



## **DEPARTMENT OF HOUSING & ECONOMIC DEVELOPMENT**

# **IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM GUIDELINES**

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**GUIDELINES EFFECTIVE AS OF  
SEPTEMBER 14, 2010**

**REVISED AS OF  
DECEMBER 10, 2024**

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## 1. INTRODUCTION AND PURPOSE

The Impact Fee Affordable Housing Assistance Program (IFAHAP) was developed to implement direction of the Board of County Commissioners (BCC) to secure a funding source for the creation of affordable housing. On November 17, 2009, the BCC authorized (R2009-2013) the utilization of impact fee investment earnings on roads, parks, and public buildings to support affordable housing within Palm Beach County. Subsequently, on April 10, 2018, the BCC adopted Resolution 2018-0605 to repeal and replace R2009-2013.

These Guidelines establish the process for distribution of IFAHAP funding and the requirements to be imposed on funding recipients.

## 2. DEFINITIONS AND ABBREVIATIONS

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

**Applicant:** The organizational entity that submits an application for IFAHAP assistance to the County.

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

**BCC:** Palm Beach County Board of County Commissioners.

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

**Declaration:** Declaration of Restrictions recorded by the Developer.

**Default Penalty Payment:** A payment to the County required of the owner of the IFAHAP-assisted property in the event of the owner's default on the terms of the Declaration of Restrictions.

**Developer:** The entity with site control that receives the IFAHAP funding award and implements the project through completion of construction and delivery to the end user.

**HED:** Palm Beach County Department of Housing and Economic Development.

**Housing Unit, Owner-Constructed/Occupied:** A detached single-family affordable housing unit constructed by an individual or household for occupancy as the individual's or household's principal place of residence.

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

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

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

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

**NOFA:** Notice of Funding Availability.

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

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

### **3. NOTICE OF FUNDING AVAILABILITY (NOFA)**

For each Program funding cycle, HED shall advertise a NOFA after the Palm Beach County Office of Financial Management and Budget obtains BCC approval of the amount available for the Program and the impact fee type(s) and benefit zone(s) where funds may be used. The NOFA shall inform the public of Program requirements, of the funding amount available by impact fee type(s) and of the impact fee benefit zone(s) where funding has been made available. The NOFA shall also inform the public of the deadline date for the BCC to commit approved Program funds to projects and the deadline date to use committed funds. The NOFA may be combined with other available funding offered by the County for affordable housing development.

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

**NOTE:** Assistance under the Program shall not be provided on a retroactive basis. Assistance under the Program shall not be provided to housing units that serve to meet a Palm Beach County Workforce Housing Program obligation or housing units constructed through the Workforce Housing Exchange Builder Option.

### **4. ELIGIBLE APPLICANTS**

Eligible applicants for the Program include:

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

### **5. APPLICATION SUBMITTAL REQUIREMENTS**

Applicants must satisfy all of the following IFAHAP application requirements at the time of application submittal:

- (a) An application cover form including the name of the project, name and address of the Applicant / project Developer, total project cost, total number of project units, total number of IFAHAP units requested, name, phone number and e-mail address of a contact person.
- (b) An organizational chart that identifies the project owner/development entity and all entities and persons with an interest in the project owner/development entity, including all owners, principals, partners, and investors.
- (c) A detailed description of the project including location, type and size of housing units, total number of housing units to be built, and the number of housing units for which the applicant is seeking impact fee assistance. Applicants shall specify by Program impact fee zone: the total amount of impact fees due for all units in the project, any impact fee existing-use credits for the project, and the amount of impact fee assistance being requested. All such amounts shall be calculated using the impact fee schedule in effect at the time of application. A spread sheet of the units to be assisted under the Program that lists each such unit separately, where the square footage and number of bedrooms of each unit is shown and where a detailed computation of the impact fees being requested for each unit by Program impact fee zone is shown using the impact fee schedule in effect at the time of application.

- (d) Evidence of infrastructure availability at the project site.
- (e) A project planning and implementation schedule that identifies all required development processes with dates and time frames for submittals, reviews, hearings, and approvals.
- (f) Evidence of site control in the form of a recorded deed(s) or certificate(s) of title, or a fully executed and valid purchase contract or option to purchase that includes a certified legal description. In the case of Rental Housing Units of For-Sale Housing Units, site control must be held by the development entity or an owner/partner in the development entity. If multiple parcels are owned or controlled by multiple owners, include a list of each owner entity and each parcel address/PCN. In the case of Owner-Constructed/Occupied Housing Units, site control must be held by the person(s) that will own and occupy the unit upon completion.
- (g) A project location map which is sufficiently detailed to clearly show in which Program impact fee zone(s) the project is located; and
- (h) A development budget that identifies all sources and uses of funding. Must include backup documentation for all non-IAHAP development funding sources.
- (i) For rental projects, a 15-year operating pro forma that identifies all revenues, expenses, debt service, and cash flow.
- (j) For homeownership projects, a sales pro forma that identifies all revenues, expenses, homebuyer subsidies (if any), and profit.

