



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures					
Grant Expenditures	\$389,046				
External Revenues	(\$389,046)				
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>-0-</b>				

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

Fund 1103 Dept 143 Unit 1434 Object 8201 Program Code/Period varies HM70A/ various  
HM70B various

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

The Agreement with Habitat Housing Solutions, Inc. allocates \$389,046 in HOME funds.

**C. Departmental Fiscal Review:**

  
 \_\_\_\_\_  
 Shairette Major, Fiscal Manager II

**III. REVIEW COMMENTS**

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

  
 OFMB 2/1/19 MJ/19

  
 Contract Development and Control  
1/17/17 JD

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**AGREEMENT BETWEEN PALM BEACH COUNTY**

**AND**

**HABITAT HOUSING SOLUTIONS, INC.**

**NOV 29 2016**

**THIS AGREEMENT**, entered into on \_\_\_\_\_, by and between **Palm Beach County**, a political subdivision of the State of Florida (hereinafter "County"), for the use and benefit of its HOME Investment Partnerships Program (hereinafter "HOME"), and **Habitat Housing Solutions, Inc.**, a non-profit corporation duly organized and existing by virtue of the laws of the State of Florida, whose principal office is at 6758 N. Military Trail, Suite 107, Riviera Beach, FL 33407, whose Federal Tax Identification number is 46-3352865, and whose DUNS number is 007534608 (hereinafter "Agency").

**WHEREAS**, the County is in receipt of HOME funds from the United States Department of Housing and Urban Development; and

**WHEREAS**, the County made \$389,046 in HOME funds available to the Agency for use on eligible affordable housing costs as more fully described herein; and

**WHEREAS**, on September 13, 2016, the County conceptually approved the award of \$389,046 in HOME funds to be made available to the Agency subject to the execution of this Agreement; and

**WHEREAS**, the Agency wishes to use the aforesaid funds to construct two (2) homes on land acquired for such purpose and to sell these homes to households having certain income levels as more particularly described in Exhibit A, attached hereto and made a part hereof; and

**WHEREAS**, the Agency and the County have negotiated the terms and conditions of, and wish to enter into, this Agreement in order to set forth the terms and conditions for the disbursement of the aforesaid funds.

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

**1. DEFINITIONS**

- (1) "County" means Palm Beach County.
- (2) "Agency" means Habitat Housing Solutions, Inc.
- (3) "HOME" means the HOME Investment Partnerships Program of the United States Department of Housing and Urban Development as authorized by 24 CFR Part 92 which regulations shall be applicable to all activities funded through this Agreement.
- (4) "CHDO" means Community Housing Development Organization as defined under HOME.
- (5) "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.
- (6) "DES" means Palm Beach County Department of Economic Sustainability.
- (7) "DES Approval" means the written approval of the DES Director or his designee.
- (8) "HOME Assisted Units" means the two (2) homes to be constructed by the Agency and occupied as more particularly described in Exhibit A, and for which the Agency receives funding made available through this Agreement.

**2. PURPOSE**

The purpose of this Agreement is to state the covenants and conditions under which the Agency, as a CHDO, will implement the Scope of Services set forth below.

**3. SCOPE OF SERVICES**

The Agency shall, in a satisfactory and proper manner as determined by DES, perform the tasks necessary to implement the Project outlined in Exhibit A as attached hereto and made a part hereof.

**4. MAXIMUM COMPENSATION**

The Agency agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and DES Director or designee-approved expenditures and encumbrances made by the Agency under this Agreement. Said services shall be performed in a manner satisfactory to DES. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$389,046 in HOME funds. From the date of this Agreement through and including September 30, 2018, the Agency, subject to DES approval, may receive the above specified amount in payment or reimbursement for the herein described eligible costs if incurred as of September 13, 2016. Of the aforesaid sum, no more than \$353,679 may be received by the Agency (or expended by the County for the benefit of the Agency) for project costs as specified herein, and no more than \$35,367 may be received by the Agency for operating expenses and developer fees as specified herein. The release of these HOME funds by the County is contingent upon HUD's release of these funds to County in HUD's IDIS reporting system.

Any funds not drawn and expended by the dates provided below shall remain with the County and not be eligible for payment or reimbursement to the Agency and the County may reallocate such funds for other projects or needs, unless revised by written agreement between the parties. Furthermore, the County shall not be obligated to replace HOME funds that were not drawn or expended with funds from another source, and the County's right to reallocate such HOME funds shall not be subject to the rights of any other lender or the terms of any subordination agreement.

Nothing in this Agreement shall obligate the Palm Beach County Board of County Commissioners to provide funding from the County's annual budget and appropriations, or from any other funding source, for any reason.

**5. TIME OF PERFORMANCE**

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of HOME funds for this project by HUD. The effective date shall be the date of execution of this Agreement, and the services of the Agency shall be undertaken and completed in light of the purposes of this Agreement. The Agency shall expend all \$389,046 made available through this Agreement on the herein described eligible costs.

More specifically, the Agency shall diligently carry out the Project such that at least 50% of the \$389,046 in allocated funds, that is no less than \$194,523, have been drawn from the County's HOME funds by September 30, 2017, unless DES, in its sole discretion, approves a later date. Thereafter, the Agency shall diligently continue to carry out the Project such that the remainder of the \$389,046 in allocated funds has been fully drawn from the County's HOME funds by September 30, 2018, unless DES, in its sole discretion, approves a later date.

The Agency shall complete all services required hereunder by September 30, 2018. This Agreement shall expire on September 30, 2018.

**This Agreement may be amended to decrease and/or recapture grant funds from the Agency depending upon the timely completion of the Project and/or the rate of expenditure of funds, as determined by DES. Failure by the Agency to diligently carry out the Project may negatively impact ability to receive future grant awards.**

**The Agency further agrees that DES, in consultation with any parties it deems necessary, shall be the final arbiter of the Agency's compliance with the above.**

**6. METHOD OF PAYMENT**

The County agrees to make payments and to reimburse the Agency for all eligible budgeted costs permitted by Federal, State, and County guidelines. The Agency shall not request reimbursement for payments made by the Agency before September 13, 2016. The Agency shall not request reimbursement for payments made after September 30, 2018 for project costs, nor shall the Agency request reimbursement or payment for operating expenses and developer fees after September 30, 2018. In no event shall the County provide advance funding to the Agency or any subcontractors

hereunder. The Agency shall request payments or reimbursements from the County by submitting to DES proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Agency may furnish copies if deemed acceptable by DES. Each request for payment or reimbursement submitted by the Agency shall be accompanied by a letter from the Agency, provided on the Agency's letterhead, referencing the name of the project funded herein, the date of this Agreement and/or its document number, and containing a statement requesting the payment or reimbursement and its amount, as well as the name and signature of the person making the request. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by DES.

**7. CONDITIONS ON WHICH PAYMENT IS CONTINGENT**

- (1) **IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES**  
The Agency shall implement this Agreement in accordance with applicable Federal, State, County, and local laws, ordinances and codes. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by DES.
- (2) **FINANCIAL ACCOUNTABILITY**  
The County may have a financial systems analysis and/or an audit of the Agency, or of any of its subcontractors, by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.
- (3) **CONTRACTING**  
All work or services contracted by the Agency and funded hereunder shall be specifically by written contract, written agreement, or purchase order and shall be subject to Federal, State and County laws and regulations (including, but not limited to, the non-discrimination requirements specified herein). All such contracts, agreements and purchase orders shall be submitted by the Agency to DES and approved by DES prior to execution as required herein. All consultant contracts and fee schedules shall meet the minimum standards as established by HUD, and if applicable, by the County. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts and reimbursables thereunder shall be at cost.
- (4) **PURCHASING**  
All purchasing for services and goods to be funded by this Agreement, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed herein.
- (5) **REPORTS, AUDITS, AND EVALUATIONS**  
Payment will be contingent on the timely receipt of complete and accurate reports required by this Agreement, and on the resolution of monitoring or audit findings identified pursuant to this Agreement.
- (6) **ADDITIONAL DES, COUNTY, AND HUD REQUIREMENTS**  
DES shall have the right under this Agreement to suspend or terminate payments if after 15 days written notice the Agency has not complied with any additional reasonable conditions that may be imposed, at any time, by DES or the County, or any additional conditions that may be imposed by HUD.
- (7) **SOURCE OF FUNDING**  
This Agreement and all obligations of County hereunder are subject to and contingent upon receipt of funding from HUD. Nothing in this Agreement shall obligate the Palm Beach County Board of County Commissioners to provide funding from the County's annual budget and appropriations.

**8. CIVIL RIGHTS COMPLIANCE, PROHIBITION OF INQUIRIES AND OPPORTUNITIES FOR RESIDENTS**

The Agency acknowledges that it is the express policy of the Board of County Commissioners of Palm Beach County, Florida that the County shall not conduct business with nor appropriate any funds to any organization that practices discrimination on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information. In compliance with the County's requirements contained in Resolution R2014-1421, the Agency has either submitted a copy of its written non-discrimination policy which is consistent with the policy detailed above, or has submitted an executed statement affirming that its non-discrimination policy is in conformance with the policy detailed above.

In furtherance of such policy, the Agency shall not, on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information, exclude any person from the benefits of, or subject any person to discrimination under, any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

The Agency agrees that it may not inquire about the sexual orientation or gender identity of an applicant for, or occupant of a HOME Assisted Unit, whether renter- or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

To the greatest extent feasible, lower-income residents of the project areas shall be given opportunities for training and employment; and to the greatest feasible extent eligible business concerns located in or owned in substantial part by persons residing in the project areas shall be awarded contracts in connection with the Project. The Agency shall comply with the Section 3 Clause of the Housing and Community Development Act of 1968.

The Agency shall also comply with 24 CFR 5.105(a) regarding discrimination.

The Agency shall comply with all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program.

**9. OPPORTUNITIES FOR SMALL AND MINORITY / WOMEN-OWNED BUSINESS ENTERPRISES**

In the procurement of supplies, equipment, construction, or services to implement this Agreement, the Agency shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible, these small business and minority/women-owned business enterprises shall be located in or owned by residents of areas designated by Palm Beach County in the Annual Consolidated Plan approved by HUD.

**10. EVALUATION AND PERFORMANCE MONITORING**

The Agency agrees that DES will carry out regular performance monitoring and evaluation activities as determined necessary by DES or the County, along with other applicable federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. **Due to the strict HUD expenditure and completion deadlines, performance requirements as detailed herein will be closely monitored by DES. Substandard performance, as determined by DES, will constitute noncompliance with this Agreement. If corrective action is not undertaken by the Agency within a reasonable period of time after being notified**

by DES, contract termination or suspension procedures will be initiated. The Agency agrees that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement.

