

**NABORS GIBLIN AND NICKERSON, PA
1500 MAHAN DRIVE TALLAHASSEE FLORIDA
(850) 224-4070**

ORDINANCE NO. _____

AN ORDINANCE OF COLLIER COUNTY, FLORIDA, AMENDING THE COLLIER COUNTY LAND DEVELOPMENT CODE; CREATING REQUIREMENTS FOR INCLUSIONARY HOUSING IN CERTAIN RESIDENTIAL AND MIXED USE DEVELOPMENTS; PROVIDING FOR A FEE IN-LIEU OF CONSTRUCTING INCLUSIONARY UNITS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE BOARD OF COUNTY COMMISISONERS OF COLLIER COUNTY, FLORIDA:

SECTION 1. SHORT TITLE. This Ordinance shall be known and may be cited as the "Collier County Inclusionary Housing Ordinance."

SECTION 2. AUTHORITY. The Board of County Commissioners of Collier County, Florida, has the home rule authority to adopt this ordinance by virtue of Article VIII, section 1(f), Florida Constitution, and sections 125.01 and 125.66, Florida Statutes.

SECTION 3. APPLICABILITY. This Ordinance shall apply to all Contributing Developments in the unincorporated area of Collier County.

SECTION 4. LEGISLATIVE FINDINGS. Collier County is facing a crisis as a result of a significant lack of available Affordable-Workforce Housing. Housing prices in Collier County have risen to such an extent that critical and other workforce personnel necessary to support new development are unable to acquire housing within their income needs. To address this crisis, the Board of County Commissioners of Collier County ("Board") has directed staff to investigate the availability of Affordable-Workforce Housing for persons and families with very-

low to moderate incomes who work in Collier County. As a result, the Board makes the following legislative findings and determinations:

(A) In Chapter 420, Florida Statutes, the Florida Legislature directly recognizes the critical shortage of affordable housing in the State of Florida for very low to moderate income families, the problems associated with rising housing costs in the state, and the lack of available housing programs to address these needs. In recognition of these problems and the State's encouragement to local governments to work in partnership with the State and private sector to solve these housing problems, the County has examined its local Affordable-Workforce Housing problem and finds a critical need for local programs to stimulate and provide for the development of Affordable-Workforce Housing for Eligible Households.

(B) In Section 163.3177, Florida Statutes, the Florida Legislature has directed counties to plan for the provision of housing for all current and anticipated future residents, provide for the elimination of substandard dwelling conditions, and plan for the provision of adequate sites for future housing, including housing for low-income, very-low income, and moderate- income families. As such, the County has examined its local Affordable-Workforce Housing stock and finds a critical need for local programs to stimulate and provide for the development of Affordable-Workforce Housing for Eligible Households.

(C) Objective 1 of the Housing Element of the Collier County/City of Naples Growth Management Plan requires the County to increase the number of new Affordable-Workforce Housing units by a minimum of 1,000 per year to meet the housing needs of all current and future Eligible Households, including those residents with special needs such as rural and farm worker housing.

(D) Policy 1.3 of the Housing Element of the Collier County/City of Naples Growth Management Plan requires the County to explore the use of local legislation to increase the supply of Affordable-Workforce Housing through the use of a variety of land development options, including inclusionary zoning to require the provision of Inclusionary Units.

(E) Policies 2.5, 2.7, 2.9, and 2.10 of the Housing Element of the Collier County/City of Naples Growth Management Plan encourage the use of development incentives to facilitate the provision of Affordable-Workforce Housing in the County.

(F) A review of state and national censuses and other wage and labor data in conjunction with local real estate sales data, demonstrates that the amount of housing in the County that is affordable to persons of moderate income and below has been declining. Property values in Collier County have increased substantially in the past five years. At the same time, earned incomes have not kept pace with the increase in such values.

(G) Recent data indicates that the median income for households with families of four in the County is \$66,100 annually while the median housing price in the County is \$469,100.

(H) The increase in property values is attributable to growth and development, particularly insofar as people and businesses continue moving to Collier County. The migration of people and businesses to the County creates a demand for new residential and non-residential development. However, there is a scarcity of housing stock for persons without high paying jobs but who wish to live and work in Collier County, and whose presence in the workforce in Collier County is necessary to support and provide essential services to those new residential and non-residential developments. Such workforce is necessary to ensure a strong local economy into the future.