NOTE: Applicants who have already received building permits for their projects at the time of application are not eligible for assistance under the Program. Only those applicants who obtain building permits after the issuance of a Certificate may receive assistance under the Program.

## **6. APPLICATION REVIEW, FUNDING RESERVATION, AND FUNDING APPROVAL**

All applications in response to a NOFA must be submitted to HED. HED staff shall review each application for eligibility and responsiveness to the NOFA submittal requirements. Applications determined by HED to be ineligible or unresponsive to the NOFA submittal requirements will not receive IAHAP assistance. Applications determined, in the sole judgement of the County, to be eligible and responsive to all submittal requirements shall, subject to funding availability, be provided an IAHAP funding reservation. Applications for retroactive Program assistance will be considered non-responsive and will be rejected.

HED will recommend that the BCC approve a not to exceed amount in Program funding assistance for the project and delegate authority to the Mayor to execute a Certificate which will be released to the recipient upon compliance with the conditions specified therein. The amount of impact fee assistance reflected in the Certificate shall be based on final computations made by the Palm Beach County Impact Fee Manager but shall not exceed the amount approved by the BCC. The Certificate shall only be used to reduce the amount of unpaid impact fees due for the funded project and must be presented to the Palm Beach County Impact Fee Manager in order to obtain the reduction. The Certificate shall not be used to obtain a reimbursement of impact fees already paid. If not used, the Certificate shall expire two (2) years after the date of funding approval by the BCC, and the Program assistance shall no longer be available to the recipient.

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

## **7. PROGRAM WIDE PERFORMANCE REQUIREMENTS**

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

(a) **Deadline to Utilize IFAHAP Assistance:**

Recipients of funding under the Program must utilize the assistance within two (2) years after the date of BCC funding approval.

(b) **Deadline for Obtaining Certificates of Occupancy:**

Recipients of funding under the Program must obtain a certificate(s) of occupancy from the building department with jurisdiction over the project for all Assisted Units and must have such units occupied by households as specified herein within four (4) years after the date of BCC funding approval.

(c) All housing units assisted under the Program must contain at least one (1) bedroom.

(d) Program funds awarded by the BCC for a certain impact fee type and impact fee benefit zone shall only be used for that same fee type in that same zone. There is no ability to switch funds between impact fee types or between impact fee benefit zones.

(e) **Floating Units:**

Rental developers whose projects contain fewer Assisted Units than the total number of units, may, for Program monitoring and compliance purposes, float some or all of the Assisted Units (which are subject to Program requirements) throughout the project, provided that the floating units are of the same number of bedrooms as what was approved for the Assisted Units.

(f) **Occupancy and Income Restrictions:**

All Assisted Units shall be subject to income restrictions from the date of issuance of the certificate of occupancy until the end of the term of the associated Declaration. The income restrictions according to housing type are:

1. **Rental Housing Units:** shall be leased only to individuals or households whose incomes, adjusted by family size, are at no more than one hundred and ten percent (110%) of AMI at the time the units are first occupied, and thereafter, at any time a new tenant occupies the unit. All such units shall be occupied for a period of not less than thirty (30) years from the date of Certificate of Occupancy.
2. **For-Sale Housing Units:** shall be sold in fee simple only to individuals or households whose incomes, adjusted by family size, are at no more than one hundred and forty percent (140%) of AMI at the time of sale. All such units shall be occupied as the principal place of residence by their owners for a period of thirty (30) years from the date of sale.
3. **Owner-Constructed/Occupied Housing Units:** shall be held in fee simple and constructed and occupied by County approved individuals or households whose incomes, adjusted by family size, are at no more than one hundred and forty percent (140%) of AMI at the time of funding approval by the BCC. All such homes shall be occupied as the principal place of residence by their owners for a period of up to thirty (30) years from the date of issuance of the home's Certificate of Occupancy, as evidenced by local homestead exemption.

(g) **Affordability Restrictions:**

All Assisted Units shall be subject to affordability restrictions with regard to rental or housing costs, as applicable. The affordability restrictions according to housing type are:

1. **Rental Housing Units:** shall be rented at rental rates where the sum of the actual monthly rent paid by the tenant plus the cost of Tenant Paid Utilities does not exceed the rent limit for Palm Beach County households at one hundred and ten percent (110%) of AMI as shown on a current rent limit chart provided by HED, as updated from time to time, and fixed according to the number of bedrooms. Utility allowances shall be calculated utilizing the HUD Utility Schedule Model, or other utility allowance schedule approved by HED. Rents in Assisted Units shall not be increased during the term of a tenant lease to adjust for changes in rent limits occurring subsequent to execution of the lease, but may only be increased upon lease renewal.

