FL 33404
Attn: Rev. William H. Burrs, President

Mortgagee: Palm Beach County
c/o County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401
Attn: Tammy K. Fields, Sr. Assistant County Attorney

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice.

ARTICLE V.

5.1 Future Advances. It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgage at its option to the Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within three (3) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or records notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable

consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the principal amount of the Note, plus interest, and any disbursements made for the payment of taxes, levies or insurance on the Premises with interest on those disbursements. If, pursuant to Florida Statutes Section 697.04, Mortgagor files a notice specifying the dollar limit beyond which future advances made pursuant to this Mortgage will not be secured by this Mortgage, then Mortgagor shall, within one (1) year of day of filing such notice, notify Mortgagee and its counsel by certified mail pursuant to Section 4.1 of this Mortgage. In addition, such a filing shall constitute a default hereunder.

5.2 Subordination. Mortgagee shall approve a First Mortgage provided that it does not exceed Five Million Seven Hundred Ten Thousand Dollars (\$5,710,000.00) and further agrees to subordinate to such First Mortgage. Nothing contained herein shall, however, relieve the Borrower from its obligation to make payments under the Promissory Note in accordance with its terms.

5.3 Lien Priority. The lien priority of this Mortgage shall not be affected by any changes in the Note including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Premises subsequent to the date of this Mortgage is recorded shall acquire such interest in the Premises with notice that Mortgagee may increase the interest rate charged pursuant to the Note or otherwise modify the Note and the Note, as modified, and the Mortgage shall remain superior to the interest of any Party in the Premises acquired subsequent to the date of this Mortgage is recorded.

5.4 Security Agreement. This instrument also creates a security interest in any and all equipment and furnishings as are considered or determined to be personal property or fixtures, together with all replacements, substitutions, additions, products and proceeds thereof, in favor of the Mortgagee under the Florida Uniform Commercial Code to secure payment of principal, interest and other amounts due Mortgagee now or hereafter secured hereby, and Mortgagee shall also have all the rights and remedies of a secured part under the Florida Uniform Commercial Code shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Florida or any other jurisdiction.

5.5 Choice of Law. This Mortgage is to be construed in all respects and enforced according to the laws of the State of Florida and you shall be in Palm Beach County.

5.6 Binding Effect. This Mortgage shall be binding upon and insure to the benefit of the Mortgagor and Mortgagee hereto, and their respective heirs, successors and assigns.

ARTICLE VI

6.1 Satisfaction of Mortgage. This Mortgage may be satisfied by successful completion of all the terms and conditions of the Grant Agreement, including, but not limited to completion of all 18 single family affordable housing units and conveyance to Eligible Households and execution and recording of the required Declaration of Restrictive Covenants.

6.2 Partial Satisfaction of Mortgage. Partial satisfactions of mortgage may be obtained by:

(a) payment of \$38,888.89 per lot to be released; or

(b) successful completion of a single family affordable housing unit and conveyance to an eligible household and the execution and recording of the required Declaration of Restrictive Covenants.

IN WITNESS WHEREOF, the Mortgagor has executed and sealed this Mortgage, the day and year first above written.

Witnesses:

**BROOK'S SUBDIVISION, a Florida
limited liability company**

**By: NORTHWEST RIVIERA
BEACH COMMUNITY
REDEVELOPMENT
CORPORATION, a Florida
not-for-profit corporation,
its sole member**

BY: _____
Rev. William H. Burr,
President

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me this ____ day of _____, 2008 by Rev. William H. Burr, as President of Northwest Riviera Beach Community Redevelopment Corporation, the sole member of Brook's Subdivision, who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

(Signature of Notary)

(Typed, Printed, or Stamped

(Name of Notary)

My Commission Expires:

EXHIBIT "E"

PERMITTED EXCEPTIONS

1. The lien of all taxes for the year 2008 and thereafter, which are not yet due and payable.
2. First Mortgage in favor of Local Initiatives Support Corporation, in the amount of \$5,710,000.

Palm Beach County
Commission on Affordable Housing
Multi-Family Development Annual Report

Development Name: _____

Preparer's Name: _____

Date: _____

Table with 8 main columns and multiple sub-columns. Columns include: Building Address/Unit Number, Household Last Name(s), Date of Income Certification, Household Size, Annual Household Income (Dollars Only), Certified Set-Aside Units (Occupied and Vacant) by AMI Percentage Category, Race of the Head of Household, Age of the Head of Household, and Demographic Category or Special Set Aside. Rows are empty.