

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 3, 2012 [] Consent [X] Regular
[] Ordinance [] Public Hearing

Department: Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A) Issuance of an Impact Fee Assistance Program Certificate of Award to Dakota Abacoa Housing, LLC for a credit of \$445,512 towards the payment of Road Impact Fees in Zone 1 for the construction of 132 affordable rental units; and
- B) A Budget Transfer of \$445,512 to appropriate funds for the Dakota Abacoa Housing, LLC housing project.

Summary: Dakota Abacoa Housing, LLC (DAH) submitted a request for assistance in response to a Notice of Funding Availability issued in November 2011 by the Department of Economic Sustainability (DES). Staff is recommending \$445,512 in credits towards the payment of County Zone 1 Road Impact Fees for Dakota Apartments which will have a total of 142 units. The total Zone 1 Road Impact Fees for the project are \$480,000. The award amount was reduced by 7% as the total number of affordable units are only 93% (132) of the total number of units (142). All 132 affordable rental units are intended to be rented to persons of moderate income whose income is less than 120% of the median annual adjusted gross income. The monthly rents including utilities do not exceed 30% of the median adjusted gross income for the household. The project allows for conversion of the units to for-sale units provided the requirements for affordability remain. A Declaration of Restrictive Covenants will be recorded to ensure a 15 year affordability period. DAH's funding request included evidence of site control, infrastructure availability, appropriate zoning, and proper location within the County's Zone 1 Road Impact Fee area. Staff had prepared to take this item to the Commission on Affordable Housing for a funding recommendation on January 26, 2012. However, the meeting was cancelled due to the lack of a quorum. So as not to delay the project further, Staff is bringing the project forward for approval. **This project is projected to create 166 jobs and have a five (5) year Economic Sustainability Impact of \$20.2 Million. These funds are from interest earned by the Impact Fee Fund.** (DES Contract Development) District 1 (TKF)

Background and Justification: On November 17, 2009, the BCC authorized the use of impact fee investment earnings from roads, parks, and public buildings for affordable housing projects. For Fiscal Year 2011, the BCC authorized the use of \$1,037,000 in unallocated investment earnings from Zone 1 Road Impact Fees (collected in Fiscal Year 2010) for eligible affordable housing projects to be located in said zone. The BCC directed DES to notify the public of the availability of these funds and to accept requests on an on-going basis until all funding is utilized. On September 14, 2010, the BCC approved the Impact Fee Assistance Program (IFAP) Guidelines which established eligible uses of the funding; unit affordability standards; funding request review standards; and the funding request approval process. To be considered under the IFAP, applicants for assistance must provide evidence of site control for the project, infrastructure availability, and appropriate zoning. Applicants approved by the BCC receive a Certificate of Award which may be presented to the County's Impact Fee Coordinator for a credit towards road impact fees. In exchange for the receipt of the Certificate, the project developer must obtain all building permits within one (1) year of BCC approval, complete construction within four (4) years, and lease the housing units at affordable rents for a period of 15 years.

Attachments:

- 1. Location Map
- 2. Impact Fee Assistance Program Certificate of Award to Dakota Abacoa Housing, LLC
- 3. Declaration of Restrictive Covenants
- 4. Budget Transfer

Recommended By: Edward R. Long 3/23/2012
Department Director Date

Approved By: Patty Hinkle 3/29/12
for Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures					
Operating Costs	\$445,512				
External Revenues					
Program Income (County)	(\$445,512)				
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				

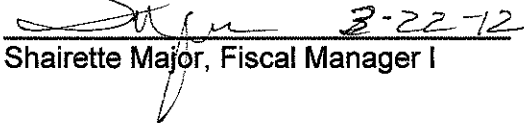
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes No
 Budget Account No.:

Fund 3531 Dept 143 Unit 1450 Object 8201 Program Code/Period IFAP-01/GY11

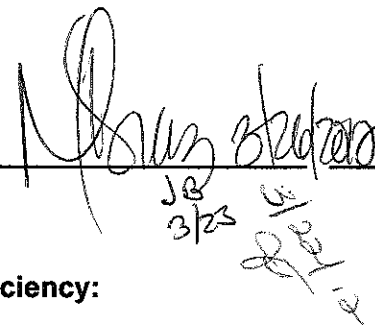
B. Recommended Sources of Funds/Summary of Fiscal Impact:


Approval of this agenda item will allocate \$445,512 to Dakota Abacoa Housing, LLC, for the Dakota Apartments project under the Impact Fee Assistance Program.