The Agency agrees to furnish upon request to DES, the County, or the County's designees copies of transcriptions of such records and information as is determined necessary by DES or the County. The Agency shall submit status reports required under this Agreement on forms approved by DES to enable DES to evaluate progress. The Agency shall provide information as requested by DES to enable DES to complete reports required by the County or HUD. The Agency shall allow DES, the County, or HUD to monitor the Agency on site. Such visits may be scheduled or unscheduled as determined by DES or HUD.

#### **11. AUDITS AND INSPECTIONS**

At any time during normal business hours and as often as DES, the County, HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Agency to DES, the County, HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement.

If during the Agency's fiscal year, the Agency expends \$750,000, or more, of Federal awards, the Agency shall submit a single audit and shall comply with the provisions of 2 CFR Part 200. The Agency shall submit its audit to DES within the earlier of, 30 days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period in which DES-administered funds are expended. Said audit shall be made by a Certified Public Accountant of the Agency's choosing, subject to the County's approval. In the event the Agency anticipates a delay in producing such audit, the Agency shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Agency. The County will be responsible for providing technical assistance to the Agency, as deemed necessary by the County.

#### **12. UNIFORM ADMINISTRATIVE REQUIREMENTS**

The Agency agrees to comply with the applicable uniform administrative requirements as described in 2 CFR Part 230 (OMB Circular A-122) and 24 CFR Part 84.

#### **13. DATA BECOMES COUNTY PROPERTY AND RECORD RETENTION**

All reports, plans, surveys, information, documents, maps, and other data produced, developed, prepared, assembled, or completed by the Agency for the purpose of this Agreement shall be made available to the County by the Agency at any time upon request by the County or DES. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to DES if requested.

In any event, the Agency shall keep this Agreement, all amendments to this Agreement, and all documents and records in connection with this Agreement and make them available to the County for on-site monitoring for at least five (5) years after expiration of this Agreement, except that:

- (1) In connection with homes sold by the Agency, documents imposing recapture/resale restrictions shall be retained by the Agency for five (5) years after the affordability period terminates.
- (2) In connection with homes rented/leased by the Agency, records of individual tenant income verifications, project rents and project inspections shall be retained by the Agency for five (5) years after the affordability period terminates.
- (3) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required retention period records in connection with the aforesaid shall be retained by the Agency until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

#### **14. INDEMNIFICATION**

The Agency shall protect, defend, reimburse, indemnify and hold the County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during performance of the terms of this Agreement or due to the acts or omissions of the Agency. Agency's aforesaid indemnity and hold harmless obligation, or portion or applications thereof, shall apply to the fullest extent permitted by law. The Agency will hold the County harmless and will indemnify the County for funds which the County is obligated to refund the Federal Government arising out of the conduct of activities and administration of Agency.

#### **15. INSURANCE**

Unless otherwise specified in this Agreement, the Agency shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages, limits, including endorsements, as described herein. Prior to execution of this Agreement and commencement of any operations/services provided under this contract, the Agency shall provide the County with current certificates of insurance evidencing all required coverage. The requirements contained herein as to types and limits, as well as the County's review or acceptance of insurance maintained by the Agency, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Agency under this Agreement. Any request for an exception to these insurance requirements must be submitted in writing to the County for approval.

(1) **COMMERCIAL GENERAL LIABILITY**

The Agency shall agree to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding nor limiting Premises/Operations, Personal Injury, Product/Completed Operations, Contractual Liability, Severability of Interests or Cross Liability. Coverage shall be provided on a primary basis.

(2) **BUSINESS AUTOMOBILE LIABILITY**

The Agency shall agree to maintain Business Automobile Liability at a limit of liability not less than \$500,000 Each Occurrence for all owned, non-owned and hired automobiles. In the event the Agency does not own any automobiles, the Business Auto Liability requirement shall be amended allowing the Agency to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. The Agency agrees that this coverage shall be provided on a primary basis.

(3) **WORKER'S COMPENSATION INSURANCE**

The Agency shall agree to maintain Workers' Compensation Insurance & Employers Liability in accordance with Florida Statutes Chapter 440. The Agency agrees this coverage shall be provided on a primary basis.

(4) **ADDITIONAL INSURED**

The Agency shall agree to endorse the County as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. **The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents, c/o Department of Economic Sustainability"**. The Agency shall agree the Additional Insured endorsements provide coverage on a primary basis.

(5) **CERTIFICATE OF INSURANCE**

Prior to execution of this Agreement, the Agency shall deliver to the County via the Insurance Company/Agent a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. During the term of the Agreement and prior to each subsequent renewal thereof, the Agency shall provide this evidence to ITS at [pbcc@instracking.com](mailto:pbcc@instracking.com) or fax (562) 435-2999, which is Palm



Beach County's insurance management system, prior to the expiration date of each and every insurance required herein. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage.

Palm Beach County  
c/o Insurance Tracking Services, Inc. (ITS)  
P. O. Box 20270  
Long Beach, CA 90801

In the event the County discontinues its use of the insurance tracking system named herein, the County shall provide written notice to the Agency with instructions regarding a substitute delivery address.

(6) RIGHT TO REVIEW AND ADJUST

The Agency shall agree the County, by and through its Risk Management Department, in cooperation with DES, reserves the right to periodically review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this Agreement. The County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

**16. MAINTENANCE OF EFFORT**

The intent and purpose of this Agreement is to increase the availability of the Agency's services. This Agreement is not to substitute for or replace existing or planned projects or activities of the Agency. The Agency agrees to maintain a level of activities and expenditures, planned or existing, for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.

**17. CONFLICT OF INTEREST**

The Agency covenants that no person (an employee, agent, consultant, officer, or elected or appointed official of the County or the Agency) who exercises or has exercised any functions or responsibilities with respect to activities assisted under this Agreement, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this Agreement, may obtain a financial interest or benefit from an assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has business or immediate family ties, during his or her tenure or for one (1) year thereafter.

Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

Any possible conflict of interest on the part of the Agency, or any person as described above, shall be disclosed in writing to the County.

No owner, developer, or sponsor of the project assisted through this Agreement (or officer, employee, agent, elected or appointed official or consultant of the Agency, owner, developer or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official or consultant of the Agency, owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME Assisted Unit (a HOME-assisted affordable housing unit) during the required period of affordability specified in 24 CFR 92.252(e) or 24 CFR 92.254(a)(4). This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. All written requests for exceptions to the above requirement regarding the occupancy of a HOME Assisted Unit shall be submitted to the County.

## **18. CITIZEN PARTICIPATION**

The Agency shall cooperate with DES in the implementation of the Citizen Participation Plan by establishing a citizen participation process to keep residents informed of the activities the Agency is undertaking in carrying out the provisions of this Agreement. Representatives of the Agency shall attend meetings and assist DES in the implementation of the Citizen Participation Plan, as requested by DES.

## **19. RECOGNITION**

All facilities purchased or constructed pursuant to this Agreement shall be clearly identified as to funding source. The Agency will include a reference to the financial support herein provided by DES in all publications and publicity. In addition, the Agency will make a good faith effort to recognize DES's support for all activities made possible with funds made available under this Agreement.

## **20. AGREEMENT DOCUMENTS**

The following documents are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein:

- (1) This Agreement, including its Exhibits, which the County may revise from time to time, as required, and to be provided for use by the Agency;
- (2) 2 CFR Part 200 and 24 CFR Part 5, Subpart A;
- (3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- (4) Executive Orders 11246, 11375, 11478, 12086, 12107, 11625, 12007, 12138, 12608, 12432, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, Section 3 of the Housing and Community Development Act of 1968, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, Protecting Tenants at Foreclosure Act of 2009 (PFTA), Public Law No. 111-22;
- (5) Executive Orders 11063, 12259, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (6) Florida Statutes, Chapter 112;
- (7) The Drug-Free Workplace Act of 1988;
- (8) The HOME Investment Partnerships Act at Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et se., and the HOME Investment Partnerships Program Regulations (24 CFR Part 92);
- (9) The Agency's personnel policies and job descriptions;
- (10) The Agency's Bylaws;
- (11) The Agency's Certificate of Insurance;
- (12) Current list of the Agency's officers and members of its Board of Directors;
- (13) National Environmental Policy Act of 1969, Lead-Based Paint Poisoning Prevention Act, the Residential Lead-Based Paint Hazard Reduction Act of 1992 and 24 CFR Part 35, Environmental Protection Agency (EPA) NESHAP, 40 CFR Parts 61 Subpart M National Emission Standard for Asbestos, revised July 1991, Clean Air and Clean Water Acts, Energy Policy and Conservation Act of 1975; Occupational Health and Safety Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101, Florida State Licensing and Asbestos Laws, Title XVIII, Chapter 255;
- (14) Section 504 of the Rehabilitation Act of 1973;
- (15) Palm Beach County Purchasing Code

The Agency shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

## **21. TERMINATION**

In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Agency with funds under this Agreement shall be returned to DES or the County. In the event of termination, the Agency shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Agency, and the County may

withhold any payment to the Agency for set-off purposes until such time as the exact amount of damages due to the County from the Agency is determined.

(1) TERMINATION FOR CAUSE

If, through any cause, either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination, provided, however, that with respect to non-monetary defaults, the County shall give written notice to the Agency, who shall have ninety (90) calendar days to cure, and provided that, with respect to monetary defaults, the County shall give written notice to the Agency, who shall have thirty (30) calendar days to cure, and provided that the Agency promptly initiates and diligently pursues such cure.

(2) TERMINATION FOR CONVENIENCE

At any time during the term of this Agreement, either party may, at its option and for any reason, terminate this Agreement upon ten (10) working days written notice to the other party. Upon termination, the County shall pay the Agency for services rendered pursuant to this Agreement through and including the date of termination, provided that such payment shall be limited to HOME Assisted Units that have been sold or rented and occupied as required herein.

If the Agency elects to terminate this Agreement after the County has provided HOME funds to the Agency, then the Agency shall refund the County all HOME funds expended by the County for HOME Assisted Units that have not been sold or rented and occupied as required herein.

(3) TERMINATION DUE TO CESSATION

In the event the HOME grant to the County is suspended or terminated, this Agreement shall be suspended or terminated effective on the date HUD specifies.