(I) The shortage of Affordable-Workforce Housing for Eligible Households creates a threat to the health, safety and welfare of the citizens of Collier County because persons who support and provide essential services to new development within Collier County, but whose wages are not sufficient to afford housing in the County, may be forced to move elsewhere to live, work, and raise their families. Because a resident workforce is necessary to provide essential support and services to new development and to ensure a sustainable local economy, this ensuing labor shortage would adversely affect both private business and the public at large.

(J) Insuring an opportunity for persons in Eligible Households to live in the County is also important to maintaining community character, an essential component of which is the social, economic, and political fabric created by the general sense of community that occurs when families that work in the community, live in the community, attend schools in the community, participate in civic organizations in the community, and vote in the community.

(K) The existing shortage of Affordable-Workforce Housing in Collier County could result in persons from Eligible Household migrating to other counties to live. These employees and their families may be forced to move out of the County into neighboring communities and will result in a shortage of available support for new development and a deterioration of the local economy and community character. In addition to placing stress on the capacity of the local community to maintain a viable workforce, the migration of persons from Eligible Households from Collier County also contributes to overcrowding, substandard housing, traffic congestion, increased pollution, urban sprawl, homelessness, and other societal ills, which, in turn, increases the amount of services and infrastructure the County is forced to provide.

(L) The current economic conditions in the County are desirable and attract new businesses and residences, but the very attraction of new business, housing, and other incidents

of growth exacerbates the shortage of Affordable-Workforce Housing available to Eligible Households. New development requires more workers to support and serve it and in many instances the workers are not highly paid, thus all new development, both residential and non-residential, exacerbates the shortage of Affordable-Workforce Housing.

(M) Additionally, any land development reduces the supply of land available to be used to build Affordable-Workforce Housing. Accordingly, it is fair and reasonable to impose an inclusionary zoning requirement for the provision of Inclusionary Units on Contributing Development when it possesses, enjoys, and consumes land, which constitutes the primary resource for housing.

(N) Recent legislative changes to section 163.3177(6), Florida Statutes, require the County to adopt a plan by July 1, 2008 for ensuring affordable workforce housing, including the identification of adequate sites for such housing.

(O) The Board desires to provide incentives to develop and provide Affordable-Workforce Housing stock within the County so that persons in Eligible Households who desire to live and to work in the County may have access to housing, and thus to offset the negative consequences of the shortage of such housing.

(P) To accomplish these objectives in accordance with Section 125.01055, Florida Statutes, the Board finds that it is fair and reasonable to impose a generally applicable inclusionary zoning requirement upon all new residential and mixed use growth within the County to increase the supply of Affordable-Workforce Housing in the County.

(Q) The Board finds that it is fair and reasonable to require Contributing Developments with 30 or more residential units to make 10% of those Inclusionary Units or alternatively to provide rental housing, off-site Affordable-Workforce Housing, Land Donations

In Lieu or pay a commiserate Fee In Lieu of the provision of Affordable-Workforce Housing stock.

SECTION 5. SITE IMPROVEMENT PLAN REVIEW. Section 10.02.03 of the Collier County Land Development Code is amended as follows:

10.02.03 Submittal Requirements for Site Development Plans

A. Generally.

1. Purpose. The intent of this section is to ensure compliance with the appropriate land development regulations prior to the issuance of a building permit. This section is further intended to ensure that the proposed development complies with fundamental planning and design principles such as: consistency with the county's growth management plan; the layout, arrangement of buildings, architectural design and open spaces; the configuration of the traffic circulation system, including driveways, traffic calming devices, parking areas and emergency access; the availability and capacity of drainage and utility facilities; the provision of Inclusionary Units; and, overall compatibility with adjacent development within the jurisdiction of Collier County and consideration of natural resources and proposed impacts thereon.

* * *

B. Final Site development plan procedure and requirements. A pre-application meeting shall be conducted by the County Manager or his designee, or his/her designee, prior to the submission of any site development or site improvement plan for review. This meeting may be waived by the County Manager or his designee upon the request of the Applicant.

1. Site development plan submittal packet: The site development submittal packet shall include the following, if applicable:

* * *

k. Inclusionary Housing Plan. For all Contributing Developments subject to Chapter 11 of the Collier County Land Development Code, the Applicant shall submit an Inclusionary Housing Plan as provided in Chapter 11.