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

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

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

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

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

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

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

(i) **Senior Liens:**

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

(j) **Default Penalty Payment:**

Property owners shall make a Default Penalty Payment to the County upon a property owner's default under the Program prior to the satisfaction of the terms of the subject Declaration. However, the Declaration shall remain in place until the affordability term expires. The amount of the Default Penalty Payment shall be determined according to housing type and ownership status as set forth below.

1. **Rental Housing Units and For-Sale Housing Units:** Developers of Rental Housing Units and Developers of For-Sale Housing Units shall submit to County a Default Penalty Payment amount consisting of the amount secured by the Declaration, plus 3% of said amount per year (or partial year) remaining in the unexpired affordability term established in the Declaration(s), plus an Administrative Fee.

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

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

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

In the event of default, the County reserves the right to exercise any other legal or equitable rights or remedies the County may have under applicable law.

(k) **Sale of Property:**

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

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

approved by the County according to the requirements of the Program. Homeowners who sell a property encumbered by a Declaration may not transfer the lien of the Declaration to another property.

**(l) Release of Restrictions at End of Term:**

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

1. As For-Sale Housing Units are initially sold to home buyers, the for-sale Developer shall place language from the Declaration into the deed conveying such units. The deed restriction language shall refer back to the Declaration and have a duration of thirty (30) years from the date of sale. At the end of the thirty (30) year term and upon full compliance with Program requirements and restrictions for each individual unit, the County shall issue a release of restrictions removing the encumbrance and lien of the Declaration from the property associated with the unit.
2. For Rental Developments, at the end of the term of the Declaration and upon full compliance with its requirements and restrictions, the County shall issue the rental Developer a release of restrictions removing the encumbrance and lien of the Declaration from the property.

**(m) Reports:**

Developers of either rental or for-sale housing units shall, upon request by the County, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Developer. Each such affidavit shall contain the following:

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

Or

4. A certification listing all For-Sale Housing Units at the project by address. This certification shall for each such unit include the sale date, the buyer's annual household income, the number of unit occupants, and the amount of mortgage principal plus interest, real estate taxes, property insurance and homeowner association fees. (The Developer may discontinue submission of these items after the final For-Sale Housing Unit has been sold to an eligible home buyer).

**8. DELEGATION OF AUTHORITY TO AMEND DECLARATIONS**

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

**PALM BEACH COUNTY**  
**IMPACT FEE AFFORDABLE HOUSING ASSISTANCE PROGRAM**

**CERTIFICATE OF AWARD**

This Certificate is awarded on \_\_\_\_\_, 202\_\_\_\_\_, by **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "County") to \_\_\_\_\_, a \_\_\_\_\_, (the "Developer"). This Certificate is awarded pursuant to funding approval by the Palm Beach County Board of County Commissioners on \_\_\_\_\_, 202\_\_\_\_\_, at which time authority was delegated to the Mayor to execute this Certificate.

The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Affordable Housing Assistance Program (the "IFAHAP") to receive a credit up to \$\_\_\_\_\_ towards the payment of Zone 2 Road Impact Fees, \$\_\_\_\_\_ towards payment of Zone 2 Park Impact Fees, and \$\_\_\_\_\_ towards the payment of Public Building Impact Fees, associated with the construction of \_\_\_\_\_ units located at \_\_\_\_\_ (the "Project").

In exchange for the receipt of the aforementioned credit from the County towards the payment of impact fees associated with the construction of the Project, the Developer also agrees to execute, record, and deliver to the County a copy of the recorded Declaration of Restrictions (the "Declaration"), attached hereto as Exhibit "A", and made a part hereof, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire two (2) years from the date of funding approval for the Project by the Palm Beach County Board of County Commissioners, that is, on \_\_\_\_\_, 202\_\_\_\_\_.

**PALM BEACH COUNTY, a political subdivision  
of the State of Florida**

**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_, Mayor

**Approved as to Form and  
Legal Sufficiency**

By: \_\_\_\_\_  
Howard J. Falcon, III  
Chief Assistant County Attorney

**Approved as to Terms and Conditions  
Dept. of Housing and Economic Development**

By: \_\_\_\_\_  
Sherry Howard  
Deputy Director

**EXHIBIT A**

**DECLARATION OF RESTRICTIONS**

**Prepared by and return to:**

Palm Beach County  
Department of Housing  
& Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, Florida 33406  
Attn: Jeffrey Bolton, Division Director