**22. PUBLIC RECORDS**

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

- (1) Keep and maintain public records required by the County to perform services as provided under this Agreement.
- (2) 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 Agency 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.
- (3) 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 Agency does not transfer the records to the public agency.
- (4) Upon completion of the Agreement the Agency shall transfer, at no cost to the County, all public records in possession of the Agency 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 Agency transfers all public records to the County upon completion of the Agreement, the Agency shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Agency keeps and maintains public records upon completion

of the Agreement, the Agency shall meet all applicable requirements for retaining public records. All records stored electronically by the Agency 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 Agency to comply with the requirements of this article shall be a material breach of this Agreement. 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 Agency 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 AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, 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](mailto:RECORDSREQUEST@PBCGOV.ORG) OR BY TELEPHONE AT (561) 355-6681.**

**23. SEVERABILITY OF PROVISIONS**

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

**24. AMENDMENTS**

The County may, at its discretion, amend this Agreement to conform with changes required by Federal, State, County, or HUD guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Palm Beach County Board of County Commissioners. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the Board of County Commissioners and signed by both parties.

**25. NOTICES**

All notices required to be given under this Agreement shall be sufficient when delivered to DES at its office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Agency when delivered to its office at the address listed on the first page of this Agreement.

**26. INDEPENDENT AGENT AND EMPLOYEES**

The Agency agrees that, in all matters relating to this Agreement, it will be acting as an independent agent and that its employees are not Palm Beach County employees and are not subject to the County provisions of the law applicable to County employees relative to employment, hours of work, rates of compensation, leave, unemployment compensation and employee benefits.

**27. NO FORFEITURE**

The rights of the County under this Agreement shall be cumulative and failure on the part of the County to exercise promptly any rights given hereunder shall not operate to forfeit or waive any of the said rights.

**28. REMEDIES**

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**29. EXCLUSION OF THIRD PARTY BENEFICIARIES**

No provision of this Agreement 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 to this Agreement, including but not limited to any citizen or employees of the County and/or the Agency.

**30. PUBLIC ENTITY CRIMES**

As provided in F.S. 287.133 by entering into this Agreement or performing any work in furtherance hereof, the Agency certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3) (a).

**31. PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL**

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 Agency, 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.

**32. ENTIRE UNDERSTANDING**

This Agreement and its provisions merge any prior agreements, if any, between the parties hereto and constitutes the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

**33. INCORPORATION BY REFERENCE**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

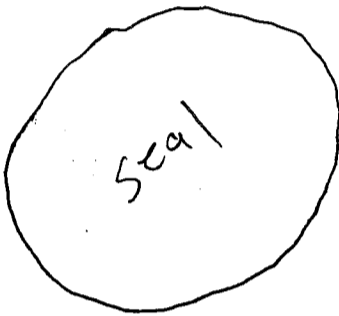
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**34. COUNTERPARTS OF THE AGREEMENT**

This Agreement, consisting of thirty-nine (39) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

WITNESS our Hands and Seals on this \_\_\_\_ day of NOV 29 2016, 20\_\_.

(AGENCY SEAL BELOW)



**HABITAT HOUSING SOLUTIONS, INC.**

By: Paula Portch  
Paula Portch, President

Date: 11/17/2016

By: Bernard Godek  
Bernard Godek, Secretary

Date: 11/17/2016

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

**FOR ITS BOARD OF COUNTY COMMISSIONERS**

By: Verdenia C. Baker  
Verdenia C. Baker  
County Administrator

Date: 11/29/16

Approved as to Form and  
Legal Sufficiency

By: James Brako  
James Brako  
Assistant County Attorney

Approved as to Terms and Conditions  
Department of Economic Sustainability

By: Sherry Howard FOR  
Sherry Howard  
Deputy Director

**EXHIBIT A**  
**WORK PROGRAM NARRATIVE**

**PART 1 - THE AGENCY AGREES TO:**

**SECTION A: OVERVIEW OF THE PROJECT:**

The Agency has acquired two (2) properties which have been approved by DES as HOME Assisted Units as follows:

- (a) 3028 Fleming Avenue, Greenacres, FL 33463  
Property Control Number: 18-42-44-23-02-002-0160
- (b) 3019 Jennings Avenue, Greenacres, FL 33463  
Property Control Number: 18-42-44-23-02-003-0170

The Agency warrants to the County that the above listed properties are vacant unoccupied properties.

Only those properties that have been approved by DES to be HOME Assisted Units and that are specifically identified above shall be eligible for HOME funding through this Agreement.

The Agency shall, under this Agreement, construct a four-bedroom detached single-family home on each property. Each property shall, as required herein, be sold to an income eligible household to be occupied as a principal place of residence for the duration of the affordability period as also set forth herein, and if not sold within a specified period, shall be rented to an income eligible household.

Notwithstanding anything to the contrary in this Agreement, all construction must be completed within the term of this Agreement in sufficient time to allow the Agency to realize beneficiaries for all HOME Assisted Units prior to September 30, 2018.

Under this Agreement, the Agency may receive reimbursement for project costs incurred by the Agency such as costs for construction, consultants, permits, land surveys, impact fees, utility connection fees and environmental compliance. The Agency may also receive payment for developer fees and certain operating expenses.

**SECTION B: MAXIMUM PER UNIT SUBSIDY AMOUNT:**

The Agency shall comply with applicable HOME regulations establishing the maximum per-unit subsidy amount for affordable housing where the total amount of HOME funds that may be expended on a per-unit basis shall not exceed the per-unit dollar limitation established in 24 CFR 92.250 which is \$277,344 for four-bedroom units.

The Agency must spend a minimum of \$1,000 per HOME Assisted Unit. Notwithstanding the maximum amount allowed to be spent per unit, nothing herein authorizes the Agency to be reimbursed under this Agreement for any sum in excess of the maximum and total authorized sum of **\$353,679** for project costs. Declarations of Restrictions shall be recorded securing the initial amount of **\$176,839.50** for each property, which amount shall be increased or decreased as necessary to reflect the actual amount of HOME funds provided for each property.

**SECTION C: TRACKING OF COSTS AND COST ALLOCATION:**

The Agency acknowledges and understands the importance of tracking its expenditures associated with each HOME Assisted Unit individually in order to clearly establish the development cost of each HOME Assisted Unit, the level of HOME funding for each HOME Assisted Unit and the level of subsidy for the occupants of each HOME Assisted Unit. The Agency shall accordingly maintain records clearly evidencing its expenditures for each HOME Assisted Unit individually including, but not limited to, contracts, invoices, receipts and bank statements, and where expenditures affect more than one HOME Assisted Unit, a record of how the Agency allocated its expenditures for each HOME Assisted Unit. No duplications shall be permitted and the County shall only allow documentation presented by the Agency to establish its expenditures for each HOME Assisted Unit that the County deems acceptable in its sole opinion.

**SECTION D: RIGHT OF ACCESS:**

For purposes of assuring compliance with this Agreement, representatives from DES and the County shall have the right of access to the properties acquired and/or improved with funds made available through this Agreement, without charges or fees and during reasonable times. The right of access purposes may include, but are not limited to, inspection of the work being performed, compliance by the Agency of all safety rules, and the Agency's compliance with all other terms of this Agreement.

**SECTION E: ELIGIBLE COSTS:**

The Agency may receive compensation or payment for the below enumerated cost categories for HOME Assisted Units, subject to the County's approval, provided the Agency has complied with the requirements of this Agreement in connection with such cost categories. In certain instances, the County may itself pay for certain of these cost categories and deduct the payment from funds allocated to the Agency herein.

**1. Project Costs:**

- (a) **Environmental Review Associated Costs:**  
Costs incurred by the Agency to comply with the environmental review requirements as imposed by DES. In addition, costs incurred by DES for environmental reviews may be charged to the budget made available through this Agreement. DES shall notify the Agency of any such costs.
- (b) **Appraisals:**  
Costs of appraisals prepared by independent licensed or certified Florida appraisers and which are prepared in conformance with the requirements of 49 CFR Part 24.103 and the relevant sections found in Appendix A thereof.
- (c) **Land Surveys:**  
Costs of property surveys prepared by Florida licensed surveyors.
- (d) **Recording Fees:**  
Costs of recording the herein required Declarations of Restrictions in the public records of Palm Beach County.
- (e) **Consultant Services:**  
Costs of Florida Registered Architects, Florida Professional Engineers and, when necessary, costs of other consultants whose services are deemed necessary for the Project by the County.
- (f) **Construction Costs:**  
Construction costs incurred by the Agency for the construction of new single-family homes, building permits, impact fees, utility connection fees, soil testing and builder's risk insurance. The Agency's receipt of the above reimbursement shall be subject to the Agency's compliance with the property standards at 24 CFR Part 92.251 in the sole opinion of the County.
- (g) **Property and Wind Insurance:**  
Costs of property and wind insurance as required herein.
- (h) **Title Insurance:**  
Costs of title insurance as required herein. Title policies shall be issued by a title insurance companies qualified to do business in the State of Florida and their issuance shall comply with Florida Statutes Chapter 626.

**2. Other Project Costs Not Listed Above:**

In regard to Project Costs not listed above, the Agency may submit a request to the County for reimbursement of payments made by the Agency in connection with this Agreement, and the County shall reimburse the Agency for such payments provided that the County, in its sole discretion, shall have determined that the costs requested for reimbursement are eligible costs under HOME and are otherwise in conformance with this Agreement. Upon the County's determination that the costs requested for reimbursement



are eligible costs, the Agency shall provide the County with a written reimbursement request for such costs along with evidence of payment, and other supporting documentation as established by the County and communicated to the Agency.

**SECTION F: PREREQUISITES TO THE EXPENDITURES OF HOME FUNDS:**

HOME funds made available through this Agreement may only be released by the County after the Agency has submitted the following to DES for each HOME Assisted Unit:

1. Title Insurance:

The Agency shall obtain a title insurance policy for all properties on which HOME funds are to be expended. Such policy shall be issued by a title insurance company qualified to do business in the State of Florida.

Only title insurance policies acceptable to County shall be deemed to have met these requirements. Where necessary, the Agency may perfect/cure title to a property in order to render the policy acceptable to the County. HOME funds may not be used for costs associated with perfecting/curing title to the property.

The Agency understand that the County may, in its sole discretion, decline to fund any costs associated with a property where the title insurance policy is not acceptable to County. **Furthermore, the Agency acknowledges and understands that the County's release of funds for any HOME Assisted Unit shall be subject to the County's acceptance of said title insurance policies.**

2. Declaration of Restrictions:

The Agency shall provide the County an original Declaration of Restrictions recorded in the public records of Palm Beach County for all properties on which HOME funds are to be expended. A separate Declaration of Restrictions for each HOME Assisted Unit, as provided in Exhibit B attached hereto, shall be executed by the Agency. Each such Declaration of Restrictions shall secure \$176,839.50.

