

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 18, 2008 [X] Consent [ ] Regular  
 [ ] Public Hearing  
 Department: Housing and Community Development  
 Submitted By: Housing and Community Development

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve: Amendment No. 002 to an Agreement (R2007-1522), with Delray Elderly, L.P., to extend the expiration date from September 30, 2008, to March 31, 2009.

**Summary:** The executed Agreement (R2007-1522) provides Delray Elderly, L.P., \$150,000, in 2005 Disaster Recovery Initiative Program funds for the purchase and installation of five generators for their residential buildings and clubhouse at 600 Lindell Blvd., in the City of Delray Beach. This Amendment provides an extension of six months to the term of the existing Agreement. The time extension is due to delays associated with evaluating site placement options, investigating alternative fuel sources, determining the requirements to comply with local codes, and acquiring the services of surveyors and engineers. The site plans are in the final stages of completion and are being scheduled for review by the City of Delray Beach Planning and Zoning. These are Federal funds that require no local match. (District 4) (TKF)

**Background and Justification:** The County entered into an Agreement (R2007-1522) with Delray Elderly, L.P., on July 31, 2007. The Agreement was amended on April 15, 2008, to provide a time extension of four months. Funding for this project is provided under the 2005 Disaster Recovery Initiative (DRI) Program. The DRI Program provides funds made available to the Florida Department of Community Affairs (DCA) by the U.S. Department of Housing and Urban Development from Community Development Block Grant (CDBG) funding to assist in recovery efforts from the Federally declared disasters (Hurricanes Katrina and Wilma) that occurred between August 25, 2005 and October 24, 2005.

**Attachments:**

1. Amendment No. 002 to the Agreement with Delray Elderly, L.P.
2. Amendment No. 001 (R2008-0635) to the Agreement with Delray Elderly, L.P., with Attachment 1.
3. Agreement (R2007-1522) with Delray Elderly, L.P., with exhibits A to E.
4. Delray Elderly, L.P., letter of September 10, 2008.

Recommended by: Edward W. Horn 10/10/08  
 Department Director Date

Approved By: Sharon J. By 10/21/08  
 Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	* see below				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Current Budget? Yes \_\_\_ No \_\_\_  
 Budget Account No.:

Fund \_\_\_ Unit \_\_\_ Org \_\_\_ Object \_\_\_ Program Code/Period BG \_\_\_ -GY \_\_\_

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

\* No fiscal impact - time extension only.

C. Departmental Fiscal Review: Shair 10-9-08  
 Shairette Major, Fiscal Manager I

**III. REVIEW COMMENTS**

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

atwillhite 10-20-08  
 OFMB 10/16/08  
 10-10-08

John J. Jacoby 10/20/08  
 Contract Development and Control  
 10/20/08

B. Legal Sufficiency:

[Signature] 10/21/08  
 Senior Assistant County Attorney

**This amendment complies with our review requirements.**

C. Other Department Review:

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

This summary is not to be used as a basis for payment.

**AMENDMENT 002 TO THE AGREEMENT  
WITH  
DELRAY ELDERLY, L.P.**

Amendment 002 entered into this 1st day of October, 2008, by and between Palm Beach County and Delray Elderly, L.P.

**WITNESSETH:**

WHEREAS, Palm Beach County entered into an Agreement (R2007-1522) with Delray Elderly, L.P., on July 31, 2007, as amended by Amendment 001 (R2008-0635) on April 15, 2008, to provide \$150,000 of Community Development Block Grant funds for the purchase and installation of five generators; and

WHEREAS, the parties wish to modify the Agreement to extend the project completion date, and

WHEREAS, both parties mutually agree that the original Agreement entered into on July 31, 2007, as amended, is hereby further amended as follows:

**A. Part III - Section 1 - Maximum Compensation:**

Substitute "March 31, 2009" for "September 30, 2008".

**B. Part III - Section 2 - Time of Performance:**

Substitute "March 31, 2009" for "September 30, 2008".

**C. Exhibit A - Section I. H - Work Schedule:**

Delete the contents of this section and replace them with the following: "The time frame for completion of the outlined activities shall be March 31, 2009".

NOW THEREFORE, all items in the previous Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment.

All provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Agreement.