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

The undersigned, \_\_\_\_\_, a \_\_\_\_\_, whose mailing address is \_\_\_\_\_, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described herein, in consideration for the receipt of a Certificate of Award for Developer Affordable For-Sale Housing Units (the "Certificate"), dated 202, under Palm Beach County's 202 Impact Fee Affordable Housing Assistance Program (hereinafter referred to as "IFAHAP") and the receipt of a credit of \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_.00) towards the payment of Zone 2 Road Impact Fees, \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_.00) towards the payment of Zone 2 Park Impact Fees, and \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_.00) towards payment of Public Building Impact Fees for a combined total of \_\_\_\_\_ and \_\_\_\_/100 Dollars (\$\_\_\_\_. ) (the "IFAHAP Credit") towards the payment of Public Building Impact Fees as provided by Palm Beach County, a political subdivision of the State of Florida (the "County"), does hereby grant to the County and impose the following restrictions against the subject property, hereinafter referred to as the "Property", which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. In consideration for the receipt of the Certificate and its associated credit towards the payment of Public Building Impact Fees, the Declarant hereby covenants and agrees as follows:
  - (a) Declarant shall construct no fewer than \_\_\_\_\_(\_\_\_\_) affordable for-sale housing units on the Property, together with ancillary improvements (the "Project"). All of the aforesaid rental housing units shall be "Affordable For-Sale Housing Units" affected by the restrictions and conditions of this Declaration of Restrictions for Developer Affordable For-Sale Housing Units (the "Declaration"). Each of the aforesaid Affordable For-Sale Housing Units shall be the unit tenant's primary residence pursuant to a signed lease document. None of the Affordable For-Sale Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
  - (b) Declarant shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all of the Affordable For-Sale Housing Units at the Project and initially lease all such units by no later than \_\_\_\_\_, 202\_\_\_\_.

(c) Declarant shall sell, no later than \_\_\_\_\_, the Affordable For-Sale Housing Unit at the Project to a household whose gross income, adjusted for family size, is no more than One Hundred Forty Percent (140%) of Area Median Income (hereinafter "AMI") at the time of sale. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area for a period of no less than Thirty (30) years from the date hereof (the "Compliance Period").

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

(e) Declarant shall, upon request by the County, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Declarant. Each such affidavit shall contain the following:

- A certification that the Declarant is in compliance with the requirements of this Declaration for the Project.
- Evidence of having completed construction of all Affordable For-Sale Housing Units at the Project and having obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein no later than \_\_\_\_\_, 202\_\_\_\_\_, which is four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Declarant may discontinue submission of these items after this requirement has been met.)
- A certification listing all Affordable For-Sale Housing Units at the Project by unit number and bedroom size. This certification shall include for each such unit the lease date, the tenant's annual household income, the number of unit occupants, and the monthly rent amount for each unit.

Declarant shall submit the Annual Report to:

Department of Housing and Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406  
Attn: Jonathan B. Brown, Director

(f) This property shall only be sold to, and occupied by, a homeowner in accordance with this Declaration.

- (g) This property may only be used for residential purposes as the housing unit owner's principal place of residence as evidenced by a local homestead exemption.
- (h) These restrictions may not be transferred to another property and these restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.
- (i) These restrictions, unless released by Palm Beach County as provided above, shall be included in every subsequent deed or other instrument or document used for conveying title to this property as well as every subsequent deed or other conveyance instrument or document used for future conveyances of the Affordable For-Sale Housing Unit for the Compliance Period.
- (j) The housing unit and the improvements on this property may only be sold, conveyed or transferred to a successor owner whose gross household income, at the time of sale, conveyance or transfer, adjusted for family size, is no more than One Hundred Forty percent (140%) of Area Median Income as determined by the Palm Beach County Department of Housing and Economic Development. Area Median Income shall be the most recent area median income published by the U. S. Department of Housing and Urban Development for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- (k) The housing unit and the improvements on this property may only be sold, conveyed or transferred to a successor owner such that the successor owner's total cost of the mortgage principal plus interest, real estate taxes, property insurance, homeowner association fees and the land lease, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the successor owner as determined by the Palm Beach County Department of Housing and Economic Development.
- (l) Declarant shall include, or cause to be included, the following restrictions and conditions in the deed or other instrument or document used for conveying the Affordable For-Sale Housing Unit:
  - i. This property shall only be sold to, and occupied by, a homeowner in accordance with the Declaration of Restrictions for Developer Affordable For-Sale Housing Units recorded in ORB \_\_\_\_ Page \_\_\_\_ of the Public Records of Palm Beach County, Florida (the "Original DOR").
  - ii. These restrictions shall be deemed a covenant running with the land described herein and are binding upon the title holder of such land, and the owner of the housing unit and improvements thereon, for the Compliance Period, as defined in the Original DOR.