The Agency shall cause each Declaration of Restrictions to be recorded in a first lien position in the Public Records of Palm Beach County, except that upon the Agency's written request, DES may allow other lenders to be in a senior lien position.

Declarations of Restrictions may be amended to increase or decrease the amount secured to match the anticipated expenditure per home provided that the total secured by all recorded Declarations of Restrictions shall never be less than the total amount of HOME funds expended pursuant to this Agreement and provided that the amount secured by each Declaration of Restrictions shall never be less than the amount of HOME funds expended on the property associated with each such Declaration of Restrictions. Any such amendment must be executed by the County and the Agency.

**SECTION G: PROPERTY AND WIND INSURANCE:**

The Agency shall, for the duration of the Declaration of Restrictions and for each home, assure continued and uninterrupted insurance coverage such that the below specified coverage is in full force and effect at all times except while the herein required builder's risk insurance is in full force and effect.

1. Property Insurance:

The Agency shall maintain property insurance written on a replacement cost basis in an amount not less than 100% of the replacement cost of the home and contents. Coverage shall be written on a replacement cost basis and include an endorsement for Ordinance & Law coverage.

2. Windstorm Insurance:

The Agency shall maintain windstorm insurance, unless included as a covered peril in the property insurance, in an amount not less than 100% of the actual cash value of the home and contents, or the maximum amount available under the Florida Windstorm Underwriting Association, whichever is less.

The Agency agrees to be fully responsible for any deductible or self-insured retention, and agrees to provide these coverages on a primary basis.

The Agency shall provide the County, within 10 business days after the effective date of this Agreement and within 10 business days after the cessation of coverage under the herein required builder's risk insurance, with a certificate of property and windstorm insurance as specified above.

**The requirements of this clause shall survive the expiration or early termination of this Agreement.**

**SECTION H: CONSULTANT SERVICES:**

The Agency shall retain the services of an architectural consultant who is a Florida Registered Architect (the "Consultant") for this Project to provide (design services to create plans and specifications) for the construction of all HOME Assisted Units described herein. The Consultant shall assist to acquire construction services; inspect work in progress; recommend payment to contractors; review and approve change orders and provide other professional services customarily provided by similar professionals for this type of project. Additional consultants, such as professional engineers, may be retained by the Agency on an as needed basis to cooperate with the Consultant, or may be retained as sub-consultants to the Consultant.

All consultant contracts shall include the pertinent HOME requirements in order to be eligible to for reimbursement under this Agreement. The Agency shall obtain such requirements from DES.

**SECTION I: CONSTRUCTION OF HOMES:**

**1. Procurement:**

The Agency shall acquire the construction services of a Florida General Contractor to construct the HOME Assisted Units, or may, in the alternative, acquire the services of Habitat for Humanity of Palm Beach County, Inc., who is the beneficiary of the exemptions provided under Chapter 489.103, Florida Statutes, and is accordingly able to construct the HOME Assisted Units contemplated herein. The Agency shall enter into a separate construction contract for each of the two (2) HOME Assisted Units. Each such construction contract shall comply with the requirements provided herein.

**2. DES Review of Proposed Construction Contract:**

The Agency shall submit to DES each proposed construction contract (including drawings and specifications). The Agency shall have obtained from DES, and included in its proposed construction contract, a document containing the HOME requirements applicable to the construction contract.

Each proposed construction contract shall include all construction work in connection with each home. Each proposed construction contract submitted to DES shall identify the proposed contractor, show the proposed contract amount per home and include a schedule of values (on form AIA G-702/703 or equivalent form) for each home to be constructed. The Agency is prohibited from including the cost of donated materials, equipment, labor and services in the construction contract amount.

The proposed construction contract for each home shall include drawings and specifications the execution of which will result in the construction of the home and attendant site improvements to the extent required herein and by the building department with jurisdiction such that a certificate of occupancy for the home will be issued by such building department upon completion of construction. The proposed construction contract shall also address the below requirements as well as any construction related improvements to the property in order to comply with the requirements of the environmental review.

(a) **Property Standards:**

Each home to be constructed in connection with this Agreement shall meet all applicable State and local codes, ordinances, and zoning requirements and the property standards at 24 CFR Part 92.251.

(b) **Prohibition Against the Use of Materials Containing Asbestos:**

The Agency shall ensure that its construction contract documents contain a prohibition against the use of any materials containing asbestos in

connection with the construction the homes described herein. Said documents must clearly state that all materials to be used in connection with the construction of these homes shall be asbestos-free.

(c) Builder's Risk Insurance:

The Agency shall ensure that its construction contract documents contain the following builder's risk requirement and shall provide evidence of such insurance coverage as required by DES:

"The Contractor, prior to commencement of work, agrees to maintain an Inland Marine Builder's Risk coverage form providing coverage to protect the interests of Palm Beach County, Habitat Housing Solutions, Inc., the Contractor, sub-contractors, architects, and engineers, including property acquired under a sales tax incentive program, property in transit, and property on or off-premises, which shall become part of the building, or Project. Coverage shall be written on an All-Risk, Replacement Cost, and Completed Value Form basis in an amount at least equal to 100% of the projected completed value of the Project as well as subsequent modifications of that sum. The Contractor agrees not to maintain a wind sublimit less than 25% of the projected completed value of the project. The Contractor agrees any flat deductible(s) shall not exceed \$25,000, and any wind percentage deductible (when applicable) shall not exceed five-percent (5%). The Contractor agrees to endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the building is occupied in whole or in part, or put to its intended use, or partially accepted by Habitat Housing Solutions, Inc. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the interest of Habitat Housing Solutions, Inc., in the building ceases, or the building is accepted or insured by the Habitat Housing Solutions, Inc."

(d) Bonding Requirements:

Construction contracts and subcontracts exceeding \$100,000 shall require a performance bond and a separate payment bond each in the amount of one hundred percent (100%) of the construction contract price, executed by a corporate surety company of recognized standing, authorized to do business in the State of Florida, as security for the faithful performance and payment of all contractor's obligations under the construction contract. During the construction periods the surety company shall hold a current certificate of authority as an acceptable surety on Federal Bonds, in accordance with U. S. Department of Treasury Circular 570, Current Revision.

3. Federal Requirements:

The Agency shall obtain from the County, and include in its contract documents the applicable Federal requirements for the Project. The Agency shall assure compliance with all applicable Federal requirements, including, but not limited to, the following:

(a) Section 3 Requirements:

The Agency agrees to comply with all Section 3 requirements applicable to contracts funded through this Agreement. The Agency shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract for every Section 3 covered project:

**Section 3 Clause**

(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- (ii) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (v) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

4. Construction Contract Award and Change Order Approval:

The Agency shall obtain DES approval prior to awarding each construction contract to be funded through this Agreement. After awarding each contract, the Agency shall:

- (a) Provide DES a copy of the executed construction contract.
- (b) Provide DES a copy of the forms included in the "Requirements for Federally Funded Projects" fully executed by the contractor.
- (c) Obtain DES approval prior to executing any change orders to such contract.
- (d) Provide DES a copy of all executed change orders to the construction contract.

5. Reimbursement for Construction Costs:

Reimbursements by the County to the Agency for construction costs shall be limited to costs that in the sole opinion of the County are eligible under HOME. The Agency shall only request reimbursement for materials and equipment that have been installed.

The Agency shall, for each reimbursement request for construction costs, provide a reimbursement request letter as specified herein along with evidence of the Agency's payment for construction costs and a copy of the prime contractor's request for payment prompting the Agency's payment. The contractor shall be required to use American

Institute of Architects (AIA) form G702/703, or an equivalent form, to request payment, and the Consultant shall approve the contractor's payment request on each such form.

- (a) Additional Condition to Release of HOME Funds for Construction:  
The Agency shall have addressed all environmental review requirements associated with the homes to be built under the construction contract as identified by DES.
- (b) Documentation to Accompany Reimbursement Requests:  
The Agency shall provide DES construction documentation as requested by DES including but not limited to: evidence of the payment and performance bonds, evidence of builder's risk insurance, contractor's roof nailing affidavit or roof inspection approval, contractor's warranty, contractor's release of lien, subcontractors' releases of lien, product approvals, manufacturers' warranties for equipment and appliances, building permits with building department final approval of permits, and Certificates of Completion or Certificates of Occupancy.
- (c) Retainage and Release of Retainage:  
The Agency shall withhold a minimum of five percent (5%) retainage on each payment requested by the prime contractor, which retainage shall only be released to the prime contractor with the final payment upon the prime contractor's (and subcontractors') full compliance with the terms and conditions of the construction contract including compliance with the requirements associated with the use of HOME funds. The Agency shall obtain the County's approval prior to releasing the accumulated retainage with the final payment.

**The requirements of this clause shall survive the expiration of this Agreement.**

**SECTION J: INCOME REQUIREMENTS FOR OCCUPANT HOUSEHOLDS:**

Regardless of whether the HOME Assisted Units are sold by the Agency as provided herein or leased to tenants as described below, the Agency shall comply with the following income requirements:

All HOME Assisted Units shall be occupied by households whose incomes, adjusted by family size, are at no more than eighty percent (80%) of Area Median Income (hereinafter "AMI") at the time these units are first occupied, and thereafter, at any time new households occupy these units, regardless of whether these households have purchased or rented these units. AMI shall mean the most current area median income published by HUD for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

**SECTION K: AFFIRMATIVE MARKETING:**

In furtherance of the County's commitment to non-discrimination and equal opportunity in housing, DES has established policies and procedures to affirmatively market housing units produced through the use of HOME funds among other sources of funds. These affirmative marketing procedures are implemented comprehensively for all housing programs through DES and aim to effect greater participation of eligible persons without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression or genetic information.

The Agency, in order to carry out the requirements and procedures of DES's Affirmative Marketing Program, shall comply with the following procedures:

- (a) Use the Equal Opportunity logo or slogan in advertisements;
- (b) Solicit applications from persons in the housing market area who are not likely to apply for housing without special outreach. The Agency may satisfy this requirement by posting a notice of vacancies in any or all of the following:
  - Community Organizations
  - Fair Housing Groups
  - Housing Counseling Agencies

- Commercial Media
  - Employment Centers
  - Local Public Housing Authorities (PHA's) or Other Similar Agencies
  - Mobile Home Communities
  - Agencies for the disabled
  - Churches and other related organizations
- (c) The Agency shall keep records of its efforts to affirmatively market units and the Agency shall provide DES copies of its records, including advertisements, minutes of meetings, income documentation, and census tract information, as applicable, as evidence of the Agency's efforts.
- (d) The requirements of 24 CFR 92.351 concerning affirmative marketing, and resulting from the use of HOME funds, are hereby incorporated into this Agreement. The Agency must take steps to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market, to the available housing. Failure to comply will result in a contract violation, possibly requiring repayment of any Federal funds.

