

CFN 20140405342
OR BK 27133 PG 0554

RECORDED 10/31/2014 11:14:11
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0554 - 573; (20pgs)

**Rental Assistance Demonstration
Use Agreement**

U.S. Department of Housing
and Urban Development
Office of Housing
Office of Public and Indian Housing

OMB Approval No. 2577-0276 (Exp. 02/29/16)

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0276), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

This Rental Assistance Demonstration Use Agreement (hereinafter called the "Agreement") made the 1st day of November, 2014, by and between the United States of America, Secretary of Housing and Urban Development (hereinafter called "HUD") and The West Palm Beach Housing Authority, Owner, (hereinafter called the "Owner"), provides as follows:

Whereas, Rental Assistance Demonstration (hereinafter called "RAD") provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance to achieve certain goals, including the preservation and improvement of these properties through access by Owners to private debt and equity to address immediate and long-term capital needs.

Whereas, Projects funded under the public housing programs may under RAD convert their assistance to long-term, project-based Section 8 rental assistance contracts. Under this component of RAD, Owners may choose between two forms of Section 8 Housing Assistance Payment (HAP) contracts: project-based vouchers (PBVs) or project-based rental assistance (PBRA). No incremental funds are authorized for this component. Owners will convert their assistance at current subsidy levels.

Whereas, Projects shall have a RAD Use Agreement that will be recorded superior to other liens on the property, run for the same term as the initial term of the HAP contract, automatically renew upon each extension or renewal of the HAP contract for a term that runs with each renewal term of the HAP contract, and remain in effect even in the case of abatement or termination of the HAP contract (for the term the HAP contract would have run, absent the abatement or termination).

Whereas, HUD has approved the conversion of the "Project" identified as Twin Lakes Village, PIC No. FL009090503 and covering real property as described in Exhibit "A" attached hereto; and that this approval is evidenced by and through the terms of the RAD Conversion Commitment as described in Exhibit "B" attached hereto; and that was previously subject to a public housing Declaration of Trust dated June 22, 1961 and recorded on June 22, 1961 in the Recorder's Office of Palm Beach County as document number 3326, Book 647, Page 225, and a public housing Declaration of Trust dated May 4, 1989 and recorded on May 15, 1989 in the Recorder's Office of Palm Beach County as document number 89-136113, Book 6064, Page 1494, and a public housing Declaration of Trust dated May 4, 1989 and recorded on May 15, 1989 in the Recorder's Office of Palm Beach County as document number 89-136114, Book 6064, Page 1504, and a public housing Declaration of Trust dated October 17, 1989 and recorded on October 26, 1989 in the Recorder's Office of Palm Beach County as document number 89-308066, Book 6239, Page 1364; and a public housing Declaration of Trust dated October 9, 1990 and recorded on October 26, 1990 in the Recorder's Office of Palm Beach County as document number 90-308409, Book 6623, Page 1910, and such public housing Declarations of Trust were released on (date) October 31, 2014 and recorded on (date) October 31, 2014 in the Recorder's Office of Palm Beach County as document number 20140405341, Book 27133, Page 0548

Whereas, pursuant to the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011) and the corresponding PIH Notice 2012-32 published on July 26, 2012 (hereinafter called the "RAD Notice"), which this Use Agreement incorporates, in exchange for HUD's agreement to permit this conversion to PBVs or PBRA, the Owner has agreed to continue to operate the assisted PBV or PBRA units only as rental housing for the initial term, and each renewal term of the HAP Contract, unless otherwise approved by HUD;

Now Therefore, in consideration of the mutual promises set forth herein and of other valuable consideration, the parties hereby agree as follows:

1. **Definitions.** All terms used in this Agreement have the same meaning as set forth in the definitions in RAD Notice.
2. **Term.** The initial term shall be twenty (20) years. Unless otherwise approved by HUD, this Agreement shall remain in effect through the initial term, and for an additional period to coincide with any renewal term of the HAP Contract. This Agreement will survive HAP abatement or termination of the HAP Contract unless otherwise approved by HUD.
3. **Use Restriction and Tenant Incomes.** The HAP-assisted units within this Project shall be used solely as rental housing for tenants meeting the eligibility and income-targeting

requirements under the HAP Contract. In the case that the HAP Contract is terminated (due to, e.g.: breach, or non-compliance), new tenants must have incomes at or below 80 percent of the average median income (AMI) at the time of admission for the remainder of the term of the Agreement, applicable to all units previously covered under the HAP contract. Additionally, rents must not exceed 30% of 80% of median income for an appropriate sized unit. Notwithstanding the foregoing, in the event the Owner is able to demonstrate to HUD's satisfaction that despite the Owner's good faith and diligent efforts to do so, the Owner is unable either (1) to rent a sufficient percentage of Units to Low

Income Tenants or Very Low Income Tenants in order to satisfy the restrictions in this paragraph, or (2) to otherwise provide for the financial viability of the Project, HUD may, in its sole discretion, agree to reduce the percentage of units subject to the restriction under this paragraph or otherwise modify this restriction in a manner acceptable to the Owner and HUD. Any such modification of the restrictions listed in this paragraph shall be evidenced by a written amendment to this Agreement executed by each of the parties hereto.