- iii. This property may only be used for residential purposes as the housing unit owner's principal place of residence as evidenced by a local homestead exemption.
- iv. These restrictions may not be transferred to another property and these restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.
- v. These restrictions, unless released by Palm Beach County as provided above, shall be included in every subsequent deed or other instrument or document used for conveying title to this property as well as every subsequent deed or other conveyance instrument or document used for future conveyances of the Affordable For-Sale Housing Unit and shall remain for a period of Thirty (30) years from the date of the Original DOR.
- vi. The housing unit and the improvements on this property may only be sold, conveyed or transferred to a successor owner whose gross household income, at the time of sale, conveyance or transfer, adjusted for family size, is no more than One Hundred Forty percent (140%) of Area Median Income as determined by the Palm Beach County Department of Housing and Economic Development. Area Median Income shall be the most recent area median income published by the U. S. Department of Housing and Urban Development for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- vii. The housing unit and the improvements on this property may only be sold, conveyed or transferred to a successor owner such that the successor owner's total cost of the mortgage principal plus interest, real estate taxes, property insurance, homeowner association fees and the land lease, calculated on a monthly basis, does not exceed thirty five percent (35%) of the gross monthly household income of the successor owner as determined by the Palm Beach County Department of Housing and Economic Development.

(m) Declarant shall include the County logo in all marketing materials for the Project. During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the Project. Sign(s) will be provided by the County and erected at Declarant's expense.

(n) Declarant shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual

orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.

2. Declarant has secured a loan to construct the project (the "Construction Loan") in an amount up to \$ \_\_\_\_\_ from the \_\_\_\_\_, which loan has been secured by a separate mortgage (the "Senior Mortgage") encumbering the Property.

The lien created by this Declaration shall be senior to all other liens, encumbrances, and mortgages on the Property except the County hereby covenants and agrees that this Declaration is and will at all times continue to be, subordinate, subject and inferior to the rights of the Senior Mortgagee under the Senior Mortgage and that the liens, rights (including approval and consent rights), remedies, payment interests, priority interests, and security interests granted to the County pursuant to or in connection with this Declaration are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights (including approval and consent rights), remedies, payment, priority and security interests granted to the Senior Mortgagee pursuant to the Senior Mortgage and the terms, covenants, conditions, operations and effects thereof. Notwithstanding the above, the County may exercise the remedies of specific performance or injunctive relief.

3. The Declarant shall pay, or cause to be paid, all taxes due relating to the Property, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part thereof, any lien superior to the lien of this Declaration, except for any liens expressly approved by the County in writing. The Declarant shall keep and maintain the Project free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure within five (5) working days of the receipt of said notice by Declarant.
4. Should Declarant change the use or planned use, or discontinue use, of the Project as For-Sale housing (including the Affordable For-Sale Housing Units) prior to the end of the Compliance Period, the Declarant shall be considered in default and subject to the remedies as provided herein.

In the event of any proposed sale, conveyance or transfer of the Property prior to the end of the Compliance Period, the Declarant must obtain written approval from the County. The restrictions set forth herein shall run with the land and be binding on the subsequent owner(s) for the remaining duration of the Compliance Period.

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

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

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

- (a) Declare due from Declarant immediately upon demand an amount equal to the IFAHAP Credit and an additional penalty of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per Affordable For-Sale Housing Unit per quarter during which such default exists, which penalty shall accrue from the date the default commenced. The Declarant shall pay said amount within ten (10) calendar days after the thirty (30) calendar day cure period specified above, and then on the first day of each quarter thereafter.
- (b) Seek specific performance to enforce the provisions, terms and conditions of this Declaration

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of all due and unpaid amounts, which the Declarant is obligated to pay hereunder. Any unpaid sum accrued hereunder shall accrue interest at the highest rate permissible by law and shall be secured by a lien against the Property.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, (but shall not be obligated to) cure, to the extent so curable by County, each default under any covenant in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County, together with interest at the highest rate permissible by law from the time of expenditure.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery

of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies of any of the covenants, terms or conditions of this Declaration shall not bar or waive any of the County's rights or remedies relating to any subsequent default. The County shall provide the Senior Lender thirty (30) calendar days notice before the County exercises any remedy under this provision.

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

To County:

Palm Beach County  
Department of Housing and Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406  
Attn: Jonathan B. Brown, Director

With copy to:

County Attorney's Office  
Palm Beach County  
301 N. Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Attn: Howard J. Falcon III, Chief Assistant County Attorney

To Declarant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

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

7. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Housing and Economic Development, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.
8. The term of this agreement, the obligations contained herein and the restrictions contained in this Declaration shall be binding upon the undersigned, their heirs, executors, successors, and assigns and deemed covenants running with the land for the duration of the Compliance Period as defined in Section 1(c) herein. 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 by an instrument executed with the same formalities as this document.
9. No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Declarant.

10. The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in a State court of competent jurisdiction in Palm Beach County.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

Executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_

## DECLARANT

Signed, sealed and delivered  
in the presence of:

By: \_\_\_\_\_

## Witnesses:

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

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

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

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

Signature:

Address:

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, on \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_, who is personally known to me, or who has produced \_\_\_\_\_ as identification.