**The requirements of this Section shall survive the expiration or earlier termination of this Agreement and shall end upon the expiration or termination of the Declaration of Restrictions.**

**SECTION L: SALE OF HOME ASSISTED UNITS FOR HOMEOWNERSHIP:**

**1. Diligent Effort to Sell and Conversion to Rental Property:**

The Agency shall sell all newly constructed HOME Assisted Units according to the requirements of this Agreement. For each HOME Assisted Unit, if the Agency is not able to enter into a "ratified sales contract" for the HOME Assisted Unit with an eligible homebuyer within nine (9) months of the date of completion of construction, then the HOME Assisted Unit shall be rented to an eligible tenant according to the requirements of Section M below. The date of completion of construction shall be the date of the Certificate of Completion or Certificate of Occupancy as issued by the building department with jurisdiction over the HOME Assisted Unit. For the purposes of this clause, a "ratified sales contract" shall mean a legally binding and enforceable agreement that has been agreed to by both the homebuyer and the Agency and that specifies the price, proposed closing and occupancy dates, type of mortgage financing sought by the homebuyer and any contingencies.

**2. Duration of Applicability:**

These requirements shall apply to each HOME Assisted Unit sold by the Agency for the duration of thirty (30) years beginning with the date the homebuyer acquires fee simple title to the HOME Assisted Unit.

**3. Permanent Ownership Housing:**

All HOME Assisted Units sold by the Agency shall be conveyed in fee simple title to be the principal place of residence of the homebuyer.

**4. Homebuyer Income Certification:**

The Agency shall, for each homebuyer intending to purchase a HOME Assisted Unit, submit the prospective homebuyer's household income information to DES to enable DES to income certify the homebuyer. The information submitted for each prospective homebuyer's household shall include income information for all persons intending to live in the HOME Assisted Unit. DES shall provide the Agency with income verification guidelines to facilitate the Agency's submission of the homebuyer's household income information.

DES income certifications of homebuyers shall be valid for a period of six (6) months. The Agency shall, for homebuyers who have been income certified by DES and who have not completed their purchase of a HOME Assisted Unit by acquiring a fee simple title to such unit within the aforesaid six (6) month period, resubmit the prospective homebuyer's household income information to DES to enable DES to income certify the homebuyer for an additional period of six (6) months.

5. Purchase Price:

The Purchase Price at which the Agency shall sell each HOME Assisted Unit shall be the lesser of:

- (a) 95% of the median purchase price of homes for the area using the Federal Housing Administration's single family mortgage program data for newly constructed housing in effect at the time the Agency enters into a Sales Contract with the homebuyer and as provided by DES to the Agency from time to time; or
- (b) The appraised value of the home based on an appraisal prepared by an appraiser qualified to perform property appraisal services in the State of Florida, prepared in conformance with the Uniform Standards of Professional Appraisals Practice (USPAP) and prepared within 90 days of the date of the Sales Contract with the homebuyer.

The Agency shall, prior to entering into a Sales Contract, obtain DES approval of the Purchase Price for each HOME Assisted Unit.

6. Homebuyer's Debt Capacity:

The Agency shall cap the amount of debt that each homebuyer of a HOME Assisted Unit may borrow towards the purchase of such a unit such that homebuyer's household does not expend more than thirty-five percent (35%) of the household's gross income, as calculated by DES, on the sum of the mortgage principal and interest, real estate taxes, property insurance, and homeowner association fees for the HOME Assisted Unit at the time of occupancy. This cap shall apply to the combined debt to be serviced by the homebuyer in connection with the purchase a HOME Assisted Unit regardless of the source of financing of such debt, that is, regardless of whether the source of financing is from an institutional lender, a public agency, or a combination of the aforesaid.

7. First Mortgage Source, Guidance and Approval, Prohibition of Shared Appreciation and Right of First Refusal:

The parties hereto recognize that the Agency shall also be the lender providing the first mortgage to the homebuyers of the HOME Assisted Units specified herein. The Agency shall provide guidance and information to prospective homebuyers regarding the financial arrangements of the intended purchase transaction (including the first, second and third mortgages associated with the purchase transaction).

The amount of the first mortgage to be borrowed by prospective homebuyers shall be subject to DES approval and shall be such that it maximizes the debt burden on the prospective homebuyer having taken into account the prospective purchaser's credit worthiness and the debt capacity described above.

The Agency shall be prohibited from entering into a shared appreciation agreement with all homebuyers of HOME Assisted Units.

The Agency's first mortgage may contain a right of first refusal allowing the Agency to purchase a HOME Assisted Unit being sold by a homeowner. The parties hereto recognize that should the Agency exercise such right and purchase a HOME Assisted Unit, then the period during which the unit is in the Agency's ownership shall represent an interruption in the thirty (30) year affordability period delineated in Section L.2 above, and that the period of interruption must be added to the end of the affordability period during which the property must be occupied by an income approved household.

Should Habitat exercise its right of first refusal in connection with any HOME Assisted Unit then it shall take ownership subject to the County's second mortgage described herein. In such instance, Habitat shall sell the HOME Assisted Unit to a successor homeowner approved by the County within one (1) year from the date it takes ownership. The County may exercise its rights and remedies as made available under the second mortgage should Habitat fail to sell the HOME Assisted Unit during said one (1) year period. HOME Assisted Units sold to successor homeowners approved by the County shall be occupied by such homeowners for the balance of the affordability period the computation of which shall account for the time during which the property was in Habitat's ownership.

8. Determining the Development Subsidy:

The Agency shall, at the time it enters into a Sales Contract, provide DES with the Development Costs for each HOME Assisted Unit to be sold. The Development Costs shall include all costs incurred by the Agency in producing the unit up to the date of the Sales Contract for such HOME Assisted Unit (except that the cost of donated materials, equipment, labor and services shall not be included in the Development Costs). These costs, regardless of the source of funding to pay for these costs, may for example include acquisition, design, construction, advertising and insurance. The Agency shall, upon DES request, provide DES detailed information on how the Development Costs was calculated for each HOME Assisted Unit.

The Development Subsidy for each HOME Assisted Unit shall be computed by deducting the Purchase Price for such unit as approved by DES from the Development Costs for such unit as deemed acceptable to DES. If the Purchase Price of the Assisted Unit exceeds the Development Costs then the Development Subsidy amount to be used below shall be zero (0).

9. Determining the Available Direct Subsidy:

The Available Direct Subsidy amount for each HOME Assisted Unit shall be computed by deducting the Development Subsidy amount for such unit as determined above from the total amount of HOME funds expended by DES for such unit.

10. Overall Financing for HOME Assisted Units and Third Mortgage Gap Financing

The Agency shall examine the overall financing needed for each HOME Assisted Unit to be sold by examining the financing anticipated to be made available to meet the Purchase Price. The Agency shall deduct the amount of the first mortgage (documented through a loan commitment) plus the homebuyer's contribution (as required by the first mortgage lender) from the Purchase Price for each HOME Assisted Unit and compare the difference to the amount of Available Direct Subsidy determined above for such unit and proceed as described below:

- (a) If such difference is equal to the Available Direct Subsidy then the entire amount of the Available Direct Subsidy shall be regarded as the Direct Subsidy to the homebuyer and such entire amount shall be the amount to be secured by a Second Mortgage and Promissory Note as described below.
- (b) If such difference is more than the Available Direct Subsidy then the entire amount of the Available Direct Subsidy shall be regarded as the Direct Subsidy to the homebuyer and such entire amount shall be the amount to be secured by a Second Mortgage and Promissory Note as described below. In this instance, unless the homebuyer is able to provide the remaining gap in the financing, the Agency shall assist the homebuyer in seeking to secure the gap financing needed to fully fund the Purchase Price. The gap financing (secured by a third mortgage) is the amount above the Available Direct Subsidy up to the aforementioned difference. If the gap financing cannot be secured, then the sale of the HOME Assisted Unit shall be abandoned and the Agency shall find another homebuyer for the unit.
- (c) If such difference is less than the Available Direct Subsidy then the amount of the difference shall be regarded as the Direct Subsidy to the homebuyer and such amount shall be the amount to be secured by a Second Mortgage and Promissory Note as described below. In this instance, the amount above the aforementioned difference up to the amount of the Available Direct Subsidy shall be regarded as proceeds which may be retained by the Agency.

11. Mandatory Counseling:

Prior to closing, each prospective homebuyer of a HOME Assisted Unit shall attend and complete eight (8) hours of homeownership counseling including at least six (6) hours in a classroom setting and two (2) hours of one-on-one (individual) counseling sessions. Homeownership counseling must be conducted by a HUD-certified counseling agency identified by DES. Each prospective homebuyer shall obtain and provide DES a copy of a certificate issued by the counseling agency evidencing attendance and completion of the above described counseling. The certificate shall be valid for a one (1) year period from its



date of issue and must show name of the provider, the date(s) of counseling, the total number of hours of counseling, and the signature of the authorized counselor.

The provision of the above certificate shall be a pre-condition for closing.

12. Closing Statement:

In order to assure that these requirements have been met, the Agency shall, prior to the closing for the sale of each HOME Assisted Unit, provide the closing statement to DES for approval. The Agency shall not proceed with closing unless DES has approved the closing statement for each sale.

13. Second Mortgage and Promissory Note:

The Agency shall, at the closing, cause each DES approved prospective homebuyer to execute a Second Mortgage and Promissory Note in favor of the County, as provided in Exhibit D herein. In exchange for the receipt of said Second Mortgage and Promissory Note the County shall release the Declaration of Restrictions and any other security documents in favor of the County as executed by the Agency in connection with the property. The execution and delivery of releases of the Declarations of Restrictions and of said other security documents is hereby delegated to the County Administrator, or designee, and shall not require any further action by the Palm Beach County Board of County Commissioners. The Agency shall cause the recording of these releases and the Second Mortgage and Promissory Note in the public records of Palm Beach County, and thereafter cause the original Second Mortgage and Promissory Note to be provided to DES. The Second Mortgage and Promissory Note shall only be subordinate to the instrument securing the first mortgage financing.

The amount to be secured by the Second Mortgage and Promissory Note shall be the Direct Subsidy amount as calculated for each HOME Assisted Unit according to the method provided above.