(AGENCY SEAL)

**DELRAY ELDERLY, L.P.**

By its General Partner:

**DELRAY ELDERLY CORPORATION,**

A foreign corporation registered to do  
business in the State of Florida

By: Sheldon Baskin  
Sheldon L. Baskin, President

By: Daniel N. Epstein  
Daniel N. Epstein, Secretary/Treasurer

(COUNTY SEAL)

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

**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Addie L. Greene, Chairperson  
Board of County Commissioners

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

Approved as to Form and  
Legal Sufficiency

By: \_\_\_\_\_  
Tammy K. Fields  
Senior Assistant County Attorney

Document No.: \_\_\_\_\_

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By: Anna Houry  
Anna Houry, Manager  
Housing and Capital Improvements

**AMENDMENT 002 TO THE AGREEMENT  
WITH  
DELRAY ELDERLY, L.P.**

Amendment 002 entered into this 1<sup>st</sup> day of October, 2008, by and between Palm Beach County and Delray Elderly, L.P.

**WITNESSETH:**

WHEREAS, Palm Beach County entered into an Agreement (R2007-1522) with Delray Elderly, L.P., on July 31, 2007, as amended by Amendment 001 (R2008-0635) on April 15, 2008, to provide \$150,000 of Community Development Block Grant funds for the purchase and installation of five generators; and

WHEREAS, the parties wish to modify the Agreement to extend the project completion date, and

WHEREAS, both parties mutually agree that the original Agreement entered into on July 31, 2007, as amended, is hereby further amended as follows:

**A. Part III - Section 1 - Maximum Compensation:**

Substitute "March 31, 2009" for "September 30, 2008".

**B. Part III - Section 2 - Time of Performance:**

Substitute "March 31, 2009" for "September 30, 2008".

**C. Exhibit A - Section I. H - Work Schedule:**

Delete the contents of this section and replace them with the following: "The time frame for completion of the outlined activities shall be March 31, 2009".

NOW THEREFORE, all items in the previous Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment.

All provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Agreement.

(AGENCY SEAL)

**DELRAY ELDERLY, L.P.**

By its General Partner:  
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business in the State of Florida

By: Sheldon Baskin  
Sheldon L. Baskin, President

By: \_\_\_\_\_  
Daniel N. Epstein, Secretary/Treasurer

(COUNTY SEAL)

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Addie L. Greene, Chairperson  
Board of County Commissioners

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

Approved as to Form and  
Legal Sufficiency

By: \_\_\_\_\_  
Tammy K. Fields  
Senior Assistant County Attorney

Document No.: \_\_\_\_\_

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By: Amin Houry  
Amin Houry, Manager  
Housing and Capital Improvements

**AMENDMENT 002 TO THE AGREEMENT  
WITH  
DELRAY ELDERLY, L.P.**

Amendment 002 entered into this 1st day of October, 20 08, by and between Palm Beach County and Delray Elderly, L.P.

**WITNESSETH:**

WHEREAS, Palm Beach County entered into an Agreement (R2007-1522) with Delray Elderly, L.P., on July 31, 2007, as amended by Amendment 001 (R2008-0635) on April 15, 2008, to provide \$150,000 of Community Development Block Grant funds for the purchase and installation of five generators; and

WHEREAS, the parties wish to modify the Agreement to extend the project completion date, and

WHEREAS, both parties mutually agree that the original Agreement entered into on July 31, 2007, as amended, is hereby further amended as follows:

**A. Part III - Section 1 - Maximum Compensation:**

Substitute "March 31, 2009" for "September 30, 2008".

**B. Part III - Section 2 - Time of Performance:**

Substitute "March 31, 2009" for "September 30, 2008".

**C. Exhibit A - Section I. H - Work Schedule:**

Delete the contents of this section and replace them with the following: "The time frame for completion of the outlined activities shall be March 31, 2009".

NOW THEREFORE, all items in the previous Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment.

All provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Agreement.

(AGENCY SEAL)

**DELRAY ELDERLY, L.P.**

By its General Partner:

**DELRAY ELDERLY CORPORATION,**  
A foreign corporation registered to do  
business in the State of Florida

By: Sheldon Baskin  
Sheldon L. Baskin, President

By: Daniel N. Epstein  
Daniel N. Epstein, Secretary/Treasurer

(COUNTY SEAL)

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Political Subdivision of the State of Florida  
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Addie L. Greene, Chairperson  
Board of County Commissioners

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

Document No.: \_\_\_\_\_

Approved as to Form and  
Legal Sufficiency

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By: \_\_\_\_\_  
Tammy K. Fields  
Senior Assistant County Attorney

By: Amir Houry  
Amir Houry, Manager  
Housing and Capital Improvements

AMENDMENT 001 TO THE AGREEMENT  
WITH  
DELRAY ELDERLY, L.P.