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

Notary Name: \_\_\_\_\_  
Notary Public - State of Florida

**ATTACHMENT 1**

**LEGAL DESCRIPTION OF THE PROPERTY**

PCN:

Address:

**ATTACHMENT 2**

**DETAIL OF IMPACT FEE CREDIT**

<b>Legal Description</b>	<b>Credit by Impact Fee Zone</b>	<b>Total Credit</b>
	Roads Zone _ Parks Zone _ Public Buildings	\$ \$ \$
	<b>GRAND TOTAL:</b>	\$

**Prepared by and return to:**

Palm Beach County  
Department of Housing  
& Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, Florida 33406  
Attn: Jeffrey Bolton, Division Director

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

The undersigned, \_\_\_\_\_, a \_\_\_\_\_, whose mailing address is \_\_\_\_\_, (hereinafter referred to as "Declarant", which term as used in every instance herein shall include Declarant's successors and assigns), for the property described herein, in consideration for the receipt of a Certificate of Award for Developer Affordable Rental Housing Units (the "Certificate"), dated \_\_\_\_\_ 202\_\_\_\_\_, under Palm Beach County's 202\_\_\_\_ Impact Fee Affordable Housing Assistance Program (hereinafter referred to as "IFAHAP") and the receipt of a credit of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$\_\_\_\_\_.00) towards the payment of Zone 2 Road Impact Fees, \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$\_\_\_\_\_.00) towards the payment of Zone 2 Park Impact Fees, and \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$\_\_\_\_\_.00) towards payment of Public Building Impact Fees for a combined total of \_\_\_\_\_ and \_\_\_\_\_/100 Dollars (\$\_\_\_\_\_. ) (the "IFAHAP Credit") towards the payment of Public Building Impact Fees as provided by Palm Beach County, a political subdivision of the State of Florida (the "County"), does hereby grant to the County and impose the following restrictions against the subject property, hereinafter referred to as the "Property", which is more fully described in Attachment 1 attached hereto and made a part hereof.

1. In consideration for the receipt of the Certificate and its associated credit towards the payment of Public Building Impact Fees, the Declarant hereby covenants and agrees as follows:
  - a. Declarant shall construct no fewer than \_\_\_\_\_(\_\_\_\_) affordable rental housing units on the Property, which shall consist of \_\_\_\_\_, together with ancillary improvements (the "Project"). All of the aforesaid rental housing units shall be "Affordable Rental Housing Units" affected by the restrictions and conditions of this Declaration of Restrictions for Developer Affordable Rental Housing Units (the "Declaration"). Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's primary residence pursuant to a signed lease document.
  - b. Declarant shall obtain certificates of occupancy from the building department with jurisdiction over the Project for all of the Affordable Rental Housing Units at the Project and initially lease all such units by no later than \_\_\_\_\_, 202\_\_\_\_\_.

- c. Declarant shall, for a period of not less than Thirty (30) years from the date hereof (the "Compliance Period"), lease each of the aforesaid Affordable Rental Housing Units to a household whose gross incomes, adjusted for family size, is not more than One Hundred Ten Percent (110%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.
- d. Declarant shall, for the aforesaid Compliance Period, lease each of the Affordable Rental Housing Units at an affordable rental rate such that the sum of the actual monthly rent paid by the tenant of the Affordable Rental Housing Unit plus the cost of tenant paid utilities does not exceed the rent limit for households of not more than \_\_\_\_\_ (%) of AMI as provided by Palm Beach County from time to time and fixed according to the number of bedrooms. Tenant paid utilities including gas, water/sewer, electric, and garbage shall be based on the current utility allowances from the HUD Utility Schedule Model, or other utility allowance schedule approved by Palm Beach County. The rental rates in Affordable Rental Housing Units shall not be increased during the term of a tenant lease to adjust for changes in rent limits occurring subsequent to execution of the lease, but may only be increased upon lease renewal.

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

- e. Declarant shall, upon request by the County, provide the County an annual report in the form of an affidavit executed by a person authorized to bind the Declarant. Each such affidavit shall contain the following:
  - (i) A certification that the Declarant is in compliance with the requirements of this Declaration for the Project.
  - (ii) Evidence of having completed construction of all Affordable Rental Housing Units at the Project and having obtained their certificates of occupancy from the building department with jurisdiction over the Project and evidence that all such units have been initially occupied by households as specified herein no later than \_\_\_\_\_, 202\_\_\_\_, which is four (4) years after the date of funding approval for the Project by the Palm Beach County Board of County Commissioners. (The Declarant may discontinue submission of these items after this requirement has been met.)
  - (iii) A certification listing all Affordable Rental Housing Units at the Project by unit number and bedroom size. This certification shall include for each such unit the lease date, the tenant's annual household income, the number of unit occupants, and the monthly rent amount for each unit and the applicable rent limit and utility allowance for each unit.