**The requirements of this Section shall survive the expiration or earlier termination of this Agreement.**

**SECTION M: RENTAL OF HOME ASSISTED UNITS TO TENANTS:**

The following shall apply to all HOME Assisted Units that the Agency was not able to sell as required herein and that the Agency must rent.

1. Diligent Effort, Rental Occupancy, and Repayment of HOME Funds:

For HOME Assisted Units that the Agency was not able to sell and that must be used as rental units, the Agency shall make a diligent effort to market and rent each such HOME Assisted Unit. Each such unit must, within six (6) months, be occupied by a household that has met the income requirements herein. If the Agency is unable to meet this occupancy requirement within the aforesaid six (6) months period, then the Agency shall, within ten (10) calendar days after the end of said period, provide DES a report containing its marketing information to show its effort to date to rent the unit and shall also provide DES its marketing plan to rent the HOME Assisted Unit after the date of the report. If the Agency has not rented the HOME Assisted Unit to a household that has met the income requirements herein within eighteen (18) months following Project Completion, then the Agency shall repay the County all HOME funds expended by the County on such unit.

2. Duration of Applicability:

These requirements shall apply to each rental HOME Assisted Unit for the duration of the Declaration of Restrictions pertinent to such unit, that is for the duration of the thirty (30) year affordability period beginning with the date of Project Completion as defined herein.

HOME Assisted Units that are rented by the Agency shall be rented on a continuous basis without interruption in occupancy exceeding thirty (30) days while the Agency performs maintenance and repairs or completes arrangements to enable occupancy by new tenants.

3. Permanent Housing:

All rental HOME Assisted Units shall be "permanent housing" meaning housing which is intended to be the tenant's home under the limits of a signed legal lease document. HOME Assisted Units may not be used for transitional housing or emergency shelters.

4. Rental Rates, Utility Allowances and Rent Schedules:

The following rental rates shall apply to all HOME Assisted Units to be rented by the Agency.

- (a) HOME Assisted Units to be rented by the Agency to households whose incomes, adjusted by family size, are no more than eighty percent (80%) of AMI, at the time these units are first occupied, and thereafter, at any time new tenants occupy these units shall be rented at a rate such that the tenant's payment is no more than the High HOME Rent Limit in effect at the time the lease is executed less any tenant paid utilities using the then current utility allowances from the HUD Utility Schedule Model. The High HOME Rent Limit, by bedroom size, shall be as published by HUD, from time to time, for the West Palm Beach-Boca Raton HUD Metro FMR Area pursuant to 24 CFR 92.252.

The above specified rates shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

- (b) The Agency shall, for the duration of the affordability period, calculate the monthly utility allowances applicable to HOME Assisted Units according to the HUD Utility Schedule Model. Such utility allowances shall be used by the Agency as described above. The Agency shall annually propose its rent schedule for HOME Assisted Units, and the County shall review and approve such rent schedule provided it is in compliance with the above limitations. Habitat shall only use rent schedules approved by the County. Changes in rent levels shall be subject to the provisions of outstanding leases. The Agency shall provide tenants not less than thirty (30) days written notice before implementing any increase in rent.

5. Tenant Income Verification:

The Agency shall, for all HOME Assisted Units to be rented, submit the prospective tenant's household income information to DES to enable DES to income certify the tenant at the time such unit is first occupied, and thereafter, at any time new tenants occupy the unit.

For each tenant in occupancy of a HOME Assisted Unit, the Agency shall **annually** submit to DES a written statement from the tenant of the amount of the tenant's annual household income and a certification from the Agency that the information is complete and accurate and that the tenant's household will provide source documents upon request.

Temporary non-compliance caused by increases in the income of existing tenants shall be addressed according to the requirements of 24 CFR 92.252(i).

DES income certifications of tenants shall be valid for a period of six (6) months. The Agency shall, for tenants who have been income certified by DES and who have not completed their lease transaction of a HOME Assisted Unit within the aforesaid six (6) month period, resubmit the prospective Tenant's household income information to DES to enable DES to income certify the tenant for an additional period of six (6) months.

6. Tenant Records to be Maintained:

The Agency shall, for each household that is rented a HOME Assisted Unit, maintain a file that, at minimum, contains the following:

- (a) An application for lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the apartment, the household characteristics, and the household income they have disclosed.
- (b) At the time a HOME Assisted Unit is first occupied, and thereafter, at any time new tenants occupy the unit, source documentation evidencing the Agency's verification of the applicant's household income and a computation sheet demonstrating the Agency'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).

- (c) In addition, copies of tenants' annual statements certifying household income as specified in Section M.5 above.
- (d) A copy of the HUD income levels in effect at the time the initial lease is signed.
- (e) A computation sheet and supporting documentation demonstrating that the rent charged by the Agency is at the applicable rental rate specified herein.
- (f) An original of all executed written leases with the applicant/tenant identifying the unit number/address and the rental rate.
- (g) A copy of the below described background check.
- (h) Any other documentation evidencing the Agency's compliance with this Agreement.

7. Background Check, Tenant Selection, and Lease Requirements:

The Agency shall comply with the following requirements:

- (a) The Agency shall conduct background checks on adult members of households prior to occupancy. Should the Agency elect to utilize criminal background information in the screening of prospective tenants or the retention/termination of tenants, the Agency 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.

Borrower shall submit its written tenant selection/retention/termination to DES for approval.

- (b) In addition to the above, the Agency shall comply with the following tenant selection requirements. In this regard, the Agency shall submit to the County for approval, and shall adopt and follow written tenant selection policies and criteria that:

- (i) Are consistent with the purpose of providing housing to families at the income levels specified herein.
- (ii) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease.
- (iii) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable.
- (iv) Give prompt written notification to any rejected applicant of the grounds for any rejection.

The Agency shall not refuse to rent HOME Assisted Units to a certificate or voucher holder under 24 CFR Part 982 - Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program, or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

- (c) The Agency shall submit a copy of its proposed Lease Agreement for approval by DES. In the event that future material revisions may occur, the Agency shall submit an updated Lease Agreement for approval (which shall not be unreasonably withheld or delayed) as revisions occur.
- (d) The lease between a tenant and the Agency must be for not less than one (1) year, unless by mutual agreement between the tenant and the Agency.
- (e) The Agency shall utilize leases which require parents to be held legally and financially liable for the acts of their children in connection with the HOME Assisted Unit, and which allow management to terminate the lease 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 or area residents the right to quiet and peaceful enjoyment of their homes or businesses.
- (f) The Agency may not terminate the tenancy or refuse to renew the lease of a tenant at a HOME Assisted Unit, except for serious or repeated violation of the terms and conditions of the lease; violation of applicable Federal, State, or local law; or for other good cause. Good cause does not include an increase in the tenant's income or refusal of the tenant to purchase the housing. To terminate or refuse to renew tenancy, the Agency must serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.
- (g) The Agency is prohibited, from including any of the following lease terms in the Lease Agreement of HOME Assisted Units:
  - (i) Agreement to be Sued: Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the Agency in a lawsuit brought in connection with the lease.
  - (ii) Treatment of Property: Agreement by the tenant that the Agency may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Agency may dispose of this personal property in accordance with State law.
  - (iii) Excusing Agency from Responsibility: Agreement by the tenant not to hold the Agency or the Agency's agents legally responsible for any action or failure to act, whether intentional or negligent.

- (iv) Waiver of Notice: Agreement of the tenant that the Agency may institute a lawsuit without notice to the tenant.
- (v) Waiver of Legal Proceedings: Agreement by the tenant that the Agency may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- (vi) Waiver of a Jury Trial: Agreement by the tenant to waive any right to a trial by jury.
- (vii) Waiver of Right to Appeal Court Decision: Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- (viii) Tenant Chargeable with Cost of Legal Actions Regardless of Outcome: Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Agency against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- (ix) Mandatory Supportive Services: Agreement by the tenant to accept supportive services that are offered.

**8. Development Costs of Rental HOME Assisted Unit:**

The Agency shall provide DES with the Development Costs of all HOME Assisted Units that the Agency was not able to sell as required herein and that the Agency must rent. The Agency shall do so at the time each such unit is initially occupied by a tenant, and the Development Costs provided to DES shall include all costs incurred by the Agency in producing the unit up to the date the unit is initially occupied by a tenant. Except for the time of submission of the Development Costs to DES and the period for which costs are to be provided, all other requirements of Section L.8 shall apply to Section M.8.

**9. Rental Income from HOME Assisted Units:**

The Agency's income from the rental of HOME Assisted Units shall be first used to offset the Agency's ongoing costs for these rental units with any excess retained by the Agency.

**The requirements of this Section shall survive the expiration of this Agreement.**

**SECTION N: OPERATING EXPENSES AND DEVELOPER FEE:**

The Agency may receive reimbursement from DES for its operating expenses as specified below. The Agency may also receive payment of developer fees from DES as specified below.

**SECTION O: REPORTS:**

The Agency shall submit to DES detailed reports as described below, and any additional reports as may be required by DES and HUD:

**1. Monthly Performance Report:**

The Agency shall submit to the County a Monthly Performance Report in the form provided as Exhibit D to this Agreement. The Agency shall first submit this report on the last day of the month during which this Agreement is executed, and thereafter, on the last day of each subsequent month. After the Agency provides a report for the month during which the last HOME Assisted Unit undertaken hereunder is occupied by an eligible household, the Agency may cease submitting this report.

**2. Annual Rent Roll (for rental properties only):**

In the event any HOME Assisted Unit undertaken hereunder is rented, the Agency shall submit to the County an Annual Rent Roll in the form provided as Exhibit E to this Agreement. The Agency shall submit the Annual Rent Roll on the 30<sup>th</sup> of August following the date of this Agreement and on the 30<sup>th</sup> of August of each subsequent year for the duration of the last Declaration of Restrictions associated with the HOME Assisted Units

undertaken hereunder.

**3. Section 3 Report:**

The Agency shall submit to the County a Section 3 Report to be provided for each contract awarded in connection with this Agreement. The Section 3 Report shall be submitted on a monthly basis for the duration of each such contract. The format and content of said report shall be determined by the County at a later date and promptly communicated to the Agency.

**5. Other Reports:**

The Agency agrees to submit to DES any other reports required by HUD and/or DES in connection with activities undertaken through this Agreement.

**PART 2 - THE COUNTY AGREES TO:**

**SECTION A:**

Provide funding for the above described Project Costs during the term of this Agreement in the amount of **\$353,679**.

**SECTION B:**

During the term of this Agreement, reimburse and/or pay the Agency a total amount not to exceed **\$35,367** for developer fees and operating expenses subject to DES approval.

