

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: January 10, 2017 Consent Regular
 Ordinance Public Hearing

Department: Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: revised Impact Fee Affordable Housing Assistance Program (IFAHAP) Guidelines.

Summary: On November 17, 2009, (R-2009-2013) the Board of County Commissioners (BCC) authorized the use of impact fee investment earnings from roads, parks, and public buildings for affordable housing projects. On September 14, 2010, the BCC approved the Impact Fee Affordable Housing Assistance Program Guidelines which established eligible uses of the funding; unit affordability standards and the funding request approval process. Staff has processed six (6) projects under the Program for BCC approval. In order to improve how future projects are processed and to clarify the applicable Program requirements, staff is proposing major revisions to the IFAHAP Guidelines. The revisions include: an Introduction and Purpose, definitions of certain terms, expansion of the operating procedures for the Program, expansion of the rental housing requirements, expansion of the for-sale housing requirements and expansion of the individual homeowner requirements. The significant changes in each of the sections are listed in Attachment 1 and the updated IFAHAP Guidelines are provided in Attachment 2.

Some of the key recommended changes include raising the occupant household qualifying income level from 120% to 140% of area median income, instituting developers and homeowners repayment requirements in instances of defaults or voluntary withdrawals from the Program, requiring new affordability periods for successor homeowners and removing the Commission on Affordable Housing from the funding recommendation process. Countywide (JB)

Background and Justification: The Impact Fee Affordable Housing Assistance Program (IFAHAP) was developed to implement direction of the BCC to secure a funding source for the creation of affordable housing. Subsequent to the BCC's approval of the original Program guidelines in 2010, staff created internal policies and procedures for the Program in 2012 (PPM CW-F-036) in order to clarify the role of County Departments implementing the Program. The revised Guidelines clarify the original guidelines and strengthen them by requiring the repayment of funds in instances of default or voluntary withdrawal from the Program. In such instances, repayment of the full amount of assistance is required with the added payment of interest and an administrative fee for rental and for-sale developers to prevent use of impact fee funds as an interest free loan by developers who later default or withdraw from the Program.

Attachment(s):

1. Significant changes to the Impact Fee Affordable Housing Assistance Program Guidelines
2. Revised Impact Fee Affordable Housing Assistance Program Guidelines
3. Impact Fee Affordable Housing Assistance Program Guidelines of September 14, 2010

Recommended By: *Spencer Howard* 12-22-16
Department Director Date

Approved By: *Raye Clark* 12/22/16
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT*	0				

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

Budget Account No.:

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____

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

*No fiscal impact

C. Departmental Fiscal Review:

Shairrette Major

Shairrette Major, Fiscal Manager II

III. REVIEW COMMENTS

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

Steve

OFMB *12/18/16*
12/17/16
JMS

John J. Jacobson

Contract Development and Control
12/20/16

B. Legal Sufficiency:

James Brubaker

Assistant County Attorney

C. Other Department Review:

Department Director

Revised Impact Fee Affordable Housing Assistance Program Guidelines

The revised Guidelines include the following significant changes:

General Requirements:

- Expand the application requirements
- Remove the Commission on Affordable Housing from the funding recommendation process
- Recognize funding reservation for projects as part of the process
- Incorporate BCC issuance of a Certificate of Award to the applicant
- Place the burden on applicant to pay excess impact fees above BCC approved amount
- Require a Declaration of Restrictions to secure the amount of assistance
- Provide for delegated authority to amend Declarations of Restriction for circumstances beyond the control of the recipient
- Require assisted units to have at least one bedroom
- Raise the occupant household qualifying income level from 120% to 140% of Area Median Income
- Require proof of marketable title in the name of the applicant before releasing the Certificate of Award

Rental Housing Requirements:

- Recognize that assisted units may not include all the units in a project
- Recognize floating units for projects with less than 100% assisted units
- Provide for a new standard of establishing rental rates using information from the Florida Housing Finance Corporation and the U.S. Department of Housing and Urban Development
- Begin the 20 year affordability period from date of Declaration of Restrictions
- Require the developer's repayment of the amount of assistance, plus interest, plus and an administrative fee upon voluntary withdrawal or default
- Require annual reports/certifications of income and rent affordability

For-Sale Housing Requirements:

- Incorporate an affordability standard as a percentage of homeowner income
- Remove annual income certification
- Begin 15 year affordability period from date of sale
- Require occupancy as principal place of residence
- Require the developer's repayment of the amount of assistance, plus interest, plus and an administrative fee upon voluntary withdrawal or default
- Require homeowner's repayment of the amount of assistance upon voluntary withdrawal or default
- Require successor homeowners to begin a new 15 year affordability period

Individual Homeowner Requirements:

- Incorporate an affordability standard as a percentage of homeowner income
- Remove annual income certification
- Begins 15 year affordability period from date of certificate of occupancy
- Require occupancy as principal place of residence
- Require repayment of the amount of assistance upon voluntary withdrawal or default
- Require successor homeowners to begin a new 15 year affordability period

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY
FLORIDA



DEPARTMENT OF ECONOMIC SUSTAINABILITY

IMPACT FEE AFFORDABLE HOUSING
ASSISTANCE PROGRAM GUIDELINES

GUIDELINES EFFECTIVE AS OF
SEPTEMBER 14, 2010

REVISED AS OF
JANUARY 10, 2017

1. INTRODUCTION AND PURPOSE

The Impact Fee Affordable Housing Assistance Program (formerly known as the Impact Fee Assistance Program) was developed to implement direction of the Board of County Commissioners to secure a funding source for the creation of affordable housing. On November 17, 2009, the Board of County Commissioners authorized (R2009-2013) the utilization of impact fee investment earnings on roads, parks, and public buildings to support affordable housing within Palm Beach County.

These Guidelines establish how allocated funds are publicized and how applications for the receipt of funding are reviewed and approved. The Guidelines also establish the requirements to be imposed on funding recipients.

2. DEFINITIONS AND ABBREVIATIONS

AMI: Area Median Income being the most current area median income published by HUD for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Assisted Unit: An affordable housing unit that has received a BCC approved impact fee assistance under the Program and is therefore subject to Program requirements. Assisted Units include For-Sale Housing Units, Rental Housing Units, and Owner-Constructed/Occupied Housing Units.

BCC: Palm Beach County Board of County Commissioners.

Certificate: Impact Fee Affordable Housing Assistance Program Certificate of Award.

DES: Palm Beach County Department of Economic Sustainability.

Declaration: Declaration of Restrictions recorded by the County.

FHFC: Florida Housing Finance Corporation.

Housing Unit, Owner-Constructed/Occupied: A detached single-family affordable housing unit constructed by an individual or household for occupancy as the individual's or household's principal place of residence, which is assisted under the Program and which is subject to Program requirements.

Housing Units, For-Sale: Affordable housing units constructed by for-profit or non-profit developers for sale to private homeowners as principal places of residence.

Housing Units, Rental: Affordable housing units constructed by for-profit or non-profit developers as rental housing.

HUD: U.S. Department of Housing and Urban Development.

HUD Utility Schedule Model: Utility schedules by housing type published by HUD (may be obtained from HUD or DES).

NOFA: Notice of Funding Availability.

Program: Palm Beach County's Impact Fee Affordable Housing Assistance Program (IFAHAP).