Amendment 001 entered into this \_\_\_\_ day of APR 15 2008, 20\_\_\_\_, by and between Palm Beach County and Delray Elderly, L.P.

WITNESSETH:

WHEREAS, Palm Beach County entered into an Agreement (R2007-1522) with Delray Elderly, L.P., on July 31, 2007, to provide \$150,000 of Community Development Block Grant funds for the purchase and installation of five generators; and

WHEREAS, the parties wish to modify the Agreement to extend the project completion date, and to replace the Declaration of Restrictions which is attached to the Agreement, and

WHEREAS, both parties mutually agree that the original Agreement entered into on July 31, 2007, is hereby amended as follows:

**A. Part III - Section 1 - Maximum Compensation:**

Substitute "September 30, 2008" for "May 31, 2008".

**B. Part III - Section 2 - Time of Performance:**

Substitute "September 30, 2008" for "May 31, 2008".

**C. Exhibit A - Section I. H - Work Schedule:**

Delete the contents of this section and replace them with the following: "The time frame for completion of the outlined activities shall be September 30, 2008".

**D. Exhibit A - Section I. J - Use of the Project Facility:**

Substitute "Attachment 1" for "Exhibit E".

**E. Exhibit E - Declaration of Restrictions:**

Delete Exhibit E and replace it with Attachment 1 hereto.

NOW THEREFORE, all items in the previous Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment.

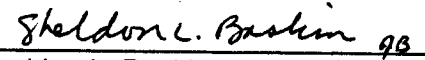
All provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Agreement.

(AGENCY SEAL)

DELRAY ELDERLY, L.P.

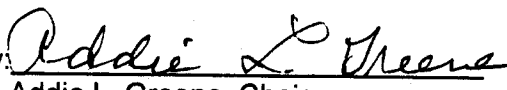
By its General Partner:  
**DELRAY ELDERLY CORPORATION,**  
A foreign corporation registered to do  
business in the State of Florida

By:   
Henry Hyatt, President

By:   
Sheldon L. Baskin, Secretary

(COUNTY SEAL)

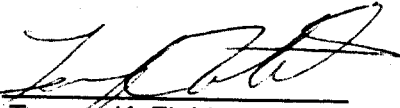
**PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida  
BOARD OF COUNTY COMMISSIONERS**

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Addie L. Greene, Chairperson  
Board of County Commissioners

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

By:   
Deputy Clerk

Approved as to Form and  
Legal Sufficiency

By:   
Tammy K. Fields  
Senior Assistant County Attorney

Document No.: R2008 0635

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By:   
Amin Houry, Manager  
Housing and Capital Improvements

ATTACHMENT 1

Return to:  
Palm Beach County  
Housing & Community Development  
160 Australian Avenue, Suite 500  
West Palm Beach, Florida 33406  
Prepared by: Tammy K. Fields,  
Senior Assistant County Attorney  
Attention: Amin Houry

**DECLARATION OF RESTRICTIONS**

The undersigned, Delray Elderly, L.P., a foreign limited partnership duly registered to do business in the State of Florida, having its principal office at 200 E. Randolph Street, Suite 2100, Chicago, IL, 60601, hereinafter referred to as "Declarant", for the property described below, in consideration of funding in the amount of One Hundred Fifty Thousand Dollars (\$150,000) received from the Palm Beach County Board of County Commissioners (the "County") does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, and described as:

Parcel I:

Tracts 1 and 2, together with that part of Lake Del lying Southeastwardly on the Southeasterly line of Hungerford Canal Easement, as shown on the Plat of Lake Delray Apartments, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, recorded in Plat Book 28, page 237, said lands situate, lying and being in Palm Beach County, Florida.

Parcel II:

Tracts 3 and 4, together with that part of Lake Del lying Northwestwardly of the Northwesterly line of Hungerford Canal Easement, as shown on the Plat of Lake Delray Apartments, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 28, page 237, said lands situate, lying and being in Palm Beach County, Florida.