4. **Subordination.** Any mortgage liens will be subject to this Agreement. This Agreement will survive foreclosure and bankruptcy.
5. **Fair Housing and Civil Rights Requirements.** Compliance with all applicable fair housing and civil rights requirements including the obligation to affirmatively further fair housing and the site selection and neighborhood standards requirements set forth in 24 CFR §§ 1.4(b)(3) and 941.202, as applicable, is required.
6. **Federal Accessibility Requirements.** Compliance with all applicable federal accessibility requirements under the Fair Housing Act and implementing regulations at 24 CFR Part 100, Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR Part 8, and Titles II and III of the Americans with Disabilities Act and implementing regulations at 28 CFR Parts 35 and 36, respectively, is required.
7. **Transfer of the Agreement.** HUD has been granted and is possessed of an interest in the above described Project such that the Owner shall remain seized of the title to said Project and refrain from transferring, conveying, encumbering or permitting or suffering any transfer, conveyance, assignment, lease, mortgage, pledge or other encumbrance of said Project or any part thereof without the release of said covenants by HUD. The Owner has constituted HUD as its attorney-in-fact to transfer PBV or PBRA assistance to another entity in the event of default under the HAP Contract. With HUD approval, after 10 years from the effective date of the initial term of the HAP Contract, if the Project is economically non-viable or physically obsolete, assistance may be transferred subject to this Agreement. Any such new Owner shall assume the obligations under this Agreement as a condition of any transfer. This Agreement shall be binding upon the Owners and all future successors and assigns until released by HUD.
8. **Release.** The endorsement by a duly authorized officer of HUD (1) upon any conveyance or transfer made by the Owner of any

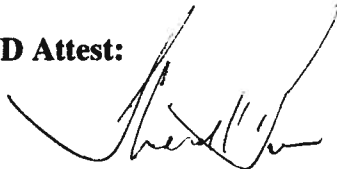
real or personal property which is determined to be excess to the needs of the Project, or (2) upon any instrument of conveyance or dedication of property, or any interest therein, for use as streets, alleys, or other public rights-of-way, or for the establishment, operation and maintenance of public utilities, or (3) upon any instrument transferring or conveying an interest therein, or (4) upon any instrument of release made by the Owner of the assisted PBV or PBRA units shall be effective to release such property from the restrictive covenants hereby created.

9. **Enforcement.** In the event of a breach or threatened breach of any of the provisions of this Agreement, any eligible tenant or applicant for occupancy within the Project, or the Secretary or his or her successors or delegates, may institute proper legal action to enforce performance of such provisions, to enjoin any acts in violation of such provisions, to recover whatever damages can be proven, and/or to obtain whatever other relief may be appropriate.
10. **Severability.** The invalidity, in whole or in part, of any of the provisions set forth in this Agreement shall not affect or invalidate any remaining provisions.
11. **Impairment of HAP Contract.** The terms and provisions of this Agreement shall continue in full force and effect except as expressly modified herein. Any conflicts between this Agreement and the HAP Contract shall be conclusively resolved by the Secretary.
12. **Execution of Other Agreements.** The Owner agrees that it has not and will not execute any other agreement with provisions contradictory of, or in opposition to, the provisions of this Agreement, and that in any event, the provisions of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other conflicting requirements.
13. **Subsequent Statutory Amendments.** If revisions to the provisions of this Agreement are necessitated by subsequent statutory amendments, the Owner agrees to execute modifications to this Agreement that are needed to conform to the statutory amendments. In the alternative, at HUD's option, HUD may implement any such statutory amendment through rulemaking.
14. **No Negotiation.** This Agreement is not subject to negotiation by the Owner or any lender.

In Witness Whereof, HUD and the Owner thereunto duly authorized has caused these presents to be signed in its name and its corporate seal to be hereunto affixed and attested this _____ day of _____, 20_____.

(Seal)

HUD Attest:



By: Theodore Torn
Title: Acting Director
Date: 10/28/14

State or
County of

DISTRICT OF COLUMBIA)
)
)

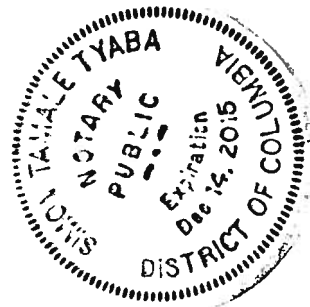
SS:

Before me, SIMON TAMALE TYABA, a Notary Public in and for said State,
on this 28th day of OCTOBER, 2014,
personally appeared THEODORE K. TORN,
who is personally well known to me to be the ACTING DIRECTOR OFFICE OF REAR, of HUD, and the person who
executed the foregoing instrument by virtue of the authority vested in him by, and I having first made known to him the contents
thereof, he did acknowledge the signing thereof to be a free and voluntary act and done on behalf of the Secretary of Housing and
Urban Development for the uses, purposes and considerations therein set forth.

Witness my hand and official seal this 28th day of OCTOBER, 2014.
(Seal)

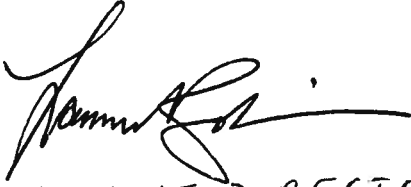
Simon Tamale Tyaba (Notary Public)

My commission expires _____, 20_____.



Owner Attest:

By:



Title: EXECUTIVE DIRECTOR

Date: 10/29/2014

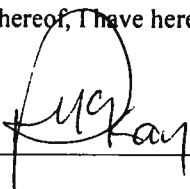
State or FLORIDA)

County of PALM BEACH)

ss:)

On this 29th day of OCTOBER, 20 14, before me residing therein, duly commissioned and sworn, personally appeared LAUREL ROBINSON, a Notary Public in and for said county and State, proved to me on the basis of satisfactory evidence to be the Owner of WEST PALM BEACH HOUSING AUTH, that executed the within instrument and acknowledged to me that such executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.
(Seal)



(Notary Public)

My commission expires 9-24, 20 17.