Declarant shall submit the Annual Report to:

Department of Housing and Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406  
Attn: Jonathan B. Brown, Director

- f. Declarant shall, for each tenant that is leasing any of the Affordable Rental Housing Units at the Project, comply with the below requirements and maintain a file that, at a minimum, contains the following:
  - (i) An application for lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the unit and their household characteristics, and the household income they have disclosed.
  - (ii) Documentation evidencing the Declarant's verification of the applicant's household income and a computation sheet demonstrating the Declarant'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).
  - (iii) A copy of the AMI showing the HUD income levels in effect at the time all leases are signed.
  - (iv) A computation sheet demonstrating that in every initial lease and, every subsequent lease, the rent is at an affordable rental rate as defined in paragraph 1(d).
  - (v) An original of each executed lease with the applicant/tenant identifying the unit number and the rental rate. Declarant shall utilize leases which require parents to be held legally and financially liable for the acts of their children in the Project and which allow management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the Project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses.
  - (vi) Should the Declarant elect to utilize criminal background information in the screening of prospective tenants or the retention/termination of tenants, the Declarant 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); or
- (iii) Be utilized to intentionally discriminate against protected classes of persons.

Tenant selection/retention/termination shall:

- (i) Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;
- (ii) Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
- (iii) Consider the nature, severity, and recency of the criminal offense;
- (iv) Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; tenant history before and/or after the criminal conduct; and rehabilitation efforts; and
- (v) Be applied equally among all classes of protected persons.

Any other documentation evidencing the Declarant's compliance with the requirements of this Declaration.

- g. Declarant shall maintain ongoing records related to each tenant at the Project, and shall maintain all tenant records for at least five (5) years after the end of each tenancy. The County shall have the option, but not the obligation, to verify the Declarant's compliance with these conditions and the requirements of this Declaration. The County may, at its sole discretion, inspect or audit all tenant and owner records, and the Declarant shall provide the County access to such books, records, and documents as required for the purpose of inspection or audit during normal business hours at the Declarant's place of business within Palm Beach County.

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 Declarant, 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.

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

- (i) Keep and maintain public records required by the County to perform services as provided in this Declaration.
- (ii) 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, F.S. or as otherwise provided by law. The Declarant 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.
- (iii) 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 Declarant does not transfer the records to the public agency.

Failure of the Declarant to comply with the requirements of this article shall be a material breach of this Declaration. 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 Declarant 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 DECLARANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE DECLARANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS DECLARATION, 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) 355-6680.**

- h. Declarant shall include the County logo in all marketing materials for the Project. During the period of the construction of the Project, the County shall have the right to install and maintain on the Property one or more signs identifying the County, or to be identified on such signs installed by others, as one of the entities participating in the development of the Project. Sign(s) will be provided by the County and erected at Declarant's expense.

- i. Declarant shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property.
2. The Declarant shall pay, or cause to be paid, all taxes due relating to the Property, and the Declarant shall not voluntarily create, or permit or suffer to be created or to exist, on or against the Property, or any part thereof, any lien superior to the lien of this Declaration, except for any liens expressly approved by the County in writing. The Declarant shall keep and maintain the Project free from the claims of all parties supplying labor or materials unto the same. The Declarant agrees to notify the County of any liens, judgments or pending foreclosure within five (5) working days of the receipt of said notice by Declarant.
3. Should Declarant change the use or planned use, or discontinue use, of the Project as rental housing (including the Affordable Rental Housing Units) prior to the end of the Compliance Period, the Declarant shall be considered in default and subject to the remedies as provided herein.
4. In the event of any proposed sale, conveyance or transfer of the Property prior to the end of the Compliance Period, the Declarant must obtain written approval from the County. The restrictions set forth herein shall run with the land and be binding on the subsequent owner(s) for the remaining duration of the Compliance Period.
5. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, shall constitute a default under this Declaration. The Declarant further acknowledges and covenants that a default under any senior mortgage to this Declaration, shall constitute a default under this Declaration.

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

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

- a. Declare due from Declarant immediately upon demand an amount equal to the entire IFAHAP Credit secured hereby and an additional penalty of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) per Affordable Rental Housing Unit per quarter during which such default exists, which penalty shall accrue from the

date the default commenced. The Declarant shall pay said amount within ten (10) calendar days after the thirty (30) calendar day cure period specified above, and then on the first day of each quarter thereafter.

- b. Seek specific performance to enforce the provisions, terms and conditions of this Declaration

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of all due and unpaid amounts, which the Declarant is obligated to pay hereunder. Any unpaid sum accrued hereunder shall accrue interest at the highest rate permissible by law and shall be secured by a lien against the Property.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, (but shall not be obligated to) cure, to the extent so curable by County, each default under any covenant in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County, together with interest at the highest rate permissible by law from the time of expenditure.

In addition to any remedy set forth herein, the County shall have such other remedies as are available at law or equity. The exercise or attempted exercise by the County of any right or remedy available under this Declaration shall not preclude the County from exercising any other right or remedy so available, nor shall any such exercise or attempted exercise constitute or be construed as an election of remedies. The Declarant shall pay any reasonable expenses, including reasonable attorney's fees and costs incurred by the County, under this Declaration and the preparation and delivery of notices required hereunder. The failure or omission by the County to enforce any of its rights or remedies of any of the covenants, terms or conditions of this Declaration shall not bar or waive any of the County's rights or remedies relating to any subsequent default.

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

To County: Palm Beach County  
Department of Housing and Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406  
Attn: Jonathan B. Brown, Director

With copy to:

County Attorney's Office  
Palm Beach County  
301 N. Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Attn: Howard J. Falcon III, Chief Assistant County Attorney

To Declarant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention:

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

7. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant shall deliver this Declaration to the Director of the Department of Housing and Economic Development, at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.
8. The term of this agreement, the obligations contained herein and the restrictions contained in this Declaration shall be binding upon the undersigned, their heirs, executors, successors, and assigns and deemed covenants running with the land for the duration of the Compliance Period as defined in Section 1(c) herein. 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 by an instrument executed with the same formalities as this document.
9. No provision herein is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party named herein, including but not limited to any citizen or employees of the County and/or the Declarant.
10. The laws of the State of Florida shall govern the interpretation and enforcement of the terms contained herein and the venue shall be in a State court of competent jurisdiction in Palm Beach County.

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Executed this \_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_

**DECLARANT**

Signed, sealed and delivered  
in the presence of:

By: \_\_\_\_\_

Witnesses:

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

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

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

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

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

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

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [ ] physical presence  
or [ ] online notarization, on \_\_\_\_\_, by \_\_\_\_\_, as  
\_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_, who is  
personally known to me, or who has produced \_\_\_\_\_ as  
identification.

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

Notary Name: \_\_\_\_\_  
(NOTARY SEAL ABOVE) Notary Public - State of Florida

**ATTACHMENT 1**

**LEGAL DESCRIPTION OF THE PROPERTY**

PCN:

Address:

**Prepared by and return to:**

Palm Beach County  
Department of Housing  
& Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, Florida 33406

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

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

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

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

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

- (a) To comply with the Conditions of Issuance contained in the Certificate referenced herein.
- (b) To construct a detached single family home on the Property, together with ancillary improvements, all of which shall be known as \_\_\_\_\_ (the "Project").

- (c) To obtain a certificate of occupancy for the Project from the building department with jurisdiction over the Project no later than \_\_\_\_\_, and to provide the County a copy of the certificate of occupancy within 30 days of its issuance.
- (d) To reside at the Project for a period of Thirty (30) years from the date of issuance of the Project's certificate of occupancy (the "Compliance Period") and to occupy the home as the Declarant's principal place of residence as evidenced by the Declarant's acquisition of a local homestead exemption.
- (e) To provide the County, upon the County's request, an affidavit containing a certification that the Declarant resides at the Project as the Declarant's principal place of residence.
- (f) Not to discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the sale of the Property.

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

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

5. Should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from a detached single family home, or should the Declarant sell, convey or transfer title to the Property prior to the end of the Compliance Period without the County's approval, then the Declarant shall be considered in default and subject to the remedies as provided herein.

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

Property in which the subsequent owner accepts the restrictions and conditions provided herein for the remainder of the Compliance Period.

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

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

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

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

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

If the Declarant shall fail to pay any of the above amounts, the County shall have the right to file in a court of competent jurisdiction an action for collection of all due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder. Any unpaid sum accrued hereunder shall accrue interest at the highest rate permissible by law and shall be secured by a lien against the Property.

Notwithstanding the foregoing, and at the sole discretion of the County, upon providing notice to the Declarant of its determination that the Declarant is in default of the terms of this Declaration, and upon the Declarant's failure to cure the default to the County's satisfaction, the County may, from time to time, cure each default under any covenant so

curable in this Declaration, or in any instrument creating a lien upon the Property, or any part thereof, to such extent that the County determines, and each amount paid, if any, by the County to cure any such default shall be paid by the Declarant to the County in addition to interest at the highest rate permissible by law from the time of expenditure. The County shall provide the First Mortgage Holder thirty (30) calendar days notice before the County cures any default.

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

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

To County: Department of Housing and Economic Development  
Palm Beach County  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406

With copy to:  
County Attorney's Office  
Palm Beach County  
301 N. Olive Avenue, Suite 601  
West Palm Beach, FL 33401

To Declarant:

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## Attention:

To First Mortgage Holder: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed, sealed and delivered  
in the presence of:

Witnesses:

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

By: \_\_\_\_\_  
name

Signature:

\_\_\_\_\_

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

Signature:

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, on \_\_\_\_\_, by \_\_\_\_\_, who is personally known to me, or who has produced \_\_\_\_\_ as identification.

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

Notary Name: \_\_\_\_\_  
(NOTARY SEAL ABOVE) Notary Public - State of Florida

**ATTACHMENT 1**  
**LEGAL DESCRIPTION OF THE PROPERTY**