Tenant Paid Utilities: Utility costs paid by a tenant in a Rental Housing Unit including gas, water/sewer, electric, and garbage based on the current utility allowances from the HUD Utility Schedule Model.

3. NOTICE OF FUNDING AVAILABILITY

For each Program funding cycle, DES shall advertise a NOFA after the Palm Beach County Office of Financial Management and Budget obtains BCC approval of the amount available for the Program and the impact fee type(s) and benefit zone(s) where funds may be used. The NOFA shall inform the public of Program requirements, of the funding amount available by impact fee type(s) and of the impact fee benefit zone(s)

where funding has been made available. The NOFA shall also inform the public of the deadline date for the BCC to commit approved Program funds (this shall be two (2) years from the above BCC approval date) and the deadline date to use committed funds (this shall be four (4) years from the above BCC approval date).

After NOFA publication, applications in response to the NOFA shall be accepted by DES year round as long as funds are available.

4. ELIGIBLE APPLICANTS

Eligible applicants for the Program include:

- (a) For-profit and non-profit developer entities who are seeking to build Rental Housing Units or For-Sale Housing Units; and
- (b) Individuals or households who are seeking to build Owner-Constructed/Occupied Housing Units for use as their principal place of residence.

5. APPLICATION REQUIREMENTS

Applicants must provide the following for their projects when they apply for funding:

- (a) A general description of the project including location, type of housing units, total number of housing units to be built, and the number of housing units for which the applicant is seeking impact fee assistance. Applicants shall specify, by Program impact fee zone, the total amount of impact fees due for all units in the project, any impact fee existing-use credits for the project, and the amount of impact fee assistance being requested. All such amounts shall be calculated using the impact fee schedule in effect at the time of application.
- (b) A spread sheet of the units to be assisted under the Program that lists each such unit separately, where the square footage (living space or a/c space) and number of bedrooms of each unit is shown and where a detailed computation of the impact fees being requested for each unit by Program impact fee zone is shown using the impact fee schedule in effect at the time of application.
- (c) Evidence of infrastructure availability at the project site;
- (d) Evidence of appropriate zoning for the project site;
- (e) Evidence of site control by the applicant; and
- (f) A project planning and implementation schedule that provides dates and shows how the applicant will meet all Program deadlines.

6. APPLICATION REVIEW, FUNDING RESERVATION, AND FUNDING APPROVAL

All applications in response to a NOFA must be submitted to DES. DES staff shall review each application for responsiveness and completeness and shall, subject to funding availability, provide the applicant a funding reservation letter if the application is responsive and complete.

DES will recommend funding approval to the BCC within ninety (90) days of the date of the funding reservation letter at which time the BCC will be requested to approve a not to exceed amount in Program funding assistance for the project and delegate authority to the Mayor to execute a Certificate which will be released to the recipient upon compliance with the conditions specified herein. The amount of impact fee assistance reflected in the Certificate shall be based on final computations made by the Palm Beach County Impact Fee Coordinator but shall not exceed the amount approved by the BCC. The Certificate may only be used to reduce the amount of impact fees due for the funded project and must be presented to the Palm Beach County Impact Fee Coordinator in order to obtain the reduction. If not used, the Certificate shall expire one (1) year after the date of funding approval by the BCC.

Amounts approved by the BCC will not be increased to match any later increase to the impact fee assessment. The recipient must fund any such increases.

7. PROGRAMWIDE PERFORMANCE REQUIREMENTS

The following requirements shall apply to projects funded under the Program:

- (a) **Deadline for Obtaining Building Permits:**
Recipients of funding under the Program must obtain all building permits for their projects from the building department with jurisdiction over the project within one (1) year after the date of BCC funding approval.
- (b) **Deadline for Obtaining Certificates of Occupancy:**
Recipients of funding under the Program must obtain a certificate(s) of occupancy from the building department with jurisdiction over the project for all Assisted Units and must have such units occupied by households as specified herein within four (4) years after the date of BCC funding approval.
- (c) All housing units assisted under the Program must contain at least one (1) bedroom.
- (d) Program funds awarded by the BCC for a certain zone may only be used in that same zone.
- (e) **Floating Units:**
Rental developers whose projects contain fewer Assisted Units than the total number of units, may, for Program monitoring and compliance purposes, float some or all of the Assisted Units (which are subject to Program requirements) throughout the project, provided that the floating units are of the same number, square footage and number of bedrooms as what was approved for the Assisted Units.
- (f) **Occupancy and Income Restrictions:**
All Assisted Units shall be subject to income restrictions from the date of issuance of the certificate of occupancy until the end of the term of the associated Declaration. The income restrictions according to housing type are:
 - 1. **Rental Housing Units:** shall be leased only to individuals or households whose incomes, adjusted by family size, are at no more than one hundred and forty percent (140%) of AMI at the time the units are first occupied, and thereafter, at any time a new tenant occupies the unit. All such units shall be developed and occupied for the period specified in the Declaration.
 - 2. **For-Sale Housing Units:** shall be sold in fee simple only to individuals or households whose incomes, adjusted by family size, are at no more than one hundred and forty percent (140%) of AMI at the time of sale. All such units shall be occupied as the principal place of residence by their owners for a period of fifteen (15) years from the date of sale.
 - 3. **Owner-Constructed/Occupied Housing Units:** shall be held in fee simple and constructed and occupied by County approved individuals or households whose incomes, adjusted by family size, are at no more than one hundred and forty percent (140%) of AMI at the time of funding approval by the BCC. All such homes shall be occupied as the principal place of residence by their owners for a period of fifteen (15) years from the date of issuance of the home's Certificate of Occupancy, as evidenced by local homestead exemption.
- (g) **Affordability Restrictions:**
All Assisted Units shall be subject to affordability restrictions with regard to rental or housing costs, as applicable. The affordability restrictions according to housing type are:

1. **Rental Housing Units:** shall be rented at rental rates where the sum of the actual monthly rent paid by the tenant plus the cost of Tenant Paid Utilities does not exceed the rent limit for Palm Beach County households at one hundred and forty percent (140%) of AMI as shown on a current rent limit chart approved by DES. The initial approved chart is the "Income Limits and Rent Limits" chart published by the FHFC for its "Multifamily Rental Programs -- Except HOME and SHIP", as updated from time to time, and fixed according to the number of bedrooms. Should FHFC discontinue publication of the aforesaid rent limits chart, then DES shall designate an alternative source of information for such rent limits.

The above rental rate restrictions for Rental Housing Units shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals, and shall be in effect from the date of issuance of the certificate of occupancy of Rental Housing Units until the end of the term of their associated Declaration.

2. **For-Sale Housing Units:** shall be affordable to the purchaser such that the total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the purchaser at the time of sale.
3. **Owner-Constructed/Occupied Housing Units:** shall be affordable to the individual or household who is seeking to build such home such that the total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly income of the individual or household at the time of funding approval by the BCC. The affordability determination shall be made by DES prior to BCC approval.

(h) Delivery of Certificate, Marketable Title and Declaration:

The following shall be submitted to DES prior to the County's delivery of the Certificate:

1. Proof of marketable title to the property (project site) in the certificate holder's name. Legal descriptions for individual lots shall be included for For-Sale Housing Units.
2. An executed Declaration (in the format approved by the County) accompanied by a check to cover the recording fees for the Declaration(s). The Declaration for For-Sale Housing Units shall include the legal descriptions for all lots that will have Assisted Units.

Upon receipt of these items, DES shall release the Certificate and record the Declaration in the public records of Palm Beach County thereby creating a lien on the property that secures the amount of assistance provided under the Program. The Declaration shall contain applicable Program requirements and restrictions for the project and the consequences that would result from non-compliance with these requirements and restrictions. At the end of the term of the Declaration and upon full compliance with its requirements and restrictions, the County shall issue a release of restrictions removing the lien of the Declaration from the property if so requested.

Forms for the different Declarations and Certificates are attached hereto. The Declaration and Certificate forms may be modified as necessary provided such modifications are consistent with these guidelines.

(i) **Senior Liens:**

Only liens expressly recognized by the County in writing in the Declaration may be senior to the County's lien on the property as created by the Declaration.

(j) **Repayment:**

Property owners shall repay the County upon a property owner's voluntary withdrawal from or default under the Program prior to the satisfaction of the terms of the subject Declaration. The repayment (the "IFAHAP Repayment Amount") shall be determined according to housing type and ownership status as set forth below.

1. **Rental Housing Units and For-Sale Housing Units:** Developers of Rental Housing Units and developers of For-Sale Housing Units shall submit to County an IFAHAP Repayment Amount consisting of the amount secured by the Declaration, plus 3% per year (or partial year) commencing with the recording of the Declaration(s), plus an Administrative Fee.

The Administrative Fee for rental housing shall be \$1,500 per rental development.

The Administrative Fee for for-sale housing units shall be \$1,500 per housing unit not yet conveyed to an individual homeowner.

2. **Individual Homeowners:** Individual homeowners, regardless of whether they received impact fee assistance directly from the County or they purchased homes for which a developer or previous owner had received assistance, shall provide County with an IFAHAP Repayment Amount consisting of the entire amount of impact fee assistance provided to their property through the Program.

Upon receipt of the full IFAHAP Repayment Amount in connection with a property owner's voluntary withdrawal, the County shall issue a release of restrictions removing the related lien of the Declaration(s) from the property or properties.

In those instances where a default has occurred, the property owner shall, at a minimum, repay the County the IFAHAP Repayment Amount. The County reserves the right to exercise any other legal or equitable rights or remedies the County may have under applicable law.

(k) **Sale of Property:**

Property owners may voluntarily sell property that has received impact fee assistance as follows:

1. Developers of Rental Housing Units may voluntarily sell the property (project site) provided that these developers have obtained the County's approval of such sale and provided that the subsequent owner has provided the County its acceptance of the restrictions and conditions created by the Declaration.
2. Developers of For-Sale Housing Units may voluntarily sell such units provided that these developers have complied with the requirements of their Declarations in connection with the sale of the units including the insertion of required deed restrictions in the deeds of units they sell.
3. Individual homeowners who purchased homes for which developers of For-Sale Housing Units received impact fee assistance and who have Program deed restrictions in the deeds for their homes, may voluntarily sell their homes during the term of these restrictions, provided that buyers of their properties are approved by the County according to the

requirements of the Program and provided that they include the same deed restrictions in the deeds to such buyers.

4. Individual homeowners who received impact fee assistance directly from the County and ones who purchased homes where a previous owner had received assistance, may voluntarily sell their properties during the term of the Declaration they executed, provided that buyers of their properties are approved by the County according to the requirements of the Program and provided that such buyers execute a new Declaration at the time of title transfer thereby encumbering the purchased properties for a new fifteen (15) year term. In such instances, Declarations executed by sellers of such properties shall be released by the County in exchange for the receipt of replacement Declarations from their buyers. Homeowners who sell a property encumbered by a Declaration may not transfer the lien of the Declaration to another property.

(l) Release of Restrictions at End of Term:

Restrictive covenants placed on the property will be released as follows:

1. As For-Sale Housing Units are initially sold to home buyers, the for-sale developer shall place language from the Declaration into the deed conveying such units. The deed restriction language shall refer back to the Declaration and have a duration of fifteen (15) years from the date of sale. At the end of the fifteen (15) year term and upon full compliance with Program requirements and restrictions for each individual unit, the County shall issue a release of restrictions removing the lien of the Declaration from the property associated with the unit.
2. For Rental Developments, at the end of the twenty (20) year term of the Declaration and upon full compliance with its requirements and restrictions, the County shall issue the rental developer a release of restrictions removing the lien of the Declaration from the property.

(m) Reports:

Developers of either rental or for-sale housing units shall, within thirty (30) days of each anniversary date of the Declaration, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the developer. Each such affidavit shall contain the following:

- A certification that the developer is in compliance with the requirements of the Declaration and the Certificate for the project.
- Evidence of having obtained all building permits for the project from the building department with jurisdiction over the project within one (1) year after the date of BCC funding approval. (The developer may discontinue submission of these items after this requirement has been met.)
- Evidence of having completed construction of Rental Housing Units or For-Sale Housing Units and obtained their certificates of occupancy from the building department with jurisdiction over the project and evidence that all such units have been rented or sold as applicable and initially occupied by households as specified herein within four (4) years after the date of BCC funding approval. (The rental or for-sale developer may discontinue submission of these items after this requirement has been met.)
- A certification listing all Rental Housing Units at the project by unit number and bedroom size. This certification shall for each such unit include the lease date, the tenant's annual household income, the number of unit occupants, and the monthly rent amount.
- Or

- A certification listing all For-Sale Housing Units at the project by address. This certification shall for each such unit include the sale date, the buyer's annual household income, the number of unit occupants, and the amount of mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees.

8. DELEGATION OF AUTHORITY TO AMEND DECLARATIONS

The County Administrator, or designee, is authorized to execute amendments to Declarations in instances of defaults that occur due to circumstances beyond the control of a rental developer, for-sale developer and individual or household, in order to cure such defaults.

PALM BEACH COUNTY
IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM

CERTIFICATE OF AWARD
FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS

This Certificate is awarded on _____, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County") to _____, a Florida _____, whose Federal I.D. number is _____ (the "Developer"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on _____, at which time authority was delegated to the Mayor to execute this Certificate.

The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit of \$_____ towards the payment of Public Buildings Impact Fees, a credit of \$_____ towards the payment of Zone ___ Park Impact Fees, and a credit of \$_____ towards the payment of Zone ___ Road Impact Fees associated with the construction of _____ (____) affordable rental housing units in a housing development to be known as _____.

In exchange for the acceptance of this Certificate and the receipt of the aforementioned credits from the County towards the payment of impact fees associated with _____, the Developer expressly agrees to comply with, and to perform, all of the terms contained in the below enumerated Conditions of Issuance.

Furthermore, in exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with _____, the Developer also agrees to execute and deliver to the County a Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date of funding approval for the _____ project by the Palm Beach County Board of County Commissioners, that is, on _____.

(COUNTY SEAL BELOW)

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Paulette Burdick, Mayor

By: _____
Deputy Clerk

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
James Brako
Assistant County Attorney

By: _____
Sherry Howard, Deputy Director

CONDITIONS OF ISSUANCE

1. Organization Status: Developer is a Florida _____ 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.

2. Housing To Be Constructed: At the time of issuance of this Certificate to the Developer, the Developer has represented to the County that the Developer owns that certain real property (hereinafter "Property") located in Palm Beach County, Florida, as more particularly described in Attachment 1 to Exhibit A, attached hereto and made a part hereof. The Developer shall construct no fewer than _____ (___) rental housing units on the Property, together with ancillary improvements, all of which shall be known as _____ (hereinafter "Project"). All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by these Conditions of Issuance and the Declaration of Restrictions referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.