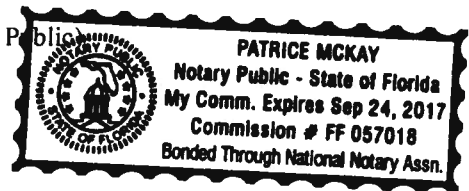


EXHIBIT A – Property Subject to this RAD Use Agreement

Parcel 1

*(118 units)
(First Declaration, Fourth Declaration, and
Fifth Declaration)*

Legal Description:

LOTS 1 TO 3, INCLUSIVE, BLOCK 6, ALL OF BLOCKS 7, 8, 9 AND ALL OF BLOCK 10, INCLUDING CLOSED ALLEY ADJACENT TO AND BETWEEN LOTS 20 AND 21, ROOSEVELT ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 25, PAGE 204, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Parcel 2

*(2 units)
(Second Declaration and Third Declaration)*

Legal Description:

LOTS 4 TO 6 INCLUSIVE, AND LOT 18, BLOCK 49, LAKE AVENUE ADDITION TO WEST PALM BEACH, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 10, PAGE 32, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Parcel 3

(20 units)

Legal Description:

LOTS 6 THROUGH 10 (LESS THE NORTH 5 FEET FOR 23RD STREET RIGHT OF WAY) AND LOTS 11 THROUGH 15, BLOCK 2, WASHINGTON HEIGHTS, AN ADDITION TO THE CITY OF WEST PALM BEACH, FLORIDA, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 5, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Parcel 4:

*(4 units)
(Second Declaration and Third Declaration)*

Legal Description:

LOTS 1 AND 2, BLOCK 6, WASHINGTON HEIGHTS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 5, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

Parcel 5:

*(4 units)
(Third Declaration)*

Legal Description:

LOTS 13 AND 14, BLOCK 10, WASHINGTON HEIGHTS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 8, PAGE 5, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

EXHIBIT B – RAD Conversion Commitment

**Rental Assistance Demonstration (RAD)
Conversion Commitment (Public Housing
and Section 8 Moderate Rehabilitation
(Mod Rehab) Program Conversions; First
Component)**

**U.S. Department of Housing and
Urban Development
Office of Multifamily Housing**

Property Name ("Project") and Address:	Name of either the Public Housing Agency or Mod Rehab Owner ("Owner"):	Owner Address:
Twin Lakes Village 1201 7th Street West Palm Beach, FL 33407	West Palm Beach Housing Authority	1715 Division Avenue West Palm Beach, FL 33407

PIC Development Number or Mod Rehab Contract Number	Number of Units in PIC Development or under Mod Rehab Contract	Number of Units Converting and Included in this RAD Conversion Commitment
FL009090503	148	148

The Secretary of Housing and Urban Development ("Secretary"), acting by and through various officials ("HUD"), offers this commitment (this "Commitment") for the above project's participation in the Rental Assistance Demonstration (RAD) Program created by the Consolidated and Further Continuing Appropriations Act of 2012, and Notice PIH-2012-32 (the "Program"). This Commitment is subject to the terms and conditions set forth below.

TERMS AND CONDITIONS:

- Applicable HUD Regulations and Requirements.** With regard to any Project covered by this Commitment, "Applicable HUD Regulations and Requirements" means (1) all applicable statutes and any regulations issued by HUD pursuant thereto that apply to the Project, including all Rental Assistance Demonstration (RAD) statutes and regulations, and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and Mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in the applicable closing document rather than add or delete provisions from such document.
- Acceptance of Commitment/Expiration.** This Commitment shall terminate thirty (30) days from the date hereof unless the Owner executes and returns a copy of this Commitment to HUD, at the address that appears on the last page of this Commitment, to the attention of the official whose signature appears on the last page of this Commitment. The Owner may not make any alterations or modifications to this Commitment other than to execute this Commitment. If the

transactions contemplated by this Commitment (collectively, the Transaction) are not closed to HUD's satisfaction within 90 days from the date this Commitment is issued, this Commitment shall, unless extended by HUD in writing, expire and be of no further force or effect, legal or otherwise. Upon expiration, all rights and obligations of the respective parties shall cease.

In the case where, pursuant to paragraph 3, ownership of the project will be transferred, this Commitment shall also be executed by the transferred ownership entity at or prior to Closing and all requirements contained herein will apply to the new ownership entity.