C. Departmental Fiscal Review:  3-22-12
 Shairette Major, Fiscal Manager I

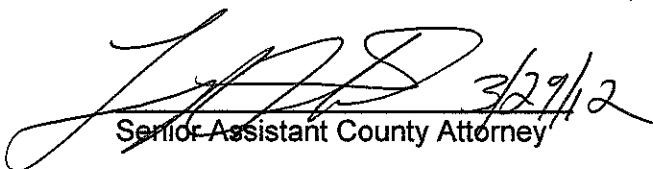
III. REVIEW COMMENTS

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

 3/23/12
 OFMB

 3/29/12
 Contract Development and Control

B. Legal Sufficiency:

 3/29/12
 Senior Assistant County Attorney

C. Other Department Review:

 Department Director

PALM BEACH COUNTY
IMPACT FEE ASSISTANCE PROGRAM
CERTIFICATE OF AWARD

This Certificate is awarded on this 3rd day of April, 2012, by the **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS** (the "County") to **DAKOTA ABACOA HOUSING, LLC**, a Florida limited liability company, whose Federal I.D. number is 45-2448226 (the "Developer").

The Developer may present this Certificate to the Palm Beach County Impact Fee Coordinator under the Impact Fee Assistance Program (the "IFAP") to receive a credit of \$445,512 towards the payment of road impact fees associated with the construction of one hundred and thirty-two (132) affordable rental housing units in a housing development to be known as Dakota Apartments and to be located in the County's Road Impact Fee Zone 1.

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

Furthermore, in exchange for the receipt of the aforementioned credit towards the payment of road impact fees from the County, the Developer also agrees to execute and deliver to the County a Declaration of Restrictive Covenants, as attached hereto, and to comply with the terms contained therein.

This Certificate, if not used for the purposes set forth herein, shall expire one (1) year from the date hereof, that is, on April 3, 2013.

(COUNTY SEAL BELOW)

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

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Shelley Vana, Chair
Board of County Commissioners

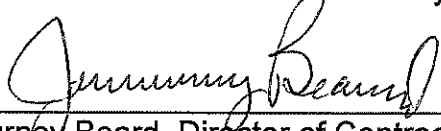
By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
Tammy K. Fields
Senior Assistant County Attorney

By: 
Journey Beard, Director of Contract
Development and Quality Control

CONDITIONS OF ISSUANCE

1. Organization Status: Developer is a Florida limited liability company duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein.

2. Housing To Be Constructed: At the time of issuance of this Certificate to the Developer, the Developer has represented to the County that the Developer has acquired title to, or intends to acquire title to, that certain real property (the "Premises") located in Palm Beach County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof. Developer shall construct no less than one hundred and forty-two (142) rental housing units on the Premises, together with ancillary improvements, all of which shall be known as Dakota Apartments. Of the aforesaid rental housing units, no less than one hundred and thirty-two (132) units shall be "Affordable Rental Housing Units" affected by these Conditions of Issuance and the Declaration of Restrictive Covenants referenced herein, and no more than ten (10) units shall be "Unrestricted Units" unaffected by these requirements. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.

3. Declaration of Restrictive Covenants: As a prerequisite to the Developer's receipt of the herein described credit towards the payment of road impact fees for Dakota Apartments, the Developer shall have acquired title to the Premises and shall have provided the County evidence, satisfactory to the County, that it possesses marketable title to the Premises. The Developer shall, in exchange for the receipt of the herein described credit towards the payment of road impact fees for Dakota Apartments, deliver to the County a fully executed Declaration of Restrictive Covenants, attached hereto as Exhibit A, and shall comply with the terms contained therein.

4. Building Permits: Developer shall obtain all building permits for the construction of all Affordable Rental Housing Units at Dakota Apartments from the building department with jurisdiction over the Premises within one (1) year after the date of this Certificate, that is, no later than April 3, 2013.

5. Certificates of Occupancy: Developer shall obtain certificates of occupancy from the building department with jurisdiction over the Premises for all Affordable Rental Housing Units at Dakota Apartments within four (4) years after the date of this Certificate, that is, no later than April 3, 2016.

6. Affordability of Rental Housing Units: Developer shall, for a period of fifteen (15) years from the date of issuance of the last certificate of occupancy for the Affordable Rental Housing Units at Dakota Apartments, lease each of the aforesaid one hundred and thirty-two (132) Affordable Rental Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and twenty percent (120%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Developer shall, for the aforesaid fifteen (15) year period, lease each of the aforesaid Affordable Rental Housing Units at an Affordable Rental Rate where the monthly rent including Utilities (hereinafter "Utilities") shall not exceed thirty percent (30%) of the gross income (adjusted for family size) of a prospective tenant household whose annual income does not exceed one hundred and twenty percent (120%) of AMI. Utilities, for the purposes of this Section, and as this term hereinafter appears, shall be defined as gas, water, electric, and sewer/garbage based on the current utility allowances in the Allowances for Tenant-Furnished Utilities and Other Services for Palm Beach County as published by HUD.

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

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

- An application-for-lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the unit and their household characteristics.
- Documentation evidencing the Developer's verification of the applicant's household income and a computation sheet demonstrating the Developer's determination of the applicant's income eligibility to occupy the unit. Household income computation shall include all wages, income from assets, regular cash or non-cash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined by HUD to be income, adjusted for family size, less deductions allowable under Section 62 of the Internal Revenue Code.
- A copy of the AMI showing the HUD income levels in effect at the time the initial lease is signed.
- A computation sheet demonstrating that in every initial lease, every subsequent lease, and every lease renewal, the rent including Utilities is at an Affordable Rental Rate as defined herein.
- An original of each executed lease with the applicant/tenant identifying the apartment number and the rental rate. Developer shall utilize leases which require parents to be held legally and financially liable for the acts of their children in the apartment complex and which allow management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses.
- A copy of background check(s). Developer shall conduct background checks on all adult members of tenant households prior to occupancy.
- Any other documentation evidencing the Developer's compliance with these Conditions of Issuance.

8. Conversion of Rental Housing Units to For-Sale Housing Units: Developer may, at any time during the aforementioned fifteen (15) year period, convert the one hundred and thirty-two (132) Affordable Rental Housing Units at Dakota Apartments to affordable for-sale housing units provided that for the balance of the fifteen (15) year period remaining after such conversion:

- Each converted unit is sold to a household whose gross income (adjusted for family size) does not exceed one hundred and twenty percent (120%) of AMI at the time of sale.
- Each converted unit, at the time of sale, is affordable to the purchasing household such that the sum of the mortgage principal and interest, real estate taxes, property insurance, and Utilities calculated on a monthly basis, does exceed thirty percent (30%) of the gross monthly household income of the purchasing household.
- Developer assures that, at any time after the initial sale of a converted unit, the resale of each such converted unit complies with the above enumerated requirements.
- Developer maintains records in a manner similar to that described above for renter households in order to demonstrate the Developer's compliance with the above enumerated requirements for the sale and resale of converted units.

9. Right to Audit and Access to Records: Developer shall maintain ongoing records related to each tenant at Dakota Apartments, and shall maintain all tenant records for at least five (5) years after the end of each tenancy. Developer shall maintain records related to the sale and resale of all rental housing units that are converted to for-sale units for a period of five (5) years after each sale or resale transaction. The County shall have the option, but not the obligation, to verify the Developer's compliance with these Conditions of Issuance. The County may, at its sole discretion, inspect or audit all tenant and owner records, and the Developer shall provide the County access to such books, records, and documents as required in this Section for the purpose of inspection or audit during normal business hours at the Developer's place of business.

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

10. Certification and Reporting Requirements: Developer shall certify to the County in an Annual Report compliance with these Conditions of Issuance by providing a certified statement listing all Affordable Rental Housing Units at Dakota Apartments by unit number, the number of bedrooms in each unit, and for these rental units, Developer shall provide the lease date, the tenant's annual household income, the number of unit occupants, the monthly rent amount, and the monthly Utility costs. For all housing units sold or resold during an annual reporting period, Developer shall provide the unit number, the number of bedrooms in each unit, the sale date, the purchaser's name, the purchaser's annual household income, the number of unit occupants, the monthly mortgage payment (principal and interest), the real estate taxes for the unit calculated on a monthly basis, the property insurance for the unit calculated on a monthly basis, and the monthly Utility costs. Developer shall submit the certified Annual Report at the end of each year for the duration of the fifteen (15) year period described above for the affordability of housing units at Dakota Apartments. Developer shall submit the Annual Report to:

Palm Beach County Impact Fee Coordinator
Vista Center Complex
2300 N. Jog Road, 2nd Floor
West Palm Beach, FL 33411-2741

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

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

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

EXHIBIT "A"

Return to:

Palm Beach County
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406
Prepared by: Tammy K. Fields,
Senior Assistant County Attorney

DECLARATION OF RESTRICTIONS

The undersigned, Dakota Abacoa Housing, LLC, having its principal office at 5604 PGA Boulevard, Suite 109, Palm Beach Gardens, FL 33418, (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 (the "Certificate"), dated April 3, 2012, under Palm Beach County's Impact Fee Assistance Program and the receipt of a credit valued at Four Hundred and Forty Five Thousand Five Hundred Twelve and 00/100 Dollars (\$445,512) towards the payment of road impact fees as provided by the Palm Beach County Board of County Commissioners (the "County"), does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, which is more fully described in Attachment 1 annexed hereto.

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

2. In consideration for the receipt of the Certificate and its associated credit of \$445,512 towards the payment of Zone 1 Road Impact Fees, the Declarant hereby covenants and agrees as follows:

- (a) To construct no less than one hundred and forty-two (142) rental housing units on the Property, together with ancillary improvements, all of which shall be known as Dakota Apartments. Of the aforesaid rental housing units, no less than one hundred and thirty-two (132) units shall be "Affordable Rental Housing Units" affected by the restrictions and conditions of this Declaration, and by those contained in the Certificate referenced herein, and no more than ten (10) units shall be "Unrestricted Units" unaffected by these restrictions and conditions. Each of the aforesaid Affordable Rental Housing Units shall be the unit tenant's home under the limits of a signed lease document. None of the Affordable Rental Housing Units may be used for transitional housing, for emergency shelters, or for other non-permanent housing.
- (b) To obtain all building permits for the construction of all Affordable Rental Housing Units at Dakota Apartments from the building department with jurisdiction over the Property no later than April 3, 2013.
- (c) To obtain certificates of occupancy from the building department with jurisdiction over the Property for all Affordable Rental Housing Units at Dakota Apartments no later than April 3, 2016.
- (d) To lease, for a period of fifteen (15) years from the date of issuance of the last certificate of occupancy for the Affordable Rental Housing Units at Dakota Apartments, all one hundred and thirty-two (132) Affordable Rental Housing Units to households whose incomes, adjusted for family size, are no more than one hundred and twenty percent (120%) of Area Median Income (hereinafter "AMI") at the time these units are first occupied, and thereafter, at any time new tenants occupy these units. 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.

- (e) To lease, for the aforesaid fifteen (15) year period, each of the herein described Affordable Rental Housing Units at an Affordable Rental Rate where the monthly rent including Utilities (hereinafter "Utilities") shall not exceed thirty percent (30%) of the gross income (adjusted for family size) of a prospective tenant household whose annual income does not exceed one hundred and twenty percent (120%) of AMI. Utilities, for the purposes of this Section, and as this term hereinafter appears, shall be defined as gas, water, electric, and sewer/garbage based on the current utility allowances in the Allowances for Tenant-Furnished Utilities and Other Services for Palm Beach County as published by HUD.
- (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 and expression in the use, or occupancy of any housing unit constructed on the Property.

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

4. The Declarant may, at any time during the aforesaid fifteen (15) year period, convert the one hundred and thirty-two (132) Affordable Rental Housing Units at Dakota Apartments, to affordable for-sale housing units provided that the Declarant complies with the following requirements for the balance of the fifteen (15) year period remaining after such conversion:

- (a) The Declarant shall sell each converted unit only to a household whose gross income (adjusted for family size) does not exceed one hundred and twenty percent (120%) of AMI at the time of sale.
- (b) The Declarant shall assure that, at the time of sale, each converted unit is affordable to the purchasing household such that the sum of the mortgage principal and interest, real estate taxes, property insurance, and Utilities, calculated on a monthly basis, does exceed thirty percent (30%) of the gross monthly household income of the purchasing household.
- (c) The Declarant shall assure that, at any time after the initial sale of a converted unit, the resale of each such converted unit complies with the above enumerated requirements.

5. Except as provided for above for the conversion of Affordable Rental Housing Units to affordable for-sale housing units, should Declarant change the use or planned use, or discontinue use, of the Property (including the beneficiaries of such use) from affordable rental housing, or should the Declarant sell, convey or transfer title to the Property, then the Declarant shall pay the County an amount equal to the entire credit amount described herein as provided by the County to the Declarant.

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

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

6. Declarant has secured a loan to acquire the Property and to construct Dakota Apartments in an amount up to \$15,000,000 from PNC Bank, or its successors (the "First Mortgage Holder"), which loan has been secured by a separate mortgage encumbering

the Property (the "First Mortgage"). The lien created by this Declaration shall be senior to all other liens, encumbrances, and mortgages on the Property except the lien created by the First Mortgage, and except any other liens expressly recognized by the County in writing.

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

8. 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. 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, after appropriate notice, the Declarant shall pay the County an amount equal to the entire credit amount as described herein. If the Declarant shall fail to pay said amount, the County shall have the right to file in a court of competent jurisdiction an action for collection of due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction. Should the Declarant fail to cure or correct any such default to the County's satisfaction within the aforesaid period, then the Declarant shall, within thirty (30) calendar days after such failure, and then once every year thereafter where such default persist in the opinion of the County, pay the County a penalty of One Thousand and 00/100 Dollars (\$1,000.00) per Affordable Rental Housing Unit per calendar year where such default exists. In lieu of paying the aforesaid penalty, the Declarant may cure or correct any such default by renting the next available vacant Unrestricted Unit such that it becomes compliant with the requirements for Affordable Rental Housing Units provided that the Declarant has obtained the County's advance approval to do so.

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

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

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

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

To Declarant: Dakota Abacoa Housing, LLC
5604 PGA Boulevard, Suite 109,
Palm Beach Gardens, FL 33418

To First Mortgage Holder: PNC Bank, National Association
Post Office Box 1220
Rocky Mount, N.C. 27802

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

10. The Declarant shall maintain its records as provided for in the Certificate and submit to the County an Annual Report, as described in the Certificate, detailing the Declarant's compliance with the terms of the Certificate and this Declaration.

11. The Declarant shall cause this Declaration to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Declarant 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:

Witnesses:

DAKOTA ABACOA HOUSING, LLC,
a Florida Limited Liability Company

Name: _____

By: Eastwind Abacoa, LLC

Signature:

a Florida Limited Liability Company,
its Managing Member

By: _____
John F. Weir, Managing Member

Name: _____

Signature:

STATE OF FLORIDA)
COUNTY OF PALM BEACH) ss

The foregoing instrument was acknowledged before me this ____ day of, _____, 20__, by John F. Weir, who is personally known to me, or who has produced _____ as identification and who did/did not take an oath.

Signature: _____

(NOTARY SEAL ABOVE)

Notary Name: _____
Notary Public - State of Florida

ATTACHMENT 1
LEGAL DESCRIPTION OF THE PROPERTY

A PORTION OF TRACT NC1R, ABACOA - PLAT No. 4 REPLAT, AS RECORDED IN PLAT BOOK 99, PAGES 14 THROUGH 21, INCLUSIVE, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT NC1R; THENCE ALONG THE EAST LINE OF SAID TRACT, SOUTH 02°10'57" WEST, A DISTANCE OF 249.80 FEET; THENCE CONTINUE ALONG SAID EAST LINE, SOUTH 01°08'07" WEST, A DISTANCE OF 57.11 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE ALONG THE SOUTH LINE OF TRACT NC1R, SOUTH 90°00'00" WEST, A DISTANCE OF 558.87 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE ALONG THE WEST LINE OF TRACT NC1R, NORTH 00°00'00" WEST, A DISTANCE OF 299.07 FEET; THENCE DEPARTING SAID WEST LINE, NORTH 90°00'00" EAST, A DISTANCE OF 170.31 FEET; THENCE SOUTH 80°16'10" EAST, A DISTANCE OF 88.59 FEET; THENCE SOUTH 80°33'18" EAST, A DISTANCE OF 40.55 FEET; THENCE SOUTH 76°00'49" EAST, A DISTANCE OF 141.88 FEET; THENCE SOUTH 85°54'00" EAST, A DISTANCE OF 91.74 FEET; THENCE NORTH 02°10'57" EAST, A DISTANCE 73.04 FEET TO A POINT ON THE NORTH LINE OF SAID TRACT NC1R AND BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF DAKOTA DRIVE; THENCE ALONG SAID NORTH LINE AND SAID RIGHT OF WAY LINE, SOUTH 85°54'30" EAST, A DISTANCE OF 40.02 FEET TO THE POINT OF BEGINNING.

and

A PORTION OF TRACT NC2R, ABACOA - PLAT No. 4 REPLAT, AS RECORDED IN PLAT BOOK 99, PAGES 14 THROUGH 21, INCLUSIVE, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID TRACT NC2R; THENCE ALONG THE EAST LINE OF SAID TRACT, SOUTH 02°10'57" WEST, A DISTANCE OF 218.37 FEET; THENCE DEPARTING SAID EAST TRACT LINE, NORTH 87°48'10" WEST, A DISTANCE OF 40.00 FEET TO THE POINT OF CURVATURE OF A NON-TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 17.00 FEET, A CHORD BEARING OF NORTH 63°32'14" WEST AND A CENTRAL ANGLE OF 52°56'35"; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 15.71 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 89°59'29" WEST, A DISTANCE OF 14.64 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 24.00 FEET AND A CENTRAL ANGLE OF 19°09'30"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 8.03 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 174.00 FEET AND A CENTRAL ANGLE OF 19°10'01"; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 58.21 FEET TO THE POINT OF TANGENCY; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 139.24 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE TO THE WEST, HAVING A RADIUS OF 28.00 FEET, A CHORD BEARING OF SOUTH 28°32'08" WEST AND A CENTRAL ANGLE OF 20°07'32"; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 9.84 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 28.00 FEET, A CHORD BEARING OF SOUTH 19°17'57" WEST AND A CENTRAL ANGLE OF 38°35'54"; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 18.86 FEET; THENCE SOUTH 89°24'40" WEST, A DISTANCE OF 34.00 FEET; THENCE NORTH 80°16'30" WEST, A DISTANCE OF 47.85 FEET; THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 214.37 FEET TO A POINT ON THE WEST LINE OF SAID TRACT NC2R; THENCE ALONG SAID WEST LINE, NORTH 00°00'00" EAST, A DISTANCE OF 239.23 FEET TO THE NORTHWEST CORNER OF SAID TRACT NC2R; THENCE ALONG THE NORTH LINE OF SAID TRACT, NORTH 90°00'00" EAST, A DISTANCE OF 586.17 FEET TO THE POINT OF BEGINNING.

**BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA
BUDGET TRANSFER**

FUND 3531 - Impact Fee Program - Roads Zone 1

Use this form to provide budget for items not anticipated in the budget.

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED	REMAINING BALANCE
EXPENDITURES								
820-9900-9902	Operating Reserves	1,097,815	1,097,815	0	445,512	652,303		
143-1450-8201	Contributions-Non-Govt Agencies	0	0	445,512	0	445,512		
TOTAL EXPENDITURES		1,097,815	1,097,815	445,512	445,512	1,097,815		

Department of Economic Sustainability
INITIATING DEPARTMENT/DIVISION
 Administration/Budget Department Approval
 OFMB Department - Posted

Signatures

Edward W. Henry

Date

3/22/2012

By Board of County Commissioners
 At Meeting of :
 April 3, 2012
 Deputy Clerk to the
 Board of County Commissioners