The Agency may receive a **maximum reimbursement of \$5,367 for operating costs**. For the purposes of this Agreement, operating costs (reasonable and necessary costs for the operation of the Agency) shall include: salaries, wages and benefits of Agency staff. The County shall, in its sole discretion, determine the sufficiency of the documentation submitted by the Agency for the reimbursement of operating expenses.

The Agency may receive payment of a **developer fee not to exceed \$15,000 per HOME Assisted Unit** for each of two (2) HOME Assisted Units as follows:

- **\$5,000**: upon presentation to the County of a building permit for the HOME Assisted Unit as issued by the City of Greenacres.
- **\$5,000**: upon completion of at least 50% of construction work on the HOME Assisted Unit as evidenced by the prime contractor's request for payment approved by the Consultant.
- **\$5,000**: upon presentation to the County of a Certificate of Occupancy for the HOME Assisted Unit as issued by the City of Greenacres.

The County shall, in its sole discretion, determine the sufficiency of the documentation submitted by the Agency for the payment developer fees.

**SECTION C:**

Provide a determination that applicant households are income eligible under HUD guidelines based on income and household size. Provide a determination that the sites are in conformance with Federal environmental requirements.

**SECTION D:**

Provide technical assistance to ensure compliance with HUD, U.S. HUD, and applicable State, Federal and County regulations and this Agreement.

**SECTION E:**

Provide overall administration and coordination activities to ensure that planned activities are completed in a timely manner.

**SECTION F:**

Monitor the Agency at any time during the term of this Agreement. Visits may be scheduled or unscheduled as determined by DES, be conducted by DES staff or its contractor, and will serve to ensure compliance with HUD regulations, that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to DES on program activities.

**EXHIBIT B**

**DECLARATION OF RESTRICTIONS**

**Return to:**

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

The undersigned, **Habitat Housing Solutions, Inc.**, a non-profit corporation duly organized and existing by virtue of the laws of the State of Florida, having its principal office at 6758 N. Military Trail, Suite 107, Riviera Beach, FL 33407, (hereinafter referred to as "Agency", which term as used in every instance herein shall include Agency's successors and assigns), for the property described below, in consideration of funding in the amount of One Hundred Seventy-Six Thousand Eight Hundred Thirty-Nine and 50/100 Dollars (\$176,839.50) received from the Palm Beach County Board of County Commissioners (the "County") for improvements to the subject property described below and hereinafter referred to as the "Property", the Agency does hereby grant to the County the following restrictions against Property.

**Legal Description**

Property Control Number:

Property Address:

1. These restrictions 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 of the County's expenditure of funds for improvements to Agency's Property, as provided through an Agreement with the County dated \_\_\_\_\_, the Agency hereby covenants and agrees that as of the date of this Declaration of Restrictions the Agency agrees:

- (a) To construct a home on the Property as specified in the Agreement.
- (b) To, thereafter, sell or rent the Property to an income eligible household as required in the Agreement, and:
- (c) To maintain the Property as decent, safe and sanitary housing in a state of good repair pursuant to applicable housing and building codes and the County's property standards.
- (d) To permit the County to inspect the Property and to inspect the Agency's records related to the Property.
- (e) To affirmatively market the Property as specified in the Agreement.
- (f) To maintain property, flood, and windstorm insurance on the Property and its improvements as specified in the Agreement.

- (g) To maintain records and submit reports and audited statements as specified in the Agreement.
- (h) To comply with the provisions, terms, and conditions set forth herein and in the Agreement.

3. The County shall release the lien of this Declaration of Restrictions upon the occurrence of one of the following events:

- (a) The Agency's sale of the Property pursuant to the provisions, terms, and conditions set forth herein and in the Agreement; or
- (b) The Agency's compliance with the provisions, terms, and conditions set forth herein and in the Agreement for a period beginning with the date of this Declaration of Restrictions and ending thirty (30) years after the date of Project Completion, which date shall be determined by the County according to the HOME regulations at 24 CFR §92. The Agency acknowledges that the Property is part of a Project as defined in 24 CFR §92.2, and that the date of Project Completion shall be determined, in part, after all necessary title transfer requirements and construction work have been performed, the final drawdown of HOME funds has been disbursed and the Project information has been entered into the disbursement and information system established by the U.S. Department of Housing and Urban Development. Once the Project Completion date has been determined by the County, the Agency shall request that County to amend this Declaration of Restrictions in order to clearly define the Project Completion date and the end of the thirty (30) year period. The Agency shall the record the amendment document in the Public Records of Palm Beach County.

4. The Agency shall in connection with the lease or sale of the Property comply with all federal, state and local Fair Housing laws.

5. The Agency shall not change the use or planned use of the Property, discontinue the use of the Property, or change the beneficiaries of such use from that for which the acquisition or improvements were made, without the prior written approval of the County. The Agency shall not sell, convey or transfer title to the Property without the prior approval of the County, or in violation of the provisions, terms, and conditions set forth herein and in the Agreement. In the event the Agency does not comply with the restrictions contained in this paragraph, the Agency shall, within 30 days of written demand by the County, pay the County an amount equal to the entire amount expended by the County in connection with the improvements to the Property. The final determination of the amount of any such payment to the County under this paragraph shall be made by the County.

6. The Agency shall pay, or cause to be paid, all taxes due while the Property is in its possession and/or in the possession of the Agency's tenants. The Agency shall not allow any lien superior to the lien of this Declaration of Restrictions to be created on or against the Property, or any portion of thereof, unless the County has consented in writing to such lien. The Agency shall keep and maintain the Property free from the claims of all parties supplying labor or materials unto the same. The Agency 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 Agency.

7. The Agency acknowledges and covenants that the provisions specified below constitute a default under this Declaration of Restrictions for which there may be a forfeiture of the Agency's title to the Property:

- (a) Failure of the Agency to perform any covenant, agreement, term, or condition contained herein or in the Agreement referenced in Section 2 above.



Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Agency of its determination that the Agency is in default of the terms of this Declaration of Restrictions, the County may, from time to time, at its sole discretion, cure each default under any covenant so curable in this Declaration of Restrictions, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County, at its sole discretion, determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Agency to the County in addition to the legal rate of interest from the time of expenditure and shall constitute a lien against the property which may be foreclosed if not discharged and satisfied within three (3) months of expenditure of such funds by the County. The County shall also become subrogated to whatever rights the holders of a prior lien might have under such instrument.

8. If the Agency fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, for any breach of this Declaration of Restrictions, the County shall have the right to file in court of competent jurisdiction an action for:

- (a) Forfeiture of all the Agency's right, title, and interest in the Property for a breach of the restrictive covenants contained in this Declaration of Restrictions; and
- (b) Collection of due and unpaid real estate taxes, assessments, charges and penalties for which the Agency is obligated to pay, or cause to be paid.

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 of Restrictions 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 Agency shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration of Restrictions 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 of Restrictions shall not bar or breach any of the County's rights or remedies on any subsequent default.

Before the County shall pursue any of its rights or remedies under this Declaration of Restrictions, the County shall first give the Agency written notice of the default complained of which such notice shall be given to the Agency at their address shown above. The Agency shall then have ten (10) working days from the date such notice is given to cure or correct any default.

9. The Agency shall submit to the County once each year a report detailing the Agency's compliance with the terms of the grant Agreement and this Declaration of Restrictions.

THIS SPACE INTENTIONALLY LEFT BLANK

10. The Agency shall cause this Declaration of Restrictions to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Agency shall provide it 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:

HABITAT HOUSING SOLUTIONS, INC.

Witness Name: _____ Witness Signature:  X _____
Witness Name: _____ Witness Signature:  X _____

By: Paula Portch, President Signature:  <b>X (DO NOT SIGN THIS EXHIBIT)</b> _____
---

(CORPORATE SEAL BELOW)

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_, by Paula Portch, as President of Habitat Housing Solutions, Inc., who is personally known to me or has produced \_\_\_\_\_ as identification and who did/did not take an oath.

(DO NOT SIGN THIS EXHIBIT)

Signature: \_\_\_\_\_

Notary Name: \_\_\_\_\_

Notary Public - State of Florida

(NOTARY SEAL ABOVE)

**EXHIBIT C**

**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

**SECOND MORTGAGE**  
**(HOME PROGRAM)**

**THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$ \_\_\_\_\_ AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERM OF THIS MORTGAGE.**

**THIS MORTGAGE** executed on \_\_\_\_\_, by \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter the "Mortgagor", to Palm Beach County, whose address is 301 North Olive Ave., West Palm Beach, Florida 33401, hereinafter the "Mortgagee". (Wherever used herein the terms "Mortgagor" and "Mortgagee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

**WITNESSETH**, that for good and valuable considerations, and also in consideration of the aggregate sum named in the Promissory Note of even date herewith, a copy of which is attached hereto as Attachment 1, the Mortgagor hereby grants, bargains, sells, aliens, remises, conveys and confirms unto the Mortgagee all the certain land of which the Mortgagor is now seized and in possession situate in Palm Beach County, Florida, hereinafter the "Property", viz:

**Legal Description**

Property Control Number:

Property Address:

**TO HAVE AND TO HOLD** the same, together with tenements, hereditaments and appurtenances thereto belonging, and the rents, issues and profits thereof, unto the Mortgagee, in fee simple.

**AND** the Mortgagor covenants to the Mortgagee that the Mortgagor is indefeasibly seized of said land in fee simple; that the Mortgagor has good right and lawful authority to convey said land as aforesaid; that the Mortgagor will make such further assurances to perfect the fee simple title to said land in the Mortgagee as may reasonably be required; that the Mortgagor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and at said land is free and clear of all encumbrances. In the event the subject Property or any interest therein shall be sold, conveyed or in any other manner disposed of, including by Agreement for Deed, this Mortgage shall become due and payable in full.

**PROVIDED ALWAYS**, that if said Mortgagor shall pay unto said Mortgagee the sum named in the Promissory Note and shall perform, comply with and abide by each and every agreement, stipulation, condition and covenant thereof, and of this Mortgage, then this Mortgage and the estate hereby created, shall cease, terminate and be null and void.

**AND**, Mortgagor hereby further covenants and agrees to pay promptly when due the principal and interest and other sums of money provided for in said Promissory Note and this Mortgage, or either; to pay all and singular the taxes, assessments, levies, liabilities, obligations, and encumbrances of every nature on said Property; to permit, commit or suffer no waste, impairment or deterioration of said land or the improvements thereon at any time; to keep the buildings now or hereafter on said land fully insured in a sum of not less than full insurable value with a company acceptable to the Mortgagee. The policy or policies to be held by, and payable to, said Mortgagee. In the event any sum or money becomes payable by virtue of such insurance the Mortgagee shall have the right to receive and apply the same to the indebtedness hereby secured.

In the event the Mortgagor fails to pay when due any tax, assessment, insurance premium or other sum of money payable by virtue of said note and this Mortgage, or either, the Mortgagee may pay the same, without waiving or affecting the option to foreclose or any other right hereunder, and all such payments shall bear interest from date hereof at the highest lawful rate then allowed by the laws of the State of Florida.

In any event, as long as the Property is encumbered by the First Mortgage, all property insurance payments and property tax payments are to be secured through escrow and paid by the First Mortgagee.

**AND**, Mortgagor agrees further that Mortgagor shall reside in the Property as the Mortgagor's principal place of residence for the term of this Mortgage.

**AND**, Mortgagor further recognizes that any secondary or junior financing placed upon the Property, (a) may divert funds which would otherwise be used to pay the Promissory Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) could detract from the value of the Property should Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Property; and (d) require the Mortgagor to have housing expenses which exceed the guidelines for affordability under the Mortgagee's HOME Program requirements.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) keeping the premises free of subordinate financing liens; and (iv) meeting HOME Program requirements for affordability, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Property or any interest therein (whether voluntarily or by operation of law) without the Mortgagee's prior written consent, which may be withheld for any reason, shall be an Event of Default hereunder.

For the purpose of and without limiting the generality of the preceding sentence, the occurrence any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Property and therefore an Event of Default hereunder.

(a) any sale, conveyance, assignment or other transfer of or the grant of security interest in, all or any part of the title to the Property within **thirty (30) years** of the date of this Mortgage without the prior written consent of the Mortgagee.

(b) any new or additional liabilities without the prior written consent of Mortgagee. Any consent by the Mortgagee, or any waiver of an event of default, under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this paragraph. If any sum of money herein referred to be not promptly paid within 15 days after the same becomes due, or if each and every agreement, stipulation, condition and covenant of said note and this Mortgage, or either, are not fully performed, complied with and abided by, then the entire sum mentioned in said Promissory Note, and this Mortgage, or the entire balance unpaid thereon, shall forthwith or thereafter, at the option of the Mortgagee, become and be due and payable, anything in said Promissory Note or herein to the contrary notwithstanding. Failure by the Mortgagee to exercise any of the rights or options herein provided shall not constitute a waiver of any rights or options under said note or this Mortgage accrued or thereafter accruing.

This Mortgage is expressly made subject and subordinate to the terms and conditions specified in that certain mortgage from Mortgagor to \_\_\_\_\_, hereinafter the "First Lender", dated \_\_\_\_\_, and recorded in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Palm Beach County, Florida, hereinafter the "First Mortgage", securing that certain note having an original principal face amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_), dated \_\_\_\_\_, hereinafter the "First Note", made by Mortgagor and payable to the First Lender.

If any provision of the Promissory Note or this Mortgage conflicts with any provision of the First Note or the First Mortgage, the terms and provisions of the First Note, and First Mortgage, shall govern.

**THIS IS A SECOND MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$\_\_\_\_\_ TOGETHER WITH ACCRUED INTEREST, IF ANY AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.**

**IN WITNESS WHEREOF**, the said Mortgagor has hereunto signed and sealed these presents the day and year first above written.

SIGNED, SEALED, AND DELIVERED  
IN THE PRESENCE OF:

Witness Name: _____ Witness Signature: _____  <b>X</b> _____
Witness Name: _____ Witness Signature: _____  <b>X</b> _____

By: _____ Signature: _____  <b>X</b> _____
By: _____ Signature: _____  <b>X</b> _____

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The forgoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_,  
by \_\_\_\_\_, who is personally known to me or has produced  
\_\_\_\_\_ as identification and who did (did not) take an oath.

Signature: \_\_\_\_\_

NotaryName: \_\_\_\_\_

Notary Public - State of Florida

(NOTARY SEAL ABOVE)

**ATTACHMENT 1**

**PROMISSORY NOTE**  
**(HOME PROGRAM)**

Amount: \$ \_\_\_\_\_

Date: \_\_\_\_\_

Property Address: \_\_\_\_\_

Place: Palm Beach County, Florida

FOR VALUE RECEIVED, the undersigned jointly and severally promise(s) to pay to the order of Palm Beach County, Florida, (herein the "County"), acting by and through its Board of County Commissioners, the remaining balance on the principal sum of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_), which remaining balance shall be payable in full upon the sale, lease, or transfer of the property, identified and legally described in the Mortgage used to secure this Promissory Note, from the undersigned, (herein the "Maker"), signing this Promissory Note (being the owner(s) having fee simple title to the mortgaged property) to any other person(s) without the prior written consent of the County.

**Upon the sale, transfer, conveyance or alienation of any part or all of the mortgaged property within thirty (30) years of the date of this note, full repayment of the principal sum plus accrued interest, if any, plus any advancements made pursuant to the terms of the Mortgage, shall become immediately due and payable.**

In the event of a refund of any governmental fees to the undersigned, the undersigned assigns such reimbursement directly to the County to be credited towards the total amount due under this Promissory Note.

The undersigned reserve(s) the right to prepay at any time all or any part of the principal amount of this Promissory Note without the payment of penalties or premiums.

This Promissory Note and the Second Mortgage securing payment of this Promissory Note is expressly made subject and subordinate to the terms and conditions specified in that certain promissory note having an original principal face amount of \_\_\_\_\_ and 00/100 Dollars (\$ \_\_\_\_\_), dated \_\_\_\_\_, hereinafter the "First Note", made by the Maker payable to \_\_\_\_\_, hereinafter the "First Lender", and secured by that certain mortgage from the Maker to the First Lender, dated \_\_\_\_\_, and recorded in Official Records Book \_\_\_\_\_, at Page \_\_\_\_\_, of the Public Records of Palm Beach County, Florida, hereinafter the "First Mortgage".

The County consents to any agreement or arrangement in which the First Lender waives, postpones, extends, reduces or modifies any provisions of the First Note or the First Mortgage, including any provision requiring the repayment of money.

If any provision of this Promissory Note or the Maker's Mortgage conflicts with any provision of the First Note or the First Mortgage, the terms and provisions of the First Note and the First Mortgage shall govern.

If default be made in the performance of any of the covenants, understandings and agreements obtained and entered into to secure financing used in connection with this Promissory Note or in said Mortgage, then the entire unpaid principal amount of this Promissory Note, together with accrued interest computed **at a rate of eight percent (8%) per annum from the date of default**, shall become at once due and payable, at the option of the County, without notice to the undersigned, time being of the essence.

Failure of the County to exercise such option shall not constitute a waiver of such default, nor a waiver of the right to exercise the same in the event of any subsequent default. If this Promissory Note be reduced to judgment, such judgment shall bear the statutory interest due on judgments, but not to exceed eight percent (8%) per annum.

Thirty (30) years from the date of this Promissory Note, if the following two conditions have been met, the entire Promissory Note will be deemed satisfied and the Maker shall have no further obligation to the County under this Promissory Note:

- 1) There have been no defaults in the performance of any of the covenants, understandings and agreement obtained and entered into to secure financing used in connection with this Promissory Note or in said Mortgage; and
- 2) There has been no sale, transfer, conveyance or alienation of any part or all of the property secured in said Mortgage.

If suit is instituted by the County to recover on this Promissory Note, the undersigned agree(s) to pay all costs of such collection including reasonable attorney's fees and court costs at the trial and appellate levels.

THIS PROMISSORY NOTE is secured by a Mortgage of even date herewith, duly filed for record in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida.

DEMAND, protest and notice of demand and protest are hereby waived, and the undersigned hereby waive(s), to the extent authorized by law, any and all homestead and other exemption rights, which otherwise would apply to the debt evidenced by this Promissory Note.

**This Promissory Note has been duly executed by the undersigned on the date first above written.**

Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_



**EXHIBIT D**

**PALM BEACH COUNTY DEPARTMENT OF ECONOMIC SUSTAINABILITY**

**MONTHLY PERFORMANCE REPORT**

<b>Report For:</b>	Month: _____ Year: _____		
<b>Agency Name:</b>	Habitat Housing Solutions, Inc..		
<b>Project Name:</b>			
<b>Report Prepared By:</b>			
	_____ Name	_____ Signature	_____ Date

**BUDGETING AND EXPENDITURES**

**Amounts Expended this Reporting Period:** HOME Funds:\$ \_\_\_\_\_ Other Funds:\$ \_\_\_\_\_  
**Amounts Expended to Date:**

//////////////////////////////////// ///	BUDGETED	EXPENDED	PERCENTAGE
HOME Funds:	\$ _____	\$ _____	%
Other Funds: _____	\$ _____	\$ _____	%
Other Funds: _____	\$ _____	\$ _____	%
TOTAL:	\$ _____	\$ _____	%

Describe any changes in budgeted amounts during this reporting period and the source of funds: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**PROJECT ACTIVITIES**

Describe your accomplishments during the reporting period: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Describe any problems encountered during this reporting period: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**CONSTRUCTION ACTIVITIES**

Describe your accomplishments during the reporting period: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Other comments:  
 \_\_\_\_\_  
 \_\_\_\_\_

Send Report to: Bud Cheney, Manager  
 Capital Improvement, Real Estate & Inspections Services  
 Department of Economic Sustainability  
 100 Australian Avenue, Suite 500  
 West Palm Beach, FL 33406

**EXHIBIT E**

**PALM BEACH COUNTY DEPARTMENT OF ECONOMIC SUSTAINABILITY**

**ANNUAL RENT ROLL**

<b>Project Name:</b>	Habitat Housing Solutions, Inc.		
<b>Report Period:</b>	From _____, 20__	to _____, 20__	
<b>Prepared By:</b>			
<b>Report Date:</b>	_____, 20__	<b>Page</b> ____	<b>of</b> ____ <b>Pages</b>

Fill in the required information for each unit or place a check mark where applicable.

	<b>Address:</b> _____ _____	<b>Address:</b> _____ _____	<b>Address:</b> _____ _____
Tenant Name:			
Lease start date:	/    /	/    /	/    /
Contract Rent:	\$	\$	\$
No. of bedrooms:			
No. of persons in household:			
Date last income certified:	/    /	/    /	/    /
Annual income:	\$	\$	\$
Household Income at 80% of AMI or less	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Female Head of Household	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disabled Head of Household	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hispanic Ethnicity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
African American	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Asian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
American Indian or Alaskan Native	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Native Hawaiian Pacific Islander	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
American Indian or Alaskan Native and White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Asian and White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
African American and White	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
American Indian/Alaskan Native and African American	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other Multi-racial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>