3. Declaration of Restrictions: As a prerequisite to the Developer's receipt of the herein described credit towards the payment of impact fees for the Project, the Developer shall have provided the County with the following:

- _____.
- _____.
- _____.
- A copy of the Developer's non-discrimination policy or a signed statement as required by Section 11 herein.

The Developer shall, in exchange for the receipt of this Certificate deliver to the County a fully executed Declaration of Restrictions for Developer Affordable Rental Housing Units, attached hereto and made a part hereof, as Exhibit A, and shall comply with the terms contained therein.

4. Building Permits: Developer shall obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than _____.

5. Certificates of Occupancy and Initial Lease: Developer shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than _____.

6. Affordability of Rental Housing Units: Developer shall, for a period of twenty (20) years from the date of execution of the Declaration of Restrictions, lease each of the aforesaid _____ (___) Affordable Rental Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Developer shall, for the aforesaid twenty (20) year period, lease each of the aforesaid Affordable Rental Housing Units at an affordable rental rate such that the sum of the actual monthly rent paid by the tenant of Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households at one hundred and

forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs -- Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the HUD Utility Schedule Model. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the HUD Utility Schedule Model be discontinued, then the County shall designate an alternative source of information).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

7. Records to be Maintained by Developer: Developer shall, for each tenant that is leased any of the Affordable Rental Housing Units at the Project, maintain a file that, at a minimum, contains the following:

- An application-for-lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the unit and their household characteristics, and the household income they have disclosed.
- Documentation evidencing the Developer's verification of the applicant's household income and a computation sheet demonstrating the Developer's determination of the applicant's income eligibility to occupy the unit. Household income computation shall follow the HUD Section 8 method (24 CFR 5.609).
- A copy of the AMI showing the HUD income levels in effect at the time the initial lease is signed.
- A computation sheet demonstrating that in every initial lease, every subsequent lease, and every lease renewal, the rent is at an Affordable Rental Rate as defined herein.
- An original of each executed lease with the applicant/tenant identifying the apartment number and the rental rate. Developer shall utilize leases which require parents to be held legally and financially liable for the acts of their children in the apartment complex and which allow management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses.
- Should the Developer elect to utilize criminal background information in the screening of prospective tenants or the retention/termination of tenants, the Developer must develop and implement tenant selection policies which comply with HUD guidance on the use of criminal background information.

Tenant selection/retention/termination shall not:

- (i) Exclude persons from housing based on records of arrests not resulting in conviction;
- (ii) Exclude persons from housing based solely on conviction of any type, with the exception of those identified by HUD (methamphetamine production and registered sex offender); and
- (iii) Be utilized to intentionally discriminate against protected classes of persons.

Tenant selection/retention/termination shall:

- (i) Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;

- (ii) Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
 - (iii) Consider the nature, severity, and recency of the criminal offense;
 - (iv) Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; tenant history before and/or after the criminal conduct; and rehabilitation efforts; and
 - (v) Be applied equally among all classes of protected persons.
- Any other documentation evidencing the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units.

8. Right to Audit and Access to Records: Developer shall maintain ongoing records related to each tenant at the Project, and shall maintain all tenant records for at least five (5) years after the end of each tenancy. The County shall have the option, but not the obligation, to verify the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units. The County may, at its sole discretion, inspect or audit all tenant and owner records, and the Developer shall provide the County 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 Developer's place of business.

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Developer, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

9. Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Developer: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Developer shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Developer is specifically required to:

- Keep and maintain public records required by the County to perform services as provided in this Certificate.
- Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Developer further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Developer does not transfer the records to the public agency.
- Upon completion of the requirements set forth in this Certificate the Developer shall transfer, at no cost to the County, all public records in possession of the Developer unless notified by the County's representative/liaison, on behalf of the

County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Developer transfers all public records to the County upon completion of the requirements set forth in this Certificate, the Developer shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the requirements set forth in this Certificate, the Developer shall meet all applicable requirements for retaining public records. All records stored electronically by the Developer must be provided to the County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Failure of the Developer to comply with the requirements of this article shall be a material breach of this Certificate. The County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The Developer acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CERTIFICATE, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT (561) 355-6680.

10. Certification and Reporting Requirements: Developer shall within thirty (30) days of each anniversary date of the Declaration of Restrictions for Developer Affordable Rental Housing Units, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Developer. Each such affidavit shall contain the following:

- A certification that the Developer is in compliance with the requirements of the Declaration of Restrictions for Developer Affordable Rental Housing Units and the Certificate for the Project.
- Evidence of having obtained all building permits for the project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- Evidence of having completed construction of all Affordable Rental Housing Units at the Project and obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- A certification listing all Affordable Rental Housing Units at the Project by unit number and bedroom size. This certification shall for each such unit include the lease date, the tenant's annual household income, the number of unit occupants, and the monthly rent amount for each unit.

Developer shall submit the Annual Report to:

Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

11. Non-Discrimination: The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

The Developer has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R2014-1421, as amended, or in the alternative, if the Developer does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that the Developer will conform to the County's non-discrimination policy as provided in Resolution R2014-1421, as amended.

Furthermore, Developer shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property, nor shall any person on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of the terms contained herein.

12. Exclusion of Third Party Beneficiaries: No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Developer.

13. Advertising: During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the project. Sign or signs will be provided by the County and erected at Developer's expense.

14. Governing Law: The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in Palm Beach County.

EXHIBIT A

Return to:
Palm Beach County
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: James Brako,
Assistant County Attorney

**DECLARATION OF RESTRICTIONS
FOR DEVELOPER AFFORDABLE RENTAL HOUSING UNITS**

The undersigned, _____, having its principal office at _____, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described below, in consideration for the receipt of a Certificate of Award for Developer Affordable Rental Housing Units (the "Certificate"), dated _____, under Palm Beach County's Impact Fee Affordable Housing Assistance Program and the receipt of a credit valued at _____ and _____/100 Dollars (\$ _____) towards the payment of road, park, and public buildings impact fees as provided by Palm Beach County a political subdivision of the State of Florida (the "County"), does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. The restrictions contained in this Declaration of Restrictions for Developer Affordable Rental Housing Units (the "Declaration") shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.

2. In consideration for the receipt of the Certificate and its associated credit of \$ _____ towards the payment of Public Buildings Impact Fees, Zone ___ Park Impact Fees, and Zone ___ Road Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct no fewer than _____ (____) rental housing units on the Property, together with ancillary improvements, all of which shall be known as _____ (the "Project"). All aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by the restrictions and conditions of this Declaration, and by those contained in the Certificate referenced herein. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
- (c) For a period of twenty (20) years from the date hereof (the "Compliance Period"), the Declarant agrees:
 - (i) To obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project no later than _____.
 - (ii) To obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable Rental Housing Units at the Project and initially lease all such units no later than _____.

- (iii) To then lease each of the aforesaid _____ () Affordable Rental Housing Units to a household whose gross incomes, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- (d) To lease each of the herein described Affordable Rental Housing Units at an affordable rental rate such that the sum of the actual monthly rent paid by the tenant of Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households at one hundred and forty percent (140%) of AMI as shown for Palm Beach County in the Income Limits and Rent Limits chart published by the Florida Housing Finance Corporation from time to time for its Multifamily Rental Programs -- Except HOME and SHIP and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the HUD Utility Schedule Model. (Should publication of the Multifamily Rental Programs -- Except HOME and SHIP or the HUD Utility Schedule Model be discontinued, then the County shall designate an alternative source of information).

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

- (e) To submit annual reports to the County as outlined in the Certificate detailing the Declarant's compliance with the terms of the Certificate and this Declaration.
- (f) To maintain its records as provided for in the Certificate.
- (g) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.

3. Declarant has secured a loan to construct the Project in an amount up to \$ _____ from _____, or its successors (the "First Mortgage Holder"), which loan has been secured by a separate mortgage encumbering the Property (the "First Mortgage"). The lien created by this Declaration shall be senior to all other liens, encumbrances, and mortgages on the Property except the lien created by the First Mortgage, and except any other liens expressly recognized by the County in writing.

4. The Declarant shall pay, or cause to be paid, all taxes due while the Property is in its possession, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part of thereof, any lien superior to the lien of this Declaration except for the lien created by the First Mortgage, and except for any other liens expressly recognized by the County in writing. The Declarant shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure on the Property within five (5) working days of the receipt of said notice by Declarant.

5. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from affordable rental housing, or should the Declarant sell, convey or transfer title to the Property prior to the end of the Compliance Period, then the Declarant shall pay the County an amount equal to the IFAHAP Repayment Amount as defined herein.

In the event of any proposed sale, conveyance or transfer of the Property prior to the end of the Compliance Period, the Declarant must obtain approval of the County. Any approved sale or conveyance of the Property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the above provisions, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this Declaration.

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

6. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under the First Mortgage, under any senior mortgage to this Declaration, or under any subordinate mortgage to this Declaration, shall constitute a default under this Declaration.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction.

If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration or the Certificate within the period set forth above after the County provides notice to the Declarant as set forth above, the County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which the County may have hereunder or under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (a) Declare due from Declarant immediately upon demand an amount equal to the IFAHAP Repayment Amount as defined herein.
- (b) Declare due from Declarant immediately upon demand a penalty of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per Affordable Rental Housing Unit per quarter where such default exists which penalty shall accrue from the date the default commenced. The Declarant shall pay said amount within ten (10) calendar days after the thirty (30) calendar day cure period specified above, and then on the first day of each quarter thereafter.

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County cures any default.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant

shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County exercises any remedy under this provision.

7. The IFAHAP Repayment Amount shall be calculated as the sum of the amount secured by the Declaration plus three percent (3%) of the amount secured by the Declaration plus \$1,500.

Upon receipt of the IFAHAP Repayment Amount by the County, the County shall issue the Declarant a release of restrictions removing the lien of this Declaration from the property.

8. All notices from the Declarant to the County and the County to the Declarant, and as otherwise required or permitted by any provision of this Declaration shall be in writing and sent by registered or certified mail and addressed as follows:

To County: Board of County Commissioners
c/o Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

To Declarant: _____

Attention: _____

To First Mortgage Holder: _____

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

THIS SPACE HAS BEEN INTENTIONALLY LEFT BLANK

9. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Economic Sustainability, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

Executed this ___ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

Witnesses:

DECLARANT NAME HERE _____,
a Florida _____

Name: _____

Signature:

By: _____
name, title

Name: _____

Signature:

STATE OF FLORIDA
COUNTY OF PALM BAECH

The foregoing instrument was acknowledged before me this ___ day of, _____,
20__, by _____, as _____ of _____, who
is personally known to me, or who has produced _____ as
identification.

Signature: _____

(NOTARY SEAL ABOVE)

Notary Name: _____
Notary Public - State of Florida

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

PALM BEACH COUNTY
IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM

CERTIFICATE OF AWARD
FOR DEVELOPER AFFORDABLE FOR-SALE HOUSING UNITS

This Certificate is awarded on _____, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County") to _____, a Florida _____, whose Federal I.D. number is _____ (the "Developer"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on _____, at which time authority was delegated to the Mayor to execute this Certificate.

The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit of \$_____ towards the payment of Public Buildings Impact Fees, a credit of \$_____ towards the payment of Zone ___ Park Impact Fees, and a credit of \$_____ towards the payment of Zone ___ Road Impact Fees associated with the construction of _____ (___) affordable for-sale housing units in a housing development to be known as _____.

In exchange for the acceptance of this Certificate and the receipt of the aforementioned credits from the County towards the payment of impact fees associated with _____, the Developer expressly agrees to comply with, and to perform, all of the terms contained in the below enumerated Conditions of Issuance.

Furthermore, in exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with _____, the Developer also agrees to execute and deliver to the County a Declaration of Restrictions for Developer Affordable For-Sale Housing Units, attached hereto and made a part hereof, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date of funding approval for the _____ project by the Palm Beach County Board of County Commissioners, that is, on _____.

(COUNTY SEAL BELOW)

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Paulette Burdick, Mayor

By: _____
Deputy Clerk

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
James Brako
Assistant County Attorney

By: _____
Sherry Howard, Deputy Director

CONDITIONS OF ISSUANCE

1. Organization Status: Developer is a Florida _____ 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.

2. Housing To Be Constructed: At the time of issuance of this Certificate to the Developer, the Developer has represented to the County that the Developer owns that certain real property (hereinafter "Property") located in Palm Beach County, Florida, as more particularly described in Attachment 1 to Exhibit A, attached hereto and made a part hereof. The Developer shall construct no fewer than _____ (____) for-sale housing units on the Property, together with ancillary improvements, all of which shall be known as _____ (hereinafter "Project"). All aforesaid for-sale housing units shall be "Affordable For-Sale Housing Units" affected by these Conditions of Issuance and the Declaration of Restrictions referenced herein. Each of the aforesaid Affordable For-Sale Housing Units shall be the unit owner's principal place of residence. None of the Affordable For-Sale Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.

3. Declaration of Restrictions: As a prerequisite to the Developer's receipt of the herein described credit towards the payment of impact fees for the Project, the Developer shall have provided the County with the following:

- _____.
- _____.
- _____.
- A copy of the Developer's non-discrimination policy or a signed statement as required by Section 12 herein.

The Developer shall, in exchange for the receipt of this Certificate deliver to the County a fully executed Declaration of Restrictions for Developer Affordable For-Sale Housing Units, attached hereto and made a part hereof, as Exhibit A, and shall comply with the terms contained therein.

4. Building Permits: Developer shall obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than _____.

5. Certificates of Occupancy: Developer shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable For-Sale Housing Units at the Project and sell all such units within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than _____.

6. Affordability of For-Sale Housing Units: Developer shall sell each of the aforesaid _____ (____) Affordable For-Sale Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time of sale. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Each Developer Affordable For-Sale Housing Unit shall, at the time of sale, be affordable to the purchaser such that the purchaser's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the purchaser.

7. Deed Restrictions for Developer Affordable For-Sale Housing Unit: Developer shall place the deed restrictions shown in the Declaration in the deed of each Developer Affordable For-Sale Housing Unit

8. Records to be Maintained by Developer: Developer shall, for each purchaser of an Affordable For-Sale Housing Units at the Project, maintain a file that, at a minimum, contains the following:

- An application-for-purchase, signed and dated by the prospective purchaser, identifying the household members that intend to occupy the unit and their household characteristics, and the household income they have disclosed.
- A contract for purchase and sale for each purchaser.
- Documentation evidencing the Developer's verification of the prospective purchaser's household income and a computation sheet demonstrating the Developer's determination of the prospective purchaser's income eligibility to occupy the unit. Household income computation shall follow the HUD Section 8 method (24 CFR 5.609).
- A copy of the AMI showing the HUD income levels in effect at the time the unit is sold.
- Documentation evidencing the Developer's verification of the prospective purchaser's mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees.
- A computation sheet demonstrating that the purchaser's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the purchaser at the time of sale.
- Original closing documents for each sale.
- Should the Developer elect to utilize criminal background information in the screening of purchasers, the Developer must develop and implement purchaser selection policies which comply with HUD guidance on the use of criminal background information.

Purchaser selection shall not:

- (i) Exclude persons from housing based on records of arrests not resulting in conviction;
- (ii) Exclude persons from housing based solely on conviction of any type, with the exception of those identified by HUD (methamphetamine production and registered sex offender); and
- (iii) Be utilized to intentionally discriminate against protected classes of persons.

Purchaser selection shall:

- (i) Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;
- (ii) Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
- (iii) Consider the nature, severity, and recency of the criminal offense;

- (iv) Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; and rehabilitation efforts; and
 - (v) Be applied equally among all classes of protected persons.
- Any other documentation evidencing the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units.

9. Right to Audit and Access to Records: Developer shall maintain ongoing records related to each tenant at the Project, and shall maintain all tenant records for at least five (5) years after the end of each tenancy. The County shall have the option, but not the obligation, to verify the Developer's compliance with these Conditions of Issuance and the requirements of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units. The County may, at its sole discretion, inspect or audit all tenant and owner records, and the Developer shall provide the County 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 Developer's place of business.

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Developer, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

10. Public Records: Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Developer: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Developer shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Developer is specifically required to:

- Keep and maintain public records required by the County to perform services as provided in this Certificate.
- Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Developer further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Developer does not transfer the records to the public agency.
- Upon completion of the requirements set forth in this Certificate the Developer shall transfer, at no cost to the County, all public records in possession of the Developer unless notified by the County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Developer transfers all public records to the County upon completion of the requirements set forth in this Certificate, the Developer shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Developer keeps and maintains public records upon completion of the requirements set forth in this Certificate, the Developer shall meet all applicable

requirements for retaining public records. All records stored electronically by the Developer must be provided to the County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Failure of the Developer to comply with the requirements of this article shall be a material breach of this Certificate. The County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. The Developer acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CERTIFICATE, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT (561) 355-6680.

11. Certification and Reporting Requirements: Developer shall within thirty (30) days of each anniversary date of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Developer. Each such affidavit shall contain the following:

- A certification that the Developer is in compliance with the requirements of the Declaration of Restrictions for Developer Affordable For-Sale Housing Units and the Certificate for the Project.
- Evidence of having obtained all building permits for the project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- Evidence of having completed construction of all Affordable For-Sale Housing Units at the Project and obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Developer may discontinue submission of these items after this requirement has been met.)
- A certification listing all Affordable For-Sale Housing Units at the Project that have been sold. This certification shall for each such unit include the address, the purchaser's annual household income, the number of unit occupants, and the purchaser's mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, provided on a monthly basis as established on the date of sale. (The Developer may discontinue submission of this information after all Affordable For-Sale Housing Units have been initially sold.)

Developer shall submit the Annual Report to:

Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

12. Non-Discrimination: The Developer warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

The Developer has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R2014-1421, as amended, or in the alternative, if the Developer does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that the Developer will conform to the County's non-discrimination policy as provided in Resolution R2014-1421, as amended.

Furthermore, Developer shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property, nor shall any person on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of the terms contained herein.

13. Exclusion of Third Party Beneficiaries: No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Developer.

14. Advertising: During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the project. Sign or signs will be provided by the County and erected at Developer's expense.

15. Governing Law: The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in Palm Beach County.

EXHIBIT A

Return to:

Palm Beach County
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: James Brako,
Assistant County Attorney

**DECLARATION OF RESTRICTIONS
FOR DEVELOPER AFFORDABLE FOR-SALE HOUSING UNITS**

The undersigned, _____, having its principal office at _____, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described below, in consideration for the receipt of a Certificate of Award for Developer Affordable For-Sale Housing Units (the "Certificate"), dated _____, 20__, under Palm Beach County's Impact Fee Affordable Housing Assistance Program and the receipt of a credit valued at _____ and ___/100 Dollars (\$_____) towards the payment of road, park, and public buildings impact fees as provided by Palm Beach County a political subdivision of the State of Florida (the "County"), does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. The restrictions contained in this Declaration of Restrictions for Developer Affordable For-Sale Housing Units (the "Declaration") shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.

2. In consideration for the receipt of the Certificate and its associated credit of \$_____ towards the payment of Public Buildings Impact Fees, Zone ___ Park Impact Fees, and Zone ___ Road Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct no fewer than _____ (___) for-sale housing units on the Property, together with ancillary improvements, all of which shall be known as _____ (the "Project"). All aforesaid for-sale housing units shall be "Affordable For-Sale Housing Units" affected by the restrictions and conditions of this Declaration, and by those contained in the Certificate referenced herein. Each of the aforesaid Affordable For-Sale Housing Units shall be unit owner's principal place of residence. None of the Affordable For-Sale Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
- (c) To obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project no later than _____.
- (d) To obtain certificates of occupancy from the building department with jurisdiction over the Project for all Affordable For-Sale Housing Units at the Project no later than _____.

- (e) To sell, no later than _____, all Affordable For-Sale Housing Units at the Project to households whose gross income, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income (hereinafter "AMI") at the time of sale. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- (f) To sell each Developer Affordable For-Sale Housing Unit such that, at the time of sale, the purchaser's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the purchaser's household.
- (g) To include the following restrictions and conditions in each deed conveying each Developer Affordable For-Sale Housing Unit:
 - i. These restrictions shall be deemed a covenant running with the land described herein and are binding upon the title holder of such land for a period of fifteen (15) years from the date hereof.
 - ii. This property may only be used for residential purposes as the title holder's principal place of residence as evidenced by a local homestead exemption.
 - iii. These restrictions may not be transferred to another property and these restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.
 - iv. These restrictions, unless released by Palm Beach County as provided above, shall be included in every subsequent deed conveying title to this property and shall renew for a period of fifteen (15) years from the date of every such deed.
 - v. This property may only be sold, conveyed or transferred to a successor title holder whose gross household income, at the time of sale, conveyance or transfer, adjusted for family size, is no more than one hundred and forty percent (140%) of Area Median Income as determined by the Palm Beach County Department of Economic Sustainability. Area Median Income shall be the most recent area median income published by the U. S. Department of Housing and Urban Development for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
 - vi. This property may only be sold, conveyed or transferred to a successor title holder such that the successor title holder's total cost of the mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the successor title holder as determined by the Palm Beach County Department of Economic Sustainability.
- (h) To submit annual reports to the County as outlined in the Certificate detailing the Declarant's compliance with the terms of the Certificate and this Declaration.
- (i) To maintain its records as provided for in the Certificate.

- (j) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.

3. Declarant has secured a loan to construct the Project in an amount up to \$ _____ from _____, or its successors (the "First Mortgage Holder"), which loan has been secured by a separate mortgage encumbering the Property (the "First Mortgage"). The lien created by this Declaration shall be senior to all other liens, encumbrances, and mortgages on the Property except the lien created by the First Mortgage, and except any other liens expressly recognized by the County in writing.

4. The Declarant shall pay, or cause to be paid, all taxes due while the Property is in its possession, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part of thereof, any lien superior to the lien of this Declaration except for the lien created by the First Mortgage, and except for any other liens expressly recognized by the County in writing. The Declarant shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure on the Property within five (5) working days of the receipt of said notice by Declarant.

5. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from affordable for-sale housing, then the Declarant shall pay the County an amount equal to the IFAHAP Repayment Amount as defined herein.

6. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under the First Mortgage, under any senior mortgage to this Declaration, or under any subordinate mortgage to this Declaration, shall constitute a default under this Declaration.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction.

If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration or the Certificate within the period set forth above after the County provides notice to the Declarant as set forth above, the County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which the County may have hereunder or under the law by reason of such default or breach, declare due from Declarant immediately upon demand an amount equal to the IFAHAP Repayment Amount as defined herein.

If the Declarant shall fail to pay the above amount, the County shall have the right to file in a court of competent jurisdiction an action for collection of due and unpaid amount and penalties which the Declarant is obligated to pay hereunder.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County cures any default.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County exercises any remedy under this provision.

7. The IFAHAP Repayment Amount per Developer Affordable For-Sale Housing Unit shall be calculated as the sum of the amount of assistance received by the Declarant for such unit plus three percent (3%) of the amount of assistance received for the unit plus \$1,500.

Attachment 2 provides a schedule of all Developer Affordable For-Sale Housing Units and the amount of assistance received by the Declarant for each such unit.

Upon receipt of the IFAHAP Repayment Amount by the County, the County shall issue the Declarant a release of restrictions removing the lien of this Declaration from the affected Developer Affordable For-Sale Housing Units.

8. All notices from the Declarant to the County and the County to the Declarant, and as otherwise required or permitted by any provision of this Declaration shall be in writing and sent by registered or certified mail and addressed as follows:

To County: Board of County Commissioners
c/o Palm Beach County Attorney's Office
301 N. Olive Avenue, Suite 601
West Palm Beach, FL 33401

To Declarant: _____

Attention: _____

To First Mortgage Holder: _____

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

THIS SPACE HAS BEEN INTENTIONALLY LEFT BLANK

9. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Economic Sustainability, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

Executed this ___ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

Witnesses:

DECLARANT NAME HERE _____,
a Florida _____

Name: _____

Signature:

By: _____
name, title

Name: _____

Signature:

STATE OF FLORIDA
COUNTY OF PALM BAECH

The foregoing instrument was acknowledged before me this ___ day of, _____,
20__, by _____, as _____ of _____, who
is personally known to me, or who has produced _____ as
identification.

Signature: _____

(NOTARY SEAL ABOVE)

Notary Name: _____
Notary Public - State of Florida

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

PALM BEACH COUNTY
IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM

CERTIFICATE OF AWARD
FOR SINGLE FAMILY AFFORDABLE HOUSING UNITS

This Certificate is awarded on _____, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County") to _____ (the "Homeowner"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on _____, at which time authority was delegated to the Mayor to execute this Certificate.

The Homeowner may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit of \$_____ towards the payment of Public Buildings Impact Fees, a credit of \$_____ towards the payment of Zone ___ Park Impact Fees, and a credit of \$_____ towards the payment of Zone ___ Road Impact Fees associated with the construction of a single family home at _____.

In exchange for the acceptance of this Certificate and the receipt of the aforementioned credits from the County towards the payment of impact fees associated with the above stated single family home, the Homeowner expressly agrees to comply with, and to perform, all of the terms contained in the below enumerated Conditions of Issuance.

Furthermore, in exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with the above stated single family home, the Homeowner also agrees to execute and deliver to the County a Declaration of Restrictions for Single Family Affordable Housing Units, as attached hereto and made a part hereof, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date of funding approval for the Homeowner by the Palm Beach County Board of County Commissioners, that is, on _____.

(COUNTY SEAL BELOW)

PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Paulette Burdick, Mayor

By: _____
Deputy Clerk

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
James Brako
Assistant County Attorney

By: _____
Sherry Howard, Deputy Director

CONDITIONS OF ISSUANCE

1. Housing To Be Constructed: At the time of issuance of this Certificate to the Homeowner, the Homeowner has represented to the County that the Homeowner owns that certain real property (hereinafter "Property") located in Palm Beach County, Florida, as more particularly described in Attachment 1 to Exhibit A, attached hereto and made a part hereof. The Homeowner shall construct a detached single family home on the Property, together with ancillary improvements (hereinafter "Project"). The Project may not be used for transitional housing, for emergency shelters, or for other non-permanent housing.

2. Declaration of Restrictions: As a prerequisite to the Homeowner's receipt of the herein described credit towards the payment of impact fees for the Project, the Homeowner shall have provided the County with the following:

- _____.
- _____.
- _____.

The Homeowner shall, in exchange for the receipt of this Certificate deliver to the County a fully executed Declaration of Restrictions for Single Family Affordable Housing Units, attached hereto and made a part hereof, as Exhibit A, and shall comply with the terms contained therein.

3. Building Permits: Homeowner shall obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project within one (1) year after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than _____.

4. Certificates of Occupancy: Homeowner shall obtain a certificate of occupancy for the Project from the building department with jurisdiction over the Project within four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, no later than _____. The Homeowner shall provide the County a copy of the certificate of occupancy within 30 days of its issuance.

5. Occupancy Requirement: The Homeowner shall, for a period of fifteen (15) years from the date of issuance of the Project's certificate of occupancy reside at the Project and occupy the home as the Homeowner's principal place of residence. The Homeowner shall acquire a local homestead exemption evidencing the Homeowner's residency at the property.

6. Certification: Homeowner shall upon request by the County provide the County an affidavit containing a certification that the Homeowner resides at the Project as the Homeowner's principal place of residence.

The Homeowner shall submit the affidavit to:

Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

7. Non-Discrimination: The Homeowner shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the sale of the Property.

8. Exclusion of Third Party Beneficiaries: No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Homeowner.

9. Governing Law: The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in Palm Beach County.

EXHIBIT A

Return to:

Palm Beach County
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: James Brako,
Assistant County Attorney

**DECLARATION OF RESTRICTIONS
FOR SINGLE FAMILY AFFORDABLE HOUSING UNITS**

The undersigned, _____, having its principal residence at _____, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described below, in consideration for the receipt of a Certificate of Award for Single Family Affordable Housing Units (the "Certificate"), dated _____, under Palm Beach County's Impact Fee Affordable Housing Assistance Program and the receipt of a credit valued at _____ and /100 Dollars (\$_____) towards the payment of road, park, and public buildings impact fees as provided by Palm Beach County a political subdivision of the State of Florida (the "County"), does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. The restrictions contained in this Declaration of Restrictions for Single Family Affordable Housing Units (the "Declaration") shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. The Declarant acknowledges and understands that these restrictions may not be transferred to another property.

These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.

2. In consideration for the receipt of the Certificate and its associated credit of \$_____ towards the payment of Public Buildings Impact Fees, Zone ___ Park Impact Fees, and Zone ___ Road Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct a detached single family home on the Property, together with ancillary improvements, all of which shall be known as _____ (the "Project").
- (c) To obtain all building permits for the construction of the Project from the building department with jurisdiction over the Project no later than _____.
- (d) To obtain a certificate of occupancy for the Project from the building department with jurisdiction over the Project no later than _____, and to provide the County a copy of the certificate of occupancy within 30 days of its issuance.
- (e) To reside at the Project for a period of fifteen (15) years from the date of issuance of the Project's certificate of occupancy (the "Compliance Period") and to occupy the home as the Declarant's principal place of residence as evidenced by the Declarant's acquisition of a local homestead exemption.

- (f) To provide the County, upon the County's request, an affidavit containing a certification that the Declarant resides at the Project as the Declarant's principal place of residence.
- (g) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the sale of the Property.

3. Declarant has secured a loan to construct the Project in an amount up to \$ _____ from _____, or its successors (the "First Mortgage Holder"), which loan has been secured by a separate mortgage encumbering the Property (the "First Mortgage"). The lien created by this Declaration shall be senior to all other liens, encumbrances, and mortgages on the Property except the lien created by the First Mortgage, and except any other liens expressly recognized by the County in writing.

4. The Declarant shall pay, or cause to be paid, all taxes due while the Property is in its possession, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part of thereof, any lien superior to the lien of this Declaration except for the lien created by the First Mortgage, and except for any other liens expressly recognized by the County in writing. The Declarant shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure on the Property within five (5) working days of the receipt of said notice by Declarant.

5. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from a detached single family home, or should the Declarant sell, convey or transfer title to the Property prior to the end of the Compliance Period without the County's approval, then the Declarant shall pay the County an amount equal to the entire credit amount secured hereby.

In the event of any proposed sale, conveyance or transfer of the Property prior to the end of the Compliance Period, the Declarant must obtain approval of the County. Any approved sale or conveyance of the Property by the Declarant will be contingent upon the County's determination that the subsequent owner meets the requirements of the Impact Fee Affordable Housing Assistance Program and upon the County's receipt of a declaration of restrictions from the subsequent owner at the time of title transfer to the Property and where the subsequent owner accepts the restrictions and conditions provided herein for a period of fifteen (15) years from the date of title transfer.

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

6. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under the First Mortgage, under any senior mortgage to this Declaration, or under any subordinate mortgage to this Declaration, shall constitute a default under this Declaration.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction.

If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration or the Certificate within the period set forth above after the County provides notice to the Declarant as set forth above, the County may at any time thereafter, with or without notice or demand and without limiting any other right or remedy which the County may have hereunder or under the law by reason of such default or breach, elect to exercise any one of the following remedies:

- (a) Declare due from Declarant immediately upon demand an amount equal to the entire credit amount secured hereby.
- (b) Declare due from Declarant immediately upon demand a penalty of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per quarter where such default exists which penalty shall accrue from the date the default commenced. The Declarant shall pay said amount within ten (10) calendar days after the thirty (30) calendar day cure period specified above, and then on the first day of each quarter thereafter.

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County cures any default.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration shall not bar or breach any of the County's rights or remedies on any subsequent default. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County exercises any remedy under this provision.

7. Declarant shall pay the County an amount equal to the entire credit amount secured hereby upon the Declarant's voluntary withdrawal from the Impact Fee Affordable Housing Assistance Program.

8. All notices from the Declarant to the County and the County to the Declarant, and as otherwise required or permitted by any provision of this Declaration shall be in writing and sent by registered or certified mail and addressed as follows:

To County: Board of County Commissioners
 c/o Palm Beach County Attorney's Office
 301 N. Olive Avenue, Suite 601
 West Palm Beach, FL 33401

To Declarant: _____

 Attention: _____

To First Mortgage Holder: _____

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

9. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Economic Sustainability, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

Executed this ___ day of _____, 20__.

Signed, sealed and delivered
in the presence of:

Witnesses:

Name: _____

By: _____
name

Signature:

Name: _____

Signature:

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ___ day of _____,
20__, by _____, who is personally known to me, or who
has produced _____ as identification.

Signature: _____

(NOTARY SEAL ABOVE)

Notary Name: _____
Notary Public - State of Florida

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

**IMPACT FEE ASSISTANCE PROGRAM GUIDELINES
SEPTEMBER 14, 2010**

I. ELIGIBLE APPLICANTS

Eligible applicants for the Impact Fee Assistance Program include For-Profit entities and Non-Profit entities who are seeking to build affordable rental or for-sale housing within identified impact fee benefit zones. Eligible applicants also include individuals or households who are seeking to build a home for use as their principal place of residence.

II. ELIGIBLE USES OF FUNDING

Only those projects that can demonstrate evidence of site control, evidence of infrastructure availability and evidence of appropriate zoning can apply. The only eligible use of Impact Fee Assistance Program funding is for the payment of impact fees associated with the development of affordable housing. Specifically, these funds may only be used to offset like impact fee types within the same impact fee benefit zones for eligible affordable housing developments. Funding awards to any eligible project shall be recommended by the Commission on Affordable Housing (CAH).

III. AFFORDABILITY GUIDELINES

"Affordable Rental Housing" projects are defined as housing units with a rent structure that charges the lesser of applicable United States Department of Housing and Urban Development (HUD) Fair Market Monthly Rents or a rental rate which does not exceed 30% of the adjusted gross income of the prospective tenant household. The 2010 HUD Fair Market Monthly rents are illustrated below.

Efficiency	\$ 910.00
One Bedroom	\$1,066.00
Two Bedroom	\$1,259.00
Three Bedroom	\$1,780.00
Four Bedroom	\$1,834.00

Rental Projects will be required to submit all statements certifying/verifying the affordability of the units annually for a period of fifteen (15) annual years. "Affordable for-sale" housing or "affordable individual homes" are defined as fee simple housing units which are affordable to individuals or households whose incomes do not exceed 120% of Area Median Income. Occupants of detached residential units shall be required to submit annual income certification statements for a period of (15) years.

IV. NOTICE OF FUNDING AVAILABILITY

Once the Office of Financial Management and Budget (OFMB) has established the amount of Impact Fee Assistance Program funding per the impact fee benefit zones, Housing and Community Development (HCD) staff shall advertise a Notice of Funding Availability. This notice shall provide information detailing: 1) the amount of funding available per the impact fee types; and 2) the eligible impact fee benefit zones. Applications will be accepted year-round as long as funding is available.

V. APPLICATION REVIEW & FUNDING RECOMMENDATIONS

All applications for impact Fee Assistance for Affordable Housing program funding must be submitted to HCD. HCD staff shall review the applications for completeness.

Those applications which are found complete shall be presented to HCD's Commission on Affordable Housing for funding recommendations.

VI. CONCEPTUAL & FINAL APPROVALS

Those applications and funding requests which receive funding recommendations from HCD's Commission on Affordable Housing, shall be presented to the Board of County Commissioners (BCC) for final approval. Approved projects will receive an "Impact Fee Assistance Certificate" which will stipulate final funding criteria.

All approved affordable housing projects **MUST** acquire all building permits within one (1) year of BCC final approval and construction must be complete within four (4) years.