SECTION 6. INCLUSIONARY HOUSING. The Collier County Land Development Code is hereby amended by creating Chapter 11, Inclusionary Housing, as follows:

CHAPTER 11. INCLUSIONARY HOUSING

11.01.00 Inclusionary Housing.

11.01.01. Purpose and Intent. The regulations and requirements of this chapter are intended to:

- A. Promote the health, safety and general welfare of the citizens of the Collier County through the implementation of the goals, objectives and policies of the Collier County/City of Naples Growth Management Plan;
- B. Increase Affordable-Workforce Housing ownership opportunities within the County;
- C. Stimulate the private sector production of Affordable-Workforce Housing available to families earning 150% and below of the area median income;
- D. Facilitate and encourage development that includes a range of housing opportunities through a variety of residential types, forms of ownership, and home sales prices; and;
- E. Encourage the even and widespread distribution of Affordable-Workforce Housing opportunities throughout all portions of the community, including within new developments in fastest growing areas of the community.

11.01.02. Definitions.

In addition to the definitions and rules of construction in section 1.08.00 of this Code, the following words, terms and phrases, when used in this section, shall have the meanings ascribed to them as set forth below, except where the context clearly indicates a different meaning:

Affordable-Workforce Housing shall mean a Dwelling Unit offered for sale or rent to an Eligible Household and with respect to which monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households of an Eligible Household.

Board shall mean the Board of County Commissioners of Collier County, Florida.

Building Permit shall mean an official document or certificate issued by the County, under the authority of ordinance or law, authorizing the construction or siting of any Building. "Building Permit" shall also include tie-down permits for those structures or Buildings, such as a Mobile Home, that may not require a Building Permit or other approvals that do not require any other type of permit before the respective item may lawfully be occupied, used, or operated.

Certificate of Occupancy shall mean the official document or certificate issued by the County under the authority of ordinance or law, authorizing the occupancy of any Building, or parts thereof, within Contributing Developments. "Certificate of Occupancy" shall also include tie-down permits for those structures or Buildings, such as a Mobile Home, that may not require a Certificate of Occupancy.

Contributing Development shall mean any development involving the construction of

thirty (30) or more Market-Rate Units.

County shall mean Collier County, a political subdivision of the State of Florida.

County Manager shall mean the chief administrative officer of the County or such person's designee.

Eligible Households shall mean one or more natural persons, the total adjusted household income, as adjusted for household size, is 150% or below of the median adjusted gross income for households within the Naples-Marco Island, Florida, metropolitan statistical area as reported by the U. S. Department of Housing and Urban Development or its governmental successor in function.

Fee in-lieu shall mean the fee paid by the developer/owner of any Contributing Development as an alternative to providing required Inclusionary Units for sale within the primary development.

Inclusionary Housing Plan shall mean a plan submitted detailing the number, type, and location within a Contributing Development of Inclusionary Units.

Inclusionary Unit shall mean an owner-occupied Affordable-Workforce Housing Dwelling Unit provided by a Contributing Development pursuant to this Chapter.

Market-rate Unit shall mean a Dwelling Unit in a Contributing Development that is not an Inclusionary Unit.

Off-Site Unit shall mean an Inclusionary Unit that will be built at a different location than the primary Contributing Development.

On-Site Unit shall mean an Inclusionary Unit that will be built as part of the primary Contributing Development.

11.01.03. Applicability.

A. The requirements of this section shall apply to all Contributing Developments within the unincorporated area of the County. Contributing Developments subject to the requirements of this section providing no less than 10% and as much as 100% of the total number of Dwelling Units in the Contributing Development as Inclusionary Units shall be eligible for development incentives as provided in accordance with Section 11.02.01.

B. Developments not subject to paragraph A. above that provide no less than 10% and as much as 100% of the total number of Dwelling Units in the primary development as Inclusionary Units shall be eligible for those development incentives as provided in accordance with Section 11.02.01.

C. For the purposes of this section, two or more Contributing Developments shall be

aggregated and considered as one development, if they are no more than 1/4 mile apart and any two of the following criteria are met:

1. There is a common interest in two or more developments;
2. The developments will undergo improvements within the same five-year period;
3. A master plan exists, submitted to a governmental body, addressing all developments;
4. All developments share some infrastructure or amenities; or,
5. A common advertising scheme or marketing plan addresses all development.

11.01.04. Vested Rights.

A. Those provisions set out in this chapter requiring Contributing Developments to provide Inclusionary Units or any of the in-lieu comparables shall not apply to the development of any property authorized by and consistent with any of the following development orders approved prior to the effective date of the Inclusionary Housing Ordinance or in application prior to the effective date of the Inclusionary Housing Ordinance and subsequently approved without major modification during the application period: preliminary plat approval; site plan approval; PUP concept plan approval; Development Agreement, approved pursuant to Chapter 163, Florida Statutes; or, DRI Development Order approval.

B. In those instances where the property owner of a vested property applies for a new Development Order, that if approved, would constitute a major modification of the previous Development Order, that property may lose its vested status as it relates to the provisions of this Chapter. Any modification to a previously approved Development Order resulting in the addition of 30 or more Dwelling Units than previously allowed in the Development Order approved prior to the effective date of the Inclusionary Zoning Ordinance, that were not previously mitigated, shall be subject to the provisions of this Chapter for the increased number of Dwelling Units.

C. The determination as to whether a change to the Development Order would be constitute a major modification shall be made by the County Manager or his/her designee, based upon applicable criteria in this code and Chapter 163, Florida Statutes, as may be applicable.

10.01.05. Exemptions.

The following shall be exempt from the requirements of this article:

A. Multi-family Dwellings constructed for rental purposes shall not be subject to requirements to provide Inclusionary Units; however, Multi-family Dwellings constructed for rental purposes may be provided to satisfy certain requirements for Inclusionary Units, as

provided herein; Condominiums and Townhouses intended for owner-occupancy are not exempt and shall be subject to these regulations;

B. Group Housing and Assisted Living Facilities.

C. Dormitories and group quarters; and

D. Manufactured homes shall not be subject to requirements to provide Inclusionary Units and may not be provided to satisfy any requirements set forth herein.

E. Developments that, through data and analysis acceptable to the County Manager, demonstrate they will not create a need for Affordable-Workforce Housing in the County.

11.01.05. Requirements for Inclusionary Units.

The following requirements shall apply to all Contributing Developments:

A. All Contributing Developments shall provide a minimum of 10% of the Dwelling Units as Inclusionary Units. For purposes of this section accessory apartment units shall not be construed as a Dwelling Unit, either for purposes of determining the number of Inclusionary Units required or the number of Inclusionary Units provided.

B. The following standards shall be utilized in the calculation of number of inclusionary units required to be provided:

1. Density Bonus Units: For purposes of calculating the number of Inclusionary Units required by this section, any additional Dwelling Units provided through use of the density bonus incentives of this Chapter will not be counted in determining the required number of Inclusionary Units.

2. Fractional Unit Requirements: In determining the number of whole Inclusionary Units required, any fractional requirement shall be rounded up to the nearest whole number.

C. Required Inclusionary Units shall be provided within the primary development or at an alternative, off-site location approved by the County.

D. The County may grant waivers of requirements for Inclusionary Units if the Board finds the following:

1. The application of the requirement to provide Inclusionary Units would produce a result inconsistent with the goals and objectives of the Collier County/City of Naples Growth Management Plan pertaining to the development of the community; or,

2. If the primary development is part of a larger development, that

development furthers the intent of this section through means other than strict compliance with the regulations set out in this section.

E. At the time of the approval of any site plan for any Contributing Development required to provide Inclusionary Units, as authorized by this Chapter, the Applicant shall post a bond equivalent to the Fee In-Lieu of providing the required Inclusionary Units. The County shall retain the bond money in escrow in an interest-bearing account for a period of no less than three years, or other time period agreed upon by the Applicant and the County, or until the County has documented that the required Inclusionary Units or In-Lieu comparables have been provided. Upon documentation that the Inclusionary Unit requirement has been met in part or in full, the County shall remit that portion of the bond money and interest proportionally equivalent to the portion of the Inclusionary Unit requirement satisfied to the Applicant or their assigns. If, after a period of three years, or other time period agreed upon by the Applicant and the County, the Applicant has not demonstrated compliance with the requirement, the bond shall be forfeited and the bond money and interest shall be transferred to the Inclusionary Housing Trust Fund, and may thereafter be utilized for purposes of providing Affordable-Workforce Housing in the County. In those instances where the Applicant has agreed in advance to pay a Fee In-Lieu of all or a portion of the required Inclusionary Units, no bond shall be required to be posted for that amount of the requirement to be satisfied through payment of the Fee In-Lieu.

F. As an alternative to providing Inclusionary Units, the owner/developer may pay a Fee In-Lieu to the County. The Fee In-Lieu rate shall be as follows:

[TO COME]

G. As an alternative to providing owner-occupied Inclusionary Units, the owner/developer may provide 1.5 Affordable-Workforce Housing, Multi-family rental units for each owner-occupancy Inclusionary Unit not otherwise provided. Rental units provided in lieu of owner-occupied Inclusionary Units shall be provided on-site within the primary development or at an adjacent location approved by the County.

H. The number and location of Inclusionary Units required in conjunction with a particular Contributing Development will be determined at the time of site plan approval as provided in Section 10.02.02 of the Collier County Land Development Code. Any of the following changes in the location of any on-site Inclusionary Units after site plan approval shall constitute a major modification to the original development order and shall be reviewed accordingly:

1. Relocation contiguous to vacant property outside the primary development;
2. Relocation contiguous to property outside the primary development developed with less intensive residential use; or
3. Relocation contiguous to property inside the primary development, developed with less intensive residential use and not previously intended as the location of Inclusionary Units. The determination as to whether the contiguous property is

considered less intensive residential use shall be made by the County Manager.

I. Construction of the required Inclusionary Units shall commence on or before the date that the Contributing Development receives Certificates of Occupancy for more than 35% of its total Dwelling Units. The County shall not issue Certificates of Occupancy for Market-Rate Units comprising more than 75% of the total approved Dwelling Units in a Contributing Development until all of the required Inclusionary Units are constructed or have Building Permits issued by the County, unless the developer has elected to pay the Fee In-Lieu.

J. To promote integration of the Inclusionary Units into the overall Contributing Development, the following provisions apply:

1. Unless approved to be built off-site, the Inclusionary Units shall be intermixed with, and not segregated from, the Market-Rate Units in the Contributing Development.

2. The Inclusionary Units must be advertised, sold, and maintained in the same manner as the Market-Rate Units in the Contributing Development and relevant information must be made available to prospective occupants of any Inclusionary Unit.

3. The developer or owner of a Contributing Development shall not disclose to any persons, other than the prospective occupants of the particular Inclusionary Unit, which units in the development are designated as Inclusionary Units.

4. In the case where construction of a Contributing Development will take place in more than one phase, a pro rata percentage of the Inclusionary Units to which the developer has committed for the entire Contributing Development shall be maintained in each phase and shall be constructed as part of each phase of the Contributing Development on the property.

11.02.00. Developer Incentives.

11.02.01. Incentives for Provision of Inclusionary Housing.

The following incentives shall be available to Contributing Developments constructing the required number of Inclusionary Units within the primary development:

A. Any Contributing Development providing Inclusionary Units pursuant to this Chapter may be entitled to a 10% increase in allowable density above that otherwise established by the zoning district in which the development is located. To qualify for this bonus, the Applicant must apply for an Inclusionary Housing Density Bonus, as follows:

1. Prior to submitting an application for the Inclusionary Housing Density Bonus, a pre-application conference may be scheduled with the County Manager. The pre-application conference provides an opportunity to familiarize the applicant with the Inclusionary Housing Density Bonus program and provides an opportunity for the County staff to obtain a clear understanding of the proposed development.

2. An application for an Inclusionary Housing Density Bonus for a development must be submitted to the County in the form established by the County. The Inclusionary Housing Density Bonus application must, at a minimum, include:

- a. The zoning districts proposed by the applicant on the property and acreage of each;
- b. The total number of Dwelling Units in the proposed development;
- c. The total number of Inclusionary Housing Density Bonus units requested;
- d. The total number of Inclusionary Units proposed in the development categorized by household level of income and number of bedrooms: (i) Gap Income Households (one bedroom, two bedrooms, or three bedrooms or more); (ii) Low Income Households (one bedroom, two bedrooms, or three bedrooms or more); (iii) Very Low Income Households (one bedroom, two bedrooms, or three bedrooms or more); (iv) Total Affordable-Workforce Housing Units (one bedroom, two bedrooms, or three bedrooms or more);
- e. Gross density of the proposed development (without and with Inclusionary Housing Density Bonus units);
- f. A narrative, describing how the design and orientation of the development seeking the density bonus is compatible with the surrounding land use character, particularly with any low density residential neighborhoods. This narrative shall address building size and massing, site layout and design, architectural characteristics, and landscaping, as well as any other aspects of development that the Applicant deems appropriate;
- g. Whether the Inclusionary Housing Density Bonus is requested in conjunction with an application for a PUD, an application for rezoning, or an application for a Stewardship Receiving Area; and
- h. Any other information which may be necessary or reasonably required to address the request for Inclusionary Housing Density Bonus for the development pursuant to the requirements set forth in this section.

3. After receipt of an application for an Inclusionary Housing Density Bonus, the County Manager shall determine whether the application submitted is complete. If that application is determined not to be complete, the County Manager shall notify the Applicant in writing of the deficiencies. The County Manager shall take no further steps to process the application until the deficiencies have been remedied.

4. After receipt of a completed application for an Inclusionary Housing Density Bonus, the County Manager must review and evaluate the application in light the requirements of this section and the Collier County Land Development Code as a whole. The County Manager must then recommend to the Planning Commission and the Board to deny, grant, or grant with conditions, the Inclusionary Housing Density Bonus application. The recommendation of the County Manager must include a report in support of recommendation.

5. Upon receipt by the Planning Commission of the application for Inclusionary Housing Density Bonus and the written recommendation and report of the County Manager, the Planning Commission must schedule and hold a properly advertised and duly noticed public hearing on the application. After the close of the public hearing, the Planning Commission must review and evaluate the application in light of the requirements of this section and the requirements of the Collier County Land

Development Code, as applicable, and must recommend to the Board that the application be denied, granted or granted with conditions.

6. Upon receipt by the Board of the application for the Inclusionary Housing Density Bonus and the written recommendation and report of the County Manager and recommendation of the Planning Commission, the Board must schedule and hold a properly advertised and duly noticed public hearing on the application. After the close of the public hearing, the Board must review and evaluate the application in light of the requirements of this section and the requirements for of the Collier County Land Development Code and must deny, grant, or grant with conditions, the application.

7. Additional procedures to request approval of a density bonus are described in Chapter 10 of the Land Development Code, along with requirements for the Developer's Agreement to ensure compliance.

B. The developer of Inclusionary Units shall be eligible to obtain greater flexibility in development design through application of the following:

1. Choice of Housing Type. Inclusionary Units required by this Chapter as well as any provided through density bonus incentive may be provided as single family, duplex, townhouse units, or cluster development within the RP-1, RP-2, and RP-MH zoning districts, and as single family, duplex, triplex, or townhouse units or as units intended for owner occupancy in a condominium, or multifamily residential structure, in other zoning districts provided that the height, setbacks, massing and exterior appearance of the Inclusionary Units are consistent with other residential units within the development in which they are located.

2. Alleviation of Setback and Lot Size Requirements Internal to the Development. All Dwelling Units (Inclusionary Units and Market-Rate Units) shall not be subject to yard setback requirements, except for yards adjacent to boundary of the primary development and other property. Dwelling Units (Inclusionary Units and Market-Rate Units) shall not be subject to minimum lot size requirements, except where lots are located adjacent to property outside of the primary development.

3. Alleviation of Buffering and Screening Requirements Internal to the Development. Inclusionary Units shall not be subject to requirements for the provision of buffering and screening for purpose of mitigating incompatibility within the primary development. Where adjacent to property outside of the primary development, Inclusionary Units shall be subject to those buffering and screening requirements as set out in this Code as may be applicable.

C. The developer of a Contributing Development that will contain the required number of Inclusionary Units in the primary development as provided in this section shall be eligible for expedited development review. The developer shall inform the Department of Zoning and Land Development Review (Zoning Department) at the pre-application stage that the

development will include Inclusionary Units; thereafter, the Zoning Department shall expedite the review of the application to the fullest extent permitted by law and shall notify other reviewing departments/agencies that the application is required to receive expedited review. Expedited applications are to be reviewed prior to other applications filed on the same date or in the same application period, except for other applications including Inclusionary Units or affordable housing pursuant to Chapter 420.9076, Florida Statutes. Unless otherwise granted by the County, any development order application not directly pertaining to or required for the development of Inclusionary Units shall not be entitled to expedited review. The Zoning Director shall serve as the County's liaison to expedite the review and approval process. This provision shall apply to site and development plan applications, subdivision applications, environmental permits, as well to individual building permits for individual Inclusionary Units.

D. A developer of Inclusionary Units may request additional incentives. The Board may grant such additional incentives through approval of a development agreement pursuant to Section 163.3220, Florida Statutes ("163 Development Agreement") or Planned Unit Development Concept Plan, so long as the Board finds the following:

1. The application of the incentive would not produce a result inconsistent with the goals and objectives of the Collier County/Naples Growth Management Plan; and
2. The provision of the incentive furthers the intent of this section.

11.03.00. Administration.

11.03.01. Compliance Procedures.

A. In accordance with Section 10.02.03 of the Collier County Land Development Code, an Inclusionary Housing Plan is a requirement of any site plan submittal subject to the requirements of this Inclusionary Housing Chapter. An Inclusionary Housing Plan is not required where the requirements are satisfied by provision of payment of a Fee In-Lieu of provision of Inclusionary Units. The Inclusionary Housing Plan must include:

1. A site plan that includes the location of the Inclusionary Units (or lots or areas set aside for Inclusionary Units), setbacks and lot sizes for Inclusionary Units and other proposed development;
2. The structure type of Inclusionary Units (may be a range of types) to be provided;
3. The proposed tenure (owner-occupancy or rental) of Inclusionary Units to be provided;
4. The structure size (may be a size range) of the Inclusionary Units to be provided;

5. The mechanisms that will be used to assure that the Inclusionary Units remain affordable, per Board, such as resale and rental restrictions, and rights of first refusal and other documents;

6. For Inclusionary Units to be provided off-site: the location (including parcel identification number(s)), structure type of Inclusionary Units and, proposed tenure; and,

7. Any other information as may be necessary to demonstrate that the development complies with the provisions of this section.

B. For all Contributing Development subject to the provisions of this Chapter, implementation of an approved Inclusionary Housing Agreement is a requirement for approval of any site plan for a Contributing Development, and must be entered into by the developer and the Board pursuant to the public hearing process established by this Inclusionary Housing Ordinance. The Inclusionary Housing Agreement must include:

1. Legal description of the land subject to the Inclusionary Housing Agreement and the names of its legal and equitable owners;

2. Total number of Dwelling Units in the development;

3. Minimum number of Inclusionary Units, categorized by level of household income and number of bedrooms, required in the development;

4. Maximum number of Inclusionary Housing Density Bonus Dwelling Units permitted in the development;

5. Gross residential density of the development;

6. The provision for continuing restrictions on the Inclusionary Units, as provided in Section 11.03.03.

7. The Inclusionary Housing Agreement and authorized development shall be consistent with the Growth Management Plan and Land Development Regulations of Collier County that are in effect at the time of development. Subsequently adopted laws and policies shall apply to the Inclusionary Housing Agreement and the development to the extent that they are not in conflict with the number, type of Inclusionary Units and the amount of Inclusionary Housing Density Bonus approved for the development, if any.

8. The conditions contained in the Inclusionary Housing Agreement shall constitute covenants, restrictions, and conditions which shall run with the land and shall be binding upon the property and every person having any interest therein at anytime and from time to time.

9. The Inclusionary Housing Agreement shall be recorded in the official records of Collier County, Florida, subsequent to the recordation of the grant deed pursuant to which the owner acquires fee simple title to the property.

C. The method of compliance with this section, including, as applicable, the number and location of Inclusionary Units, shall be established within the final development order and incorporated through appropriate annotation on the approved site plan and in an inclusionary housing letter of agreement, signed by all parties, and recorded by the Collier County Clerk of Courts. Where inclusionary requirements are satisfied through the provision of Off-site Units, the development orders for the primary and off-site development may be issued concurrently or sequentially; however, the site plans for both developments shall reflect the method the compliance and shall as well be incorporated through appropriate annotation in an inclusionary housing letter of agreement, signed by all parties, and recorded by the Collier County Clerk of Courts.

11.03.02. Eligibility Monitoring.

A. The determination of Eligible Households to buy and occupy Affordable-Workforce Housing units is the central component of the Inclusionary Housing monitoring program and the mandatory requirement for Affordable-Workforce Housing units.

B. Household income eligibility is a three-step process and all three of the following steps shall be accomplished prior to a prospective occupant being qualified as an Eligible Household pursuant to the Inclusionary Housing program and this Inclusionary Housing Ordinance. No person shall occupy an Inclusionary Unit provided under this program or this Inclusionary Housing Ordinance prior to being qualified at the appropriate level of income:

1. Submittal of an application by a prospective occupant;
2. Verification of household income; and
3. Execution of an income certification.

C. The developer shall be responsible for accepting applications from prospective occupants, verifying income and obtaining the income certification for its development which involves Inclusionary Units, and all forms and documentation must be provided to the Collier County Housing and Human Services prior to qualification of the prospective occupant as an Eligible Household. The Collier County Housing and Human Services shall review all documentation provided, and may verify the information provided from time to time. Prior to occupancy, the developer shall provide to the Collier County Housing and Human Services, at a minimum, the application for Eligible Household qualification, including the income verification form and the income certification form, and the purchase or lease contract for that Inclusionary Unit. The County may conduct scheduled inspections to verify occupancy in accordance with this section.