Property Control Number(s): 12-43-46-29-08-001-0000

1. These restrictions shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and executed with the same formalities as this document.
2. In consideration of the County's grant in the amount of \$150,000 (in CDBG dollars) as provided through a grant Agreement with the County dated July 31, 2007, the Declarant hereby covenants and agrees for a period of 10 years commencing with the expiration date of said grant Agreement (as may be amended from time to time, but which shall expire no later than September 30, 2008) to use the subject property as described in the Declarant's funding application to the County, and as described in said grant Agreement, and the Declarant further agrees to maintain insurance as required in the grant Agreement.
3. The Declarant agrees in regard to the use of the facility/property whose improvements were funded through the grant Agreement that for a period of ten (10) years after the expiration date of said Agreement:
  - (a) The Declarant's use of the facility/property during the term hereof shall be residential rental housing where at least 51% of the units comprising such housing are occupied by households whose incomes do not exceed 80% of the area median income (the "Use"). The Declarant may not change the Use, or discontinue the Use, of the facility/property (including the beneficiaries of such Use), unless the Declarant provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
    1. The new use of the facility/property, in the opinion of the County, qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
    2. The requirements of paragraph 3(b) of this section are met.

- (b) If the Declarant determines after consultation with affected citizens, that it is appropriate to change the Use of the facility/property to a use which does not qualify under Paragraph 3(a)(1) of this section or discontinue use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
- (c) Following the reimbursement of CDBG funds by the Declarant to the County pursuant to Paragraph 3(b) above, the facility/property will then no longer be subject to these restrictions, and the County shall then release these restrictions as described above.

In the event of any proposed sale, conveyance or transfer of the subject property, the Declarant must notify the County, through its Housing and Community Development Department. Any proposed sale or conveyance of the subject property by the Declarant involving a change in use in accordance with the provisions of Paragraph 3(b) above, shall be subject to the County receiving the reimbursement required by Paragraph 3(b). In the event of a sale, conveyance, or transfer of the subject property not involving a change in use, the restrictions and conditions provided herein shall continue for the duration of this Declaration.

4. The Declarant agrees to notify the County of any liens, judgements or pending foreclosure on the subject property within five (5) working days of the receipt of said notice by the Declarant.

Upon receipt of a written request from the County, Declarant shall submit to the County a report detailing the Declarant's compliance with the terms of the grant Agreement and this Declaration of Restrictions. Declarant shall not be obligated to submit such report more than once each year.

5. Declarant relinquishes all rights to alter, amend, modify, or release these covenants prior to the completion of the ten year period described above other than in accordance with Paragraphs 3(b) and 3(c) and as set forth in the next sentence. In the event the County does not fund the grant agreement, Declarant may unilaterally terminate this Declaration provided Declarant provides written notice of such termination to the County. However, in the event the County funds any or all of the grant Agreement, this Declaration of Restrictions may not be terminated without the express written release of the County.

6. In the event of any litigation necessary to enforce the terms of the Declaration, the Declarant agrees to reimburse the County for attorneys fees and costs associated with litigation.

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

**DELRAY ELDERLY, L.P.**

By its General Partner:  
**DELRAY ELDERLY CORPORATION,**  
 A foreign corporation registered to do  
 business in the State of Florida

(DO NOT SIGN THIS ATTACHMENT)

By: \_\_\_\_\_  
**Henry Hyatt, President**

(CORPORATE SEAL ABOVE)

STATE OF FLORIDA  
 COUNTY OF PALM BEACH

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

(DO NOT SIGN THIS ATTACHMENT)

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

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

(NOTARY SEAL ABOVE)



**AGREEMENT BETWEEN PALM BEACH COUNTY**

**AND**

**DELRAY ELDERLY, L.P.**

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of JUL 31 2007, 20\_\_\_\_, by and between Palm Beach County, a political subdivision of the State of Florida, for the use and benefit of its Community Development Block Grant Program, and the Delray Elderly, L.P., a foreign limited partnership duly registered to do business in the State of Florida, having its principal office at 200 E. Randolph Street, Suite 2100, Chicago, IL, 60601, and its Federal Tax Identification number as 36-4210395.