3. **Closing Date.** The date upon which the binding legal instruments in the Transaction are executed and filed for record shall be called the "Closing Date." The Owner and HUD estimate that the Closing Date will be no later than August 11, 2014 (the "Estimated Closing Date"). Attachment A hereto ("Closing Preparations") describes various conditions of closing and checklist items that must be completed before the closing can occur.
4. **HUD Approval of Project Ownership.** The Owner agrees that HUD approval of the legal entity that will own the Project following the closing of the Transaction is a condition of the Transaction.
 - a. **Ownership.**
 - ☒ The project is currently owned by the Owner, which is the intended RAD ownership entity.
 - ☐ At closing (or, in the case of Mod Rehab projects, prior to closing, if applicable), ownership of the Project will be transferred to Click here to enter text., a Click here to enter text, organized under the state of Click here to enter text ("Transferee"). The Owner agrees that transfer of ownership of the Project will occur at or prior to the Closing Date. At or prior to such transfer of ownership of the Project, the Owner shall assign its interest in this Commitment to Transferee, but only after receiving HUD approval of Transferee, which approval shall include, without limitation, Previous Participation approval through the Active Partners Participation Certification System (APPS) or through Form HUD-2530.
 - b. **2530 Approvals.**
 - ☐ All needed 2530 approvals have been received. All 'principals' of the proposed ownership entity (as such term is used for purposes of Form HUD-2530) have been approved by HUD.
 - ☐ All needed 2530 approvals have not been received. Prior to closing, all 'principals' of the proposed ownership entity (as such term is used for purposes of Form HUD-2530) shall have received Previous Participation approval from HUD, through the Active Partners Participation Certification System (APPS) or through Form HUD-2530.
 - c. **Proposed Organizational Documents.** To the extent a new entity was created to own the converting property, the organizational documents must be reviewed by HUD's attorneys and the form and substance of those documents must be consistent with HUD requirements.
 - ☐ HUD has approved the proposed organizational documents for the proposed ownership entity.
 - ☐ HUD has not yet approved the proposed organizational documents and such approval is a condition of closing the Transaction.
5. **Closing Documents.** The Owner shall execute or cause to be produced, as appropriate, such agreements, instruments, certificates and other documents as HUD may require to complete the Transaction (collectively, the "Closing Documents"), using forms prescribed by HUD and completed, executed, recorded and/or filed in the number of copies and in such manner as directed by HUD.
 - a. The Closing Documents shall include a specified "RAD Use Agreement", the form of which is attached to this document as Exhibit B.
 - b. The Closing Documents shall include a specified "Housing Assistance Payments Contract", the form of which is attached to this document as Exhibit C.
 - c. Source of Financing. The Closing Documents will include such documents as may be

required by lenders and other parties providing funds for the Transaction, which documents shall be acceptable to HUD in HUD's sole and absolute discretion.

6. **Project Financial Condition.** Unless HUD gives written instructions otherwise, prior to the Closing Date the Owner shall take all steps necessary to ensure that:
 - a. Fire and other property insurance as required under applicable HUD requirements are and shall be maintained in full force and effect.
 - b. All ordinary and necessary operating expenses under Applicable HUD Requirements of the Project are paid through the Closing Date.
 - c. All statutory, regulatory, and HUD administrative requirements pertaining to the Project are and shall be satisfied notwithstanding the Owner's participation in the Program, except as expressly modified by this Commitment and/or the Closing Documents.

Upon request by HUD, the Owner shall certify in writing that any or all of the foregoing requirements have been met.
7. **Project Physical Condition.** Except as expressly authorized in writing by the Secretary, during the period beginning with the date of this Commitment through the Closing Date, the Owner shall continue to maintain the physical condition of the Project in accordance with all applicable HUD regulations and requirements and all applicable local codes. Upon request by HUD, the Owner shall provide a written certification, in a form satisfactory to HUD, with respect to this requirement.
8. **Expenses and Transaction Costs.** Except as otherwise set forth in this Commitment and the attachments hereto, regardless of whether the Transaction is consummated, HUD shall not be responsible for any expenses or transaction costs incurred by or at the direction of the Owner in connection with the Transaction (including fees for consultants, attorneys, environmental contractors, tax advisors and accountants; city, county and/or state taxes and/or fees; recording fees, prepayment penalties and/or premiums; costs for title insurance and title examination; surveys and appraisals).
9. **HUD Claims, Causes of Action and Demands.** Notwithstanding the execution of this Commitment by HUD or the consummation of the Transaction, HUD's obligations hereunder remain subject to, without limitation, the provisions of Notice PIH-2012-32, and any and all claims, causes of action or demands that may be asserted against the Owner (including any party related to, affiliated with, or a subsidiary of, the Owner) by or on behalf of the Secretary, HUD or others, civil or criminal, whether known or unknown, foreseen or unforeseen, asserted or unasserted, matured or not, shall remain uncompromised and not prejudiced.
10. **Tax, Financial, and Legal Consequences.** HUD has not provided, nor shall it provide, any opinions, representations, warranties, or covenants regarding any federal, state and/or local tax consequences, financial consequences, or legal consequences relative to the Transaction. The Owner and all other parties to, or affected by the Transaction are advised by HUD to consult with their own legal counsel and tax advisers with respect to all such matters. The Owner agrees that it is relying on its own independent determination regarding the tax, financial and legal matters related to this Transaction and not upon any representation made by any other party to this Transaction or any other party's agent or employee. Under no circumstances shall the reliance or performance of the Owner on matters—including but not limited to the tax, or financial or legal matters—result in obligations, duties, or liabilities for HUD.
11. **Owner Certifications.** By executing this Commitment, the Owner hereby certifies to HUD that:
 - a. The Owner provided all notices relating to the Program in the form approved by HUD, to such persons and in the manner required by the Program in compliance with applicable Program requirements promulgated by the Secretary.
 - b. The Owner continues to meet all program eligibility requirements as stipulated in PIH Notice 2012-32.
 - c. As of date of this Commitment, the Owner is not subject to, or received any notice of any debarment, suspension or other administrative proceeding or investigation, including any sanctions against a public housing agency (including, but not limited to employees, Board

Members and principals), initiated by HUD, or any other federal or state government agency against such party.

- d. Prior to the Closing Date, the Owner agrees to notify HUD immediately, in writing, of any proposed or actual transfer of any ownership interests in the Project (whether or not such transfer requires HUD approval).
- e. Through the Closing Date, the Owner agrees that no such transfer shall become effective until the Secretary has issued any approval that may be required under applicable HUD requirements.

Upon the request of HUD, the Owner shall provide HUD with evidence satisfactory to HUD relating to each of the foregoing certifications.

12. **Certifications, Representations and Warranties by Owner.** Any certification, representation or warranty delivered by Owner pursuant to this Commitment shall be true and correct when given, and shall remain true and correct at all times through and including the Closing Date. In the event any such certification, representation or warranty is no longer complete or correct, and without limiting HUD's rights and remedies, the Owner shall immediately provide to HUD an updated document completing or correcting the certification, representation or warranty.
13. **Failure by Owner to Take Required Actions.** In the event that Owner fails to take any action, or deliver any information, called for under this Commitment, within the time frames contemplated under this Commitment (including any time frames provided under applicable law and regulations, and taking into account any requirements of applicable law and regulations regarding notices and opportunities to cure), HUD may (without further notice and without offering an additional opportunity to cure) declare that this Commitment is null and void and of no further force or effect.
14. **Controlling Provisions; Severability.** This Commitment is subject to all applicable law and regulations. In the event of a conflict between the terms and conditions of this Commitment and applicable law or regulations, the applicable law or regulations shall control. Should any provision of this Commitment be held by a court of law to be unenforceable, such determination shall in no way compromise the enforceability of the other provisions.
15. **Successors and Assigns.** This Commitment and its attachments are binding upon the Owner and upon Owner's successors and assigns. Unless otherwise provided herein, this Commitment may not be assigned by the Owner, in whole or in part, except upon the prior written consent of HUD.
16. **Conditions of Closing.** This Commitment shall not be effective or enforceable against HUD until all conditions stated herein have been satisfied.
17. **HUD Approvals and Decisions.** Any approval or decision of HUD pursuant to this Commitment shall be in HUD's sole and absolute discretion. No such approval or decision shall be deemed to have been made unless given in writing and executed by an authorized representative of HUD. HUD's execution of the Closing Documents shall constitute any approvals or decisions not previously given in writing.
18. **Post-Closing Corrections.** Notwithstanding anything to the contrary contained in this Commitment, Owner agrees to execute, before or after the Closing Date, such documents, amendments or modifications as HUD deems necessary or appropriate to effectuate the intent of this Commitment or to complete or consummate the Transaction, including but not limited to instruments necessary to correct this Commitment or any of the Closing Documents.
19. **Changes to This Commitment.** Amounts and other business terms identified in this Commitment are estimates, based on the information readily available at the time this Commitment is issued, and reflect an assumption that the Transaction will close on the Estimated Closing Date. In the event such estimates are later determined to be inaccurate, the parties agree to notify each other and (unless HUD determines that the Transaction is not economically and practically feasible or otherwise is unacceptable, in which case HUD may declare this Commitment null and void and of no further force and effect) execute an amendment to this Commitment reflecting the revised terms. The final amounts and other business terms shall be

determined by the Closing Date and inserted into the applicable Closing Documents. The Owner's execution of the Closing Documents shall constitute the Owner's acceptance of the final amounts and other business terms reflected therein. At or after the Closing Date, HUD will execute a Final Administrative Amendment to this Commitment, reflecting the final amounts and other business terms, and the Owner will execute such Final Administrative Amendment if HUD so requests.

20. Sources of Funds.

a. Type of Financing .

- ☒ **No commercial first mortgage.** The project will not be financed with a commercial mortgage loan.
- ☐ **Conventional First Mortgage Financing.** On the Closing Date, the Owner shall cause the Project and Transaction to be financed with a non-FHA insured mortgage loan (the "New Loan"). The terms of the New Loan shall be consistent with the terms and conditions of this Commitment, and must otherwise be acceptable to HUD as to form and substance. As a condition of closing, and not less than 40 calendar days prior to the closing, the Owner shall submit to HUD a binding commitment for the New Loan, which commitment shall be acceptable to HUD in its sole and absolute discretion.
- ☐ **FHA-Insured First Mortgage Financing.** On the Closing Date, the Owner shall cause the Project and Transaction to be financed, with a new FHA insured mortgage loan (the "New Loan"). The terms of the New Loan shall be consistent with the terms and conditions of this Commitment and the applicable HUD requirements for the New Loan. The Owner must deliver to HUD a copy of the fully executed FHA Firm Commitment for the New Loan within 40 calendar days prior to closing
- ☐ **Secondary Mortgage Financing.** On the Closing Date, the Owner shall cause the Project and Transaction to be financed with a secondary mortgage loan (the "Secondary Loan"). The terms of the Secondary Loan shall be consistent with the terms and conditions of this Commitment, and must otherwise be acceptable to HUD as to form and substance. As a condition of closing, and not less than 40 calendar days prior to the closing, the Owner shall submit to HUD a binding commitment for the Secondary Loan, which commitment shall be acceptable to HUD in its sole and absolute discretion.

b. Business Terms of the New Loan (see Exhibit E).

Note: The Mortgage or Deed of Trust securing the New Loan will be recorded after the RAD Use Agreement and will be subject to the RAD Use Agreement.

c. Other Sources of Funds.

- i. The Transaction will include such other sources of funds as are described in Exhibit D Sources and Uses of Funds. Exhibit E shall describe the key business terms of all sources of funds other than any commercial first mortgage loan described in the preceding paragraph.
- ii. Other than any commercial first mortgage loan described in the preceding paragraph, no additional debt (secured or unsecured) may be created against the Project without the prior express written consent of HUD, which consent may be given or withheld in the sole discretion of the Secretary.
- iii. Where the Transaction will include funds to be contributed by the Owner, the Owner certifies that all such funds are available and reserved for the Transaction, are irrevocable, and that the Owner has obtained all consents necessary in order for the Owner to commit such funds to the Transaction.
- iv. As a condition of closing, and not less than 40 calendar days prior to the closing, the Owner shall submit to HUD binding commitments for all funding sources, which commitments shall be acceptable to HUD in its sole and absolute discretion.

21. **RAD HAP Contract.** On the Closing Date, the Owner and HUD (or in the case of PHA conversions to PBVs, the voucher-administering PHA) shall enter into a Housing Assistance Payments Contract (the "RAD HAP Contract"), the form of which is attached hereto as Exhibit C.

a. **Project Funding in Initial Year.**

- ☒ The Contract shall be funded from the effective date of the Contract through the remainder of the calendar year from public housing amounts obligated prior to the effective date of the Contract, and from any additional public housing amounts that HUD obligates in full or in part, subject to the availability of sufficient appropriations, for the remainder of the calendar year in which the Contract becomes effective. In the latter case, to the extent sufficient appropriations become available, HUD will obligate such funding and provide the Owner written notification of (i) the amount of such funding, and (ii) the approximate amount of time within the remainder of the calendar year in which the Contract becomes effective to which it will be applied. The PHA hereby certifies that it will follow instructions provided by HUD to make all such funds available for the project for the initial year, including any amounts that may be required at closing.

- ☐ For Mod Rehab Owners, the RAD PBRA or PBV contract will become effective upon the expiration of the existing Mod Rehab contract. The Owner agrees not to request or accept a Mod Rehab renewal contract if the project closes in accordance with this RCC.

b. **Conversion Type:**

- ☒ The Owner has selected Project-Based Rental Assistance (PBRA).
☐ The Owner has selected Project-Based Vouchers (PBV).

c. **Choice-Mobility:**

- ☒ The Owner shall provide a Choice-Mobility option as described in Notice PIH-2012-32.
☐ The Owner is exempt from the Choice-Mobility requirement described in Notice PIH-2012-32.

22. **Section 8 Contract Rents.** The RAD HAP Contract will specify monthly Section 8 contract rents as follows:

Number of Contract Units	Number of Bedrooms	Contract Rent	Utility Allowance	Gross Rent
16	2	\$482	\$117	\$599
102	3	\$682	\$135	\$817
24	4	\$703	\$152	\$855
6	5	\$809	\$170	\$979

23. **Required Repairs (not applicable in the case of new construction).** The Owner agrees to complete the Repairs described in Exhibit F in accordance the following provisions.

- a. The estimated cost of the Repairs, including contingency, shall be funded in the manner described below.

- ☐ **FHA 221(d) financing will be utilized.** Because the transaction will be financed in accordance with Section 221(d) of the National Housing Act, the Repairs shall be funded through draws on the proceeds of the New Loan.

- ☐ **223(f), FHA risk-sharing or other FHA financing will be utilized.** Because the transaction will be financed in accordance with the National Housing Act, the estimated cost of the Repairs, plus contingency, shall be deposited into a Rehabilitation Escrow. The Rehabilitation Escrow shall be held by the FHA-approved lender and shall be controlled and managed in accordance with HUD requirements applicable to the FHA program under which the New Loan will be endorsed for mortgage insurance.

- ☒ **Otherwise.** The estimated cost of the Repairs, plus contingency, shall be deposited into a Rehabilitation Escrow.

- The Rehabilitation Escrow will be held, controlled, and managed by

West Palm Beach Housing Authority ("Rehab Administrator").

- The Repairs shall be administered in a commercially standard and reasonable manner, in accordance with a written agreement ("Rehabilitation Agreement").
 - In the event of owner default under the Rehabilitation Agreement, the Rehab Administrator shall notify HUD within 10 calendar days after default and shall, within 30 calendar days after default, submit an action plan to HUD. HUD reserves the right (but is not obligated), at any point during the remaining life of the rehabilitation/construction escrow agreement, to take over administration of the rehabilitation, contract for the remaining repairs, pay for completion of repairs from rehabilitation funds, place a lien on the project for any actual costs of rehabilitation and administration that exceed available funds in the escrow, and enforce the lien in the event of nonpayment.
 - The Owner and Rehab Administrator shall provide to HUD a certification, acceptable to HUD in HUD's sole and absolute discretion, that the Repairs will be managed in accordance with all applicable requirements of the Program.
- b. In carrying out the Repairs, the Owner shall comply with applicable requirements of:
- i. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations at 49 CFR Part 24 with regard to any temporary relocation of residents.
 - ii. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR Parts 8.22 and 8.23, with regard to any "substantial alterations" defined in such regulations.
 - iii. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR Part 8.23, with regard to any other "alterations" as defined in such regulations.
 - iv. The design and construction requirements of the Fair Housing Amendments Act of 1988 and its implementing regulations at 24 CFR Part 100.25, with regard to housing first constructed after March 13, 1991.
 - v. Section 3 of the Housing Act of 1968 and all of the related regulations, rules and requirements for any Repairs that qualify as "construction" or "rehabilitation" as defined in such regulations, rules and requirements.
 - vi. Davis-Bacon prevailing wage requirements, section 12 of the United States Housing Act of 1937, and Contract Work Hours and Safety Standards Act, and all of the related regulations, rules and requirements for any Repairs that qualify as "construction" or "rehabilitation" as defined in such regulations, rules and requirements.
 - vii. The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-485 6), and implementing regulations at 24 CFR part 35, as applicable
- c. Failure by the Owner to complete the Repairs in accordance with this Commitment shall constitute a breach of this Commitment.
- d. The Repairs shall be completed within 12 to 18 months following the Effective Date of the HAP Contract.
- e. Any actual costs for the Repairs in excess of funds available shall be paid by the Owner from non-project funds.
- f. The Owner shall not be entitled to earn or receive any cash flow distributions from the Project until after completion of the Repairs, inspection of the completed Repairs, certification of the actual cost of the Repairs, and written HUD acceptance of the completed Repairs.
- g. HUD's written acceptance of the completed Repairs shall constitute HUD's consent for the Owner to direct the application of any remaining repair funds.

24. **New Construction.** In the case of New Construction, the Owner agrees to complete the Construction described in Exhibit F in accordance with the following provisions:

- a. The plans and specifications for the Construction shall meet all requirements listed

below:

- i. The more stringent of the following:
 1. A national building code, such as Uniform Building Code, Council of American Building Officials Code, or Building Officials Conference of America Code; or
 2. Applicable State and local laws, codes, ordinances, and regulations;
 - ii. Other Federal requirements including any Federal fire-safety requirements and HUD minimum property standards (e.g., 24 CFR part 200, subpart S for FHA-insured properties);
 - iii. The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-484 6), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-485 6), and implementing regulations at 24 CFR part 35, as applicable;
 - iv. Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR Parts 8.22 and 8.23; and
 - v. The design and construction requirements of the Fair Housing Amendments Act of 1988 and its implementing regulations at 24 CFR Part 100.25.
- b. The estimated cost of the Construction, including contingency, shall be funded, and the Construction shall be managed, in the manner described below.
- ☐ **FHA 221(d) financing will be utilized.** Because the transaction will be financed in accordance with Section 221(d) of the National Housing Act, the Construction shall be funded through draws on the proceeds of the New Loan.
 - ☐ **Non-FHA construction financing will be utilized.** The Financing Plan must propose a financing and construction management approach that provides at least as much protection to HUD as the FHA Section 221(d) approach. The Financing Plan must also include full plans and specifications and be based on a fixed price general construction contract. The Construction shall be funded and controlled in the following manner:
 1. The Owner shall engage a qualified general contractor.
 2. The general contractor shall obtain either (i) a payment and performance bond from a properly licensed surety, which bond and surety shall be acceptable to HUD in HUD's sole and absolute discretion; or (ii) a letter of credit, acceptable to HUD in HUD's sole and absolute discretion.
 3. The Owner shall provide a completion guarantee agreement, from a creditworthy guarantor, promising to complete construction if the general contractor fails to do so, and promising to pay any costs in excess of budget, including any costs due to change orders. Such completion guaranty, and guarantor, shall be acceptable to HUD in HUD's sole and absolute discretion.
 4. The Owner shall provide to HUD a certification, acceptable to HUD in HUD's sole and absolute discretion, that the Construction will be managed in accordance with all applicable requirements of the Program.
- c. In carrying out the Construction, the Owner shall comply with applicable requirements of:
- i. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and its implementing regulations at 49 CFR Part 24 with regard to any temporary relocation of residents.
 - ii. Section 3 of the Housing Act of 1968 and its implementing regulations at 24 CFR Part 135.
 - iii. Davis-Bacon prevailing wage requirements, section 12 of the United States Housing Act of 1937 and Contract Work Hours and Safety Standards Act, and all of the related regulations, rules and requirements.
- d. The scope of construction described in Exhibit F shall not be reduced. Any reduction in the scope of construction shall constitute a breach of this Commitment unless it has been approved by HUD.
- e. Failure by the Owner to complete the Construction in accordance with this Commitment shall constitute a breach of this Commitment.
- f. The Construction shall be completed within Click here to enter text months following the Closing Date.

25. Critical Repairs.

- ☐ The project has critical repairs. Exhibit G contains a list of critical repairs. On or before closing, the Owner will provide HUD with evidence, satisfactory to HUD in its sole and absolute discretion, that all critical repairs have been completed and paid for.
- ☒ The project does not have critical repairs.

26. Reserve for Replacements.

- a. The new Reserve for Replacements balance to be established at Closing (Initial Deposit to Replacement Reserves, or IDRR) is estimated to be **\$785,423**.
- b. The initial monthly deposit to the Reserve for Replacements, to be made from project rental income, and to be effective after the Closing Date, and subject to annual increases as required by HUD, is estimated to be **\$20,833.33**.

27. Owner's Counsel. The Owner agrees to select counsel to represent the Owner in connection with this Transaction, which counsel shall not, in HUD's sole and absolute discretion, have a conflict of interest, defined as a situation in which the proposed counsel (a) has a financial interest in the Project, or in the provision of goods or services (including financing) to the Project; or (b) has one or more personal, business, or financial interests or relationships which would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the proposed counsel.

28. Additional Special Terms and Conditions (as applicable).

- ☐ **Green Certification.** Owner has elected to pursue certification of Click here to enter text as a condition of its participation in the Program. The Owner shall not be entitled to earn its final Development Fee draw until after HUD has concurred in writing that such Green certification has been achieved.
- ☐ **Modification of Existing Junior Debt.** Within 30 days of execution of this Commitment, the Owner agrees to provide to HUD a true and correct copy of all notes, riders, allonges, security instruments and other documents evidencing that certain loan owed by Owner to Click here to enter text, dated Click here to enter text, and in the original principal amount of Click here to enter text. Owner acknowledges that the Closing Date shall not be scheduled until such time as Owner has demonstrated that such loan has been satisfied (from non-project funds) or has demonstrated, to HUD's satisfaction, in HUD's sole discretion, that Owner and the lender have modified (or agreed to modify at or prior to the Closing Date) such loan in a manner satisfactory to HUD in its sole and absolute discretion.
- ☒ Other special conditions (explain):
- a. The PHA must provide O&M Plans for Asbestos and Lead Based Paint removal

29. Exhibits. The following exhibits are a part of this Commitment, as follows:

- a. Closing Preparations
- b. Form of RAD Use Agreement.
- c. Form of RAD HAP Contract.
- d. Sources and Uses of Funds
- e. Key Business Terms
- f. List of Repairs or Description of New Construction
- g. List of Critical Repairs
- h. Form A of Owner Certification Re: Accounts Payable and Form B of Owner Certification Re: Accounts Payable
- i. Excess Obligations Approved for Payment as Transaction Costs and Excess Obligations to be Satisfied Prior to the Closing Date

30. Entire Agreement; Survival. All prior and contemporaneous oral and written communications are merged herein and superseded hereby, and this Commitment and all exhibits attached constitute the entire agreement between the Owner and HUD with respect to the Transaction. This Commitment shall survive Closing of the Transaction.

31. **Binding Effect.** The binding effect and implementation of this Commitment is not contingent in any way upon the provision by Congress of any funds. Owner acknowledges that Congress is not obligated to appropriate any funds to satisfy this Commitment


32. **Consistency with Federal Law.** Nothing contained in this Commitment shall impose on HUD any duty, obligation, or requirement, the performance of which would be inconsistent with federal statutes, rules, or regulations in effect at the time of such performance

This Commitment shall be binding upon the parties hereto and their successor and assigns.

I certify under penalty of perjury that the foregoing is true and correct.

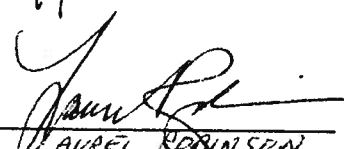
Signature Page

Department of Housing and Urban Development

By: 
 Name: Margaret Solle Salazar
 Title: Associate Deputy Assistance Secretary, Office of Affordable Housing Preservation
 Date: 7/11/14

ACCEPTED AND AGREED TO:

☒ Owner: West Palm Beach Housing Authority

By: 
 Name: LAUREL ROBINSON
 Title: EXECUTIVE DIRECTOR
 Date: 7-7-14

☐ Transferee:

By: _____
 Name: _____
 Title: _____
 Date: _____

Return the signed RAD Conversion Commitment to:

Beverly N. Rudman
 RAD Closing Manager
 U.S. Department of HUD
 451 7th Street SW, Room 6222
 Washington, DC 20410
 Beverly.n.rudman@hud.gov
 202-402-8395



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

September 25, 2014

Owner: Laurel Robinson, Executive Officer
West Palm Beach Housing Authority

Re: **RAD Conversion Commitment Amendment One**
PIC No: FL009090503
Development Name: Twin Lakes Village

Dear Ms. Robinson:

The U.S. Department of Housing and Urban Development has reviewed your request for an Amendment to the RAD Conversion Commitment issued on **7/1/2014** for the above-referenced RAD conversion. For all paragraphs and exhibits cited, the RAD Conversion Commitment is hereby amended as follows:

Paragraph 2: Acceptance of Commitment/Expiration

This amendment further extends the RAD Conversion Commitment in writing through **10/29/2014**.

Paragraph 3: Closing Date

The date upon which the binding legal instruments in the Transaction are executed and filed for record shall be called the "Closing Date." The Owner and HUD estimate that the Closing Date will be no later than **10/29/2014**(the "Estimated Closing Date"). Attachment A hereto ("Closing Preparations") describes various conditions of closing and checklist items that must be completed before the closing can occur.

This amendment supersedes all prior amendments. All terms and agreements set forth in the RAD Conversation Commitment issued on the date set forth above remain in effect.

This Commitment Amendment shall be binding upon the parties hereto and their successor and assigns.

I certify under penalty of perjury that the foregoing is true and correct.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

Signature Page

Department of Housing and Urban Development

By: 

Name: Theodore K. Toon

Title: Acting Associate Deputy Assistant Secretary,
Office of Affordable Housing Preservation

Date: 9/25/14

ACCEPTED AND AGREED TO:

☒ Owner:

West Palm Beach Housing Authority

By: 

Name: Laurel Robinson

Title: Executive Director

Date: October 1, 2014



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

October 22, 2014

Owner: Laurel Robinson, Executive Officer
West Palm Beach Housing Authority

Re: **RAD Conversion Commitment Amendment Two**
PIC No: FL009090503
Development Name: Twin Lakes Village

Dear Ms. Robinson:

The U.S. Department of Housing and Urban Development has reviewed your request for an Amendment to the RAD Conversion Commitment issued on 7/1/2014 as amended on 9/25/14 for the above-referenced RAD conversion. For all paragraphs and exhibits cited, the RAD Conversion Commitment is hereby amended as follows:

Paragraph 2: Acceptance of Commitment/Expiration

This amendment further extends the RAD Conversion Commitment in writing through **11/29/2014**.

Paragraph 3: Closing Date

The date upon which the binding legal instruments in the Transaction are executed and filed for record shall be called the "Closing Date." The Owner and HUD estimate that the Closing Date will be no later than **11/29/2014** (the "Estimated Closing Date"). Attachment A hereto ("Closing Preparations") describes various conditions of closing and checklist items that must be completed before the closing can occur.

This amendment supersedes all prior amendments. All terms and agreements set forth in the RAD Conversation Commitment issued on the date set forth above remain in effect.

This Commitment Amendment shall be binding upon the parties hereto and their successor and assigns.

I certify under penalty of perjury that the foregoing is true and correct.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

Signature Page

Department of Housing and Urban Development

By: [Signature]

Name: Theodore K. Toon

Title: Acting Director, Office of Recapitalization,
Multifamily Housing Division, Office of Housing

Date: 10/22/14

ACCEPTED AND AGREED TO:

☒ Owner:

West Palm Beach Housing Authority

By: [Signature]

Name: Laurel Robinson

Title: Executive Director

Date: 10-24-2014