11.03.03. Continuing Restrictions on Inclusionary Units.

A. Income verification and certification pursuant to the foregoing provision shall be a requirement for the conveyance of any interest in an Inclusionary Unit or the land on which it is

located. An Inclusionary Unit may be purchased only by a Certified Buyer who intends to live in the Inclusionary Unit as a primary residence. No owner of an Inclusionary Unit may lease the entire Inclusionary Unit and may only lease portions of the Inclusionary Unit so long as the owner continues to live in the Inclusionary Unit. An owner of an Inclusionary Unit may only sell its Inclusionary Unit to another Certified Buyer in accordance with the provisions of this Affordable Housing Ordinance.

B. The owner of any Inclusionary Unit, other than the initial developer, shall cause a lien instrument in favor of and approved by Collier County to be recorded with the Clerk of the Circuit Court of Collier County, Florida, immediately after the recordation of the instrument conveying the Inclusionary Unit to the owner. The lien instrument shall provide that, if the Inclusionary Unit (or the land on which it is located) is sold within fifty (50) years after the original purchase, it shall either offer the Inclusionary Unit to the Collier County Community Land Trust ("CCCLT") or its successor in function at a sales price not to exceed the original purchase price plus five percent (5%) per year of the original purchase price or be subject to the following recapture provision. If the owner elects to sell the Inclusionary Unit to a party other than the CCCLT or if the CCCLT declines to purchase the Inclusionary Unit, the owner shall pay to Collier County an amount equal to one half (1/2) of the sales price in excess of the original purchase price plus five percent (5%) increase per year. For example, an owner originally buys an Inclusionary Unit for \$150,000 and sells it after five years for \$250,000. A five percent increase per year for five years will give a value of \$191,441. Deducting this amount from the new sales price of \$250,000.00 gives a difference of \$58,559. The owner would then owe Collier County \$29,279.50 of the proceeds (one-half of \$58,559). Payment of this amount would release the owner from the recorded lien against the property. Such payment shall be maintained in a segregated fund, established by Collier County, solely for Affordable-Workforce Housing purposes, and such money shall be used solely to encourage, provide for, or promote Affordable-Workforce Housing in Collier County. The lien instrument may be subordinated to a qualifying first mortgage.

11.03.04. Annual Monitoring Report.

A. Any development containing Inclusionary Units shall be subject to the monitoring program set forth in this section.

B. The developer shall provide the County with an annual progress and monitoring report, in a form developed by the County, regarding the delivery of Inclusionary Units throughout the period of construction and occupancy for each of the developer's developments that involve Inclusionary Units.

C. The annual progress and monitoring report shall, at a minimum, require any information reasonably helpful to ensure compliance with this section and provide information with regard to affordable housing in the County.

D. Failure to complete and submit the monitoring report to the County within 60 days from the due date will result in a penalty of up to \$50.00 per day per incident or occurrence unless a written extension not to exceed 30 days is requested prior to expiration of the 60-day submission deadline.

11.03.05. Trust Fund.

A. The Board hereby establishes a separate trust account for the In-Lieu Fees, to be designated as the "Inclusionary Housing Trust Account," which shall be maintained separate and apart from all other accounts of the County.

B. All In-Lieu Fees shall be deposited into such trust account immediately upon receipt.

C. Funds on deposit in the Inclusionary Housing Trust Account, including all interest accrued, shall be used solely to increase and improve the supply of Affordable-Workforce Housing in the County in accordance with the Collier County Affordable-Workforce Housing Trust Fund Administrative Guidelines, which are attached hereto and incorporated herein by reference; including, but not limited to, all costs associated with planning, subsidizing, or developing Affordable-Workforce Housing units in the County. A report shall be prepared annually by the County reflecting the collection and expenditures of the In-Lieu Fees by the County during the previous Fiscal Year. This report shall be presented to the Board at a regularly scheduled meeting.

SECTION 7: SEVERABILITY. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

SECTION 8: EFFECTIVE DATE. A certified copy of this Ordinance shall be filed in the Department of State by the Clerk of the Board within ten (10) days after enactment by the Board and shall take effect immediately.

DULY ADOPTED in regular session, this _____ day of _____, 2007.

BOARD OF COUNTY COMMISSIONERS
OF COLLIER COUNTY, FLORIDA

BY: _____
Chairman

ATTEST:

Clerk

(SEAL)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

David C. Weigel
County Attorney

F:\Tally Data\General Data\Wpdata\PROJECTS\Collier County\06048\CollierInclusionaryOrdDraft#4.7-3-07.doc