**WHEREAS**, Palm Beach County has entered into a Contract (number 07DB-3V-10-60-01-Z07) with the State of Florida, Department of Community Affairs, in connection with the State's 2005 Disaster Recovery Initiative Program which the State is implementing for the use of grant funds provided by the United States Department of Housing and Urban Development under its Community Development Block Grant Program; and

**WHEREAS**, the Delray Elderly, L.P., was allocated certain funds under said Contract to implement specified activities under the 2005 Disaster Recovery Initiative Program; and

**WHEREAS**, Palm Beach County desires to engage the Delray Elderly, L.P., to implement the activities associated with the funds allocated to it.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, it is agreed as follows:

**PART I**

**DEFINITIONS, PURPOSE AND APPLICABLE CONDITIONS**

**1. DEFINITIONS**

- (1) "County" means Palm Beach County.
- (2) "CDBG" means the Community Development Block Grant Program of the United States Department of Housing and Urban Development.
- (3) "HCD" means Palm Beach County Housing and Community Development.
- (4) "Agency" means the Delray Elderly, L.P.
- (5) "State" means the State of Florida, Department of Community Affairs.
- (6) "Contract" means Contract number 07DB-3V-10-60-01-Z07 between Palm Beach County and the State of Florida, Department of Community Affairs.
- (6) "HCD Approval" means the written approval of the HCD Director or his designee.
- (7) "U.S. HUD" means the Secretary of Housing and Urban Development or a person authorized to act on its behalf.

**2. PURPOSE**

The purpose of this Agreement is to state the covenants and conditions under which the Agency will implement the Scope of Services set forth in Part II of this Agreement.

3. APPLICABLE CONDITIONS

The Agency shall be bound by the Contract to the extent applicable to this Agreement. Furthermore, the conditions applicable to the activities undertaken in connection with this Agreement shall include but not be limited to those listed below (as they may be amended from time to time). Palm Beach County's failure to list verbatim or make reference to a regulation, statute, ordinance, reference, or any other document affecting the Agency, shall not relieve the Agency of compliance with any applicable regulation, statute, ordinance, or any other document not listed below. The County reserves the right, but not the obligation, to inform the Agency of any such applicable regulation, statute, ordinance, or any other document, and to require the Agency to comply with the same.

1. Community Development Block Grant, Final Rule, 24 C.F.R., Part 570;
2. Florida Small and Minority Business Act, s 288.702-288.714, F.S.;
3. Florida Coastal Zone Protection Act, s 161.52-161.58, F.S.;
4. Local Government Comprehensive Planning and Land Development Regulation Act, Ch. 163, F.S.;
5. Title I of the Housing and Community Development Act of 1974, as amended;
6. Treasury Circular 1075 regarding drawdown of CDBG funds;
7. Sections 290.0401-290.049, F.S.;
8. Rule Chapter 9B-43, Fla Admin. Code.;
9. Department of Community Affairs Technical Memorandums;
10. HUD Circular Memorandums applicable to the Small Cities CDBG Program;
11. Single Audit Act of 1984;
12. National Environmental Policy Act of 1969 and other provisions of law which further the purpose of this Act;
13. National Historic Preservation Act of 1966 (Public Law 89-665) as amended and Protection of Historic Properties (24 C.F.R., part 800);
14. Preservation of Archaeological and Historical Data Act of 1966;
15. Executive Order 11593 - Protection and Enhancement of Cultural Environment;
16. Reservoir Salvage Act;
17. Safe Drinking Water Act of 1974, as amended;
18. Endangered Species Act of 1958, as amended;
19. Executive Order 12898 - Environmental Justice
20. Executive Order 11988 and 24 C.F.R. Part 55- Floodplain Management;
21. The Federal Water Pollution Control Act of 1972, as amended (33 U.S.C., s 1251 et. seq.);
22. Executive Order 11990 - Protection of Wetlands;
23. Coastal Zone Management Act of 1968, as amended;
24. Wild and Scenic Rivers Act of 1968, as amended;
25. Clean Air Act of 1977;
26. HUD Environmental Standards (24 C.F.R. Part 58);
27. Farmland Protection Policy Act of 1981;
28. Clean Water Act of 1977;
29. Davis - Bacon Act;
30. Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. s. 327 et. seq.;
31. The Wildlife Coordination Act of 1958, as amended;
32. The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1975 (42 U.S.C., s. 6901 et. seq.;
33. Noise Abatement and Control: Departmental Policy Implementation, Responsibilities and Standards, 24 C.F.R. Part 51, Subpart B;
34. Flood Disaster Protection Act of 1973, P.L. 92-234;
35. Protection of Historic and Cultural Properties under HUD Programs, 24 C.F.R. Part 59;
36. Coastal Zone Management Act of 1972, P.L. 92-583;
37. Architectural and Construction Standards;
38. Architectural Barriers Act of 1968, 42 U.S.C. 4151;
39. Executive Order 11296, relating to the evaluation of flood hazards;
40. Executive Order 11288, relating to prevention, control and abatement of water pollution;
41. Cost-Effective Energy Conservation Standards, 24 C.F.R., Part 39;
42. Section 8 Existing Housing Quality Standards, 24 C.F.R., Part 882;
43. Coastal Barrier Resource Act of 1982;
44. Federal Fair Labor Standards Act, 29 U.S.C. s. 201 et. seq.;
45. Title VI of the Civil Rights Act of 1964 - Non-discrimination;
46. Title VII of the Civil Rights Act of 1968 - Non-discrimination in housing;
47. Age Discrimination Act of 1975;
48. Executive Order 12892 - Fair Housing;
49. Section 109 of the Housing and Community Development Act of 1974, Non-discrimination;
50. Section 504 of the Rehabilitation Act of 1973 and 24 C.F.R., Part 8;
51. Executive Order 11063 - Equal Opportunity in Housing;
52. Executive Order 11246 - Non-discrimination;
53. Section 3 of the Housing and Urban Development Act of 1968, as amended - Employment /Training of Lower Income Residents and Local Business Contracting;
54. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 100-17, and 49 C.F.R. Part 24;
55. Copeland Anti Kickback Act of 1924;
56. Hatch Act;
57. Title IV Lead-Based Paint Poisoning Prevention Act (42 U.S.C. s. 1251 et. seq.);
58. OMB Circulars A-87, A-122 and A-133, as revised;
59. Administrative Requirements for Grants, 24 C.F.R. Part 85;
60. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 and 24 C.F.R. Part 12;
61. Emergency Rule 9BER05-2, CDBG Disaster Recovery Funds;
62. HUD program requirements for disaster recovery projects as published in Federal Register, Vol. 69, No. 237 (December 10, 2004) [Docket No. FR-4959 - N-01].

PART II

SCOPE OF SERVICES

The Agency shall, in a satisfactory and proper manner as determined by HCD, perform the tasks necessary to conduct the program outlined in Exhibit "A" as attached hereto and made a part hereof.

PART III

COMPENSATION, TIME OF PERFORMANCE, METHOD, AND CONDITIONS OF PAYMENT

1. MAXIMUM COMPENSATION

The Agency agrees to accept as full payment for services rendered pursuant to this Agreement the actual amount of budgeted, eligible, and HCD Director or designee-approved expenditures and encumbrances made by the Agency under this Agreement. Said services shall be performed in a manner satisfactory to HCD. In no event shall the total compensation or reimbursement to be paid hereunder exceed the maximum and total authorized sum of \$150,000 (as more specifically detailed in Exhibit A hereto) for the period of July 31, 2007 through and including May 31, 2008. Any funds not obligated by the expiration date of this Agreement shall automatically revert to the County.

2. TIME OF PERFORMANCE

The effective date of this Agreement and all rights and duties designated hereunder are contingent upon the timely release of funds for this project under State Contract number 07DB-3V-10-60-01-Z07. The effective date shall be the date of execution of this Agreement, and the services of the Agency shall be undertaken and completed in light of the purposes of this Agreement. In any event, all services required hereunder shall be completed by the Agency prior to May 31, 2008.

3. METHOD OF PAYMENT

The County agrees to make payments and to reimburse the Agency for all budgeted costs permitted by Federal, State, and County guidelines. The Agency shall not request reimbursement for payments made by the Agency before the effective date of this Agreement, nor shall it request reimbursement for payments made after the expiration date of this Agreement, and in no event shall the County provide advance funding to the Agency or any subcontractors hereunder.

The Agency shall request payments or reimbursements from the County by submitting to HCD proper documentation of expenditures consisting of originals of invoices, receipts, or other evidence of indebtedness, and when original documents cannot be presented, the Agency may furnish copies if deemed acceptable by HCD. Payment shall be made by the Palm Beach County Finance Department upon presentation of the aforesaid proper documentation of expenditures as approved by HCD.

The Agency may at any time after the expiration of this agreement request from the County reimbursement for payments made by the Agency during the term of this Agreement by submitting to HCD the aforesaid proper documentation of expenditures, and the Palm Beach County Finance Department shall make payment as stated above, provided that HCD has determined that the funds allocated to the Agency through this agreement are still available for payment, and provided that HCD approves such payment.

4. CONDITIONS ON WHICH PAYMENT IS CONTINGENT

(1) IMPLEMENTATION OF PROJECT ACCORDING TO REQUIRED PROCEDURES

The Agency shall implement this Agreement in accordance with applicable Federal, State, and County laws, ordinances and codes and with the procedures outlined in HCD Policies and Procedures memoranda. The Federal, State, and County laws, ordinances and codes are minimal regulations supplemented by more restrictive guidelines set forth by HCD. No payments for projects funded by more than one funding source will be made until a cost allocation plan has been approved by the HCD Director or designee.

Should a project receive additional funding after the commencement of this Agreement, the Agency shall notify HCD in writing within thirty (30) days of receiving notification from the funding source and submit a cost allocation plan for approval by the HCD Director or designee within forty-five (45) days of said official notification.

- (2) FINANCIAL ACCOUNTABILITY  
The County may have a financial systems analysis and/or an audit of the Agency, or of any of its subcontractors, by an independent auditing firm employed by the County or by the County Internal Audit Department at any time the County deems necessary to determine if the project is being managed in accordance with Federal, State, and County requirements.
- (3) SUBCONTRACTS  
Any work or services subcontracted hereunder shall be specifically by written contract, written agreement, or purchase order. All subcontracts shall be submitted by the Agency to HCD and approved by HCD prior to execution of any subcontract hereunder. All subcontracts shall be subject to Federal, State and County laws and regulations. This includes ensuring that all consultant contracts and fee schedules meet the minimum standards as established by the Palm Beach County Engineering Department and U.S. HUD. Contracts for architecture, engineering, survey, and planning shall be fixed fee contracts. All additional services shall have prior written approval with support documentation detailing categories of persons performing work plus hourly rates including benefits, number of drawings required, and all items that justify the "Fixed Fee Contract." Reimbursables will be at cost.  
None of the work or services covered by this Agreement, including, but not limited to, consultant work or services, shall be subcontracted or reimbursed without prior written approval of the HCD Director or his designee.
- (4) PURCHASING  
All purchasing for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the procedures prescribed by the Palm Beach County Purchasing Code, as well as Federal Management Circulars A-110, A-122, and 24CFR Part 84, which are incorporated herein by reference.
- (5) REPORTS, AUDITS, AND EVALUATIONS  
Payment will be contingent on the timely receipt of complete and accurate reports required by this Agreement, and on the resolution of monitoring or audit findings identified pursuant to this Agreement.
- (6) ADDITIONAL HCD, COUNTY, AND U.S. HUD REQUIREMENTS  
HCD shall have the right under this Agreement to suspend or terminate payments if after 15 days written notice the Agency has not complied with any additional conditions that may be imposed, at any time, by HCD, the County, the State, or U.S. HUD.
- (7) PRIOR WRITTEN APPROVALS-SUMMARY  
The following activities among others require the prior written approval of the HCD Director or designee to be eligible for reimbursement or payment:
- (a) All subcontracts and agreements pursuant to this Agreement;
  - (b) All change orders;
  - (c) All requests to utilize uncommitted funds after the expiration of this Agreement for programs described in Exhibit A.
- (8) PROGRAM-GENERATED INCOME  
All income earned by the Agency from activities financed in whole or in part by funds provided hereunder must be reported to HCD. Such income would include, but not be limited to, income from service fees, sale of commodities, and rental or usage fees. The Agency shall report its plan to utilize such income to HCD, and said plan shall require the prior written approval of the HCD Director or designee. Accounting and disbursement of such income shall comply with OMB Circular A-110 and other applicable regulations incorporated herein by reference.  
In addition to the foregoing, Program Income, as defined by 24 CFR 570.500(a), may be retained by the Agency. Program Income shall be utilized to undertake activities specified in Exhibit A of this Agreement, and all provisions of this Agreement shall apply to said activities. Any Program Income on hand at, or received after, the expiration of this Agreement shall be returned to the County.

PART IV

GENERAL CONDITIONS

1. OPPORTUNITIES FOR RESIDENTS AND CIVIL RIGHTS COMPLIANCE

The Agency agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, familial status, marital status, sexual orientation, or gender, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

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

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

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

3. PROGRAM BENEFICIARIES

At least fifty-one percent (51%) of the beneficiaries of a project funded through this Agreement must be low- and moderate- income persons. The project funded under this Agreement shall assist beneficiaries as defined above for the time period designated in this Agreement. The Agency shall provide written verification of compliance to HCD upon HCD's request.

4. EVALUATION AND MONITORING

The Agency agrees that HCD will carry out periodic monitoring and evaluation activities as determined necessary by HCD or the County and that payment, reimbursement, or the continuation of this Agreement is dependent upon satisfactory evaluation conclusions based on the terms of this Agreement. The Agency agrees to furnish upon request to HCD, the County, or the County's designees copies of transcriptions of such records and information as is determined necessary by HCD or the County. The Agency shall submit status reports required under this Agreement on forms approved by HCD to enable HCD to evaluate progress. The Agency shall provide information as requested by HCD to enable HCD to complete reports required by the County, the State, or HUD. The Agency shall allow HCD, the County, or HUD to monitor the Agency on site. Such visits may be scheduled or unscheduled as determined by HCD, the State, or HUD.

5. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as HCD, the County, the State, U.S. HUD, or the Comptroller General of the United States may deem necessary, there shall be made available by the Agency to HCD, the County, the State, U.S. HUD, or the Comptroller General for examination all its records with respect to all matters covered by this Agreement. The Agency agrees to comply with the provisions of the Single Audit Act of 1984, as amended, as it pertains to this Agreement. The Agency shall submit a single audit, including any management letter, made in accordance with the general program requirements of OMB Circulars A-110, A-122, A-133, and other applicable regulations within one hundred and eighty (180) days after the end of any fiscal year covered by this Agreement in which Federal funds from all sources are expended. Said audit shall be made by a Certified Public Accountant of the Agency's choosing, subject to the County's approval. In the event the Agency anticipates a delay in producing such audit, the Agency shall request an extension in advance of the deadline. The cost of said audit shall be borne by the Agency. In the event the agency is exempt from having an audit conducted under A-133, the Agency shall submit audited financial statements and/or the County reserves the right to conduct a "limited scope audit" of the agency as defined by A-133. The County will be responsible for providing technical assistance to the Agency, as deemed necessary by the County.

6. DATA BECOMES COUNTY PROPERTY

All reports, plans, surveys, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Agency for the purpose of this Agreement shall be made available to the County by the Agency at any time upon request by the County or HCD. Upon completion of all work contemplated under this Agreement copies of all documents and records relating to this Agreement shall be surrendered to HCD if requested. In any event the Agency shall keep all documents and records for five (5) years after expiration of this Agreement.

7. INDEMNIFICATION

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

8. INSURANCE

Unless otherwise specified in this Agreement, the Agency shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages, limits, including endorsements, as described herein. The requirements contained herein as to types and limits, as well as the County's review or acceptance of insurance maintained by the Agency, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Agency under this Agreement.

(1) COMMERCIAL GENERAL LIABILITY

The Agency shall agree to maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted by the County's Risk Management Department. The Agency agrees this coverage shall be provided on a primary basis.

(2) BUSINESS AUTOMOBILE LIABILITY

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

(3) WORKERS COMPENSATION INSURANCE

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

(4) ADDITIONAL INSURED

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

(5) CERTIFICATE OF INSURANCE

The Agency shall agree to deliver to the County a certificate(s) of insurance evidencing the required insurance is in full force and effect within thirty (30) calendar days prior to the execution of this Agreement by the County. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be included on the certificate(s). The Agency shall deliver the certificate(s) to HCD at its office at 160 Australian Avenue, Suite 500, West Palm Beach, Florida 33406.

(6) RIGHT TO REVIEW AND ADJUST

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

9. MAINTENANCE OF EFFORT

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

10. CONFLICT OF INTEREST

The Agency covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the Agency. Any possible conflict of interest on the part of the Agency or its employees shall be disclosed in writing to HCD provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project target area.

11. CITIZEN PARTICIPATION

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

12. RECOGNITION

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

13. AGREEMENT DOCUMENTS

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

- (1) This Agreement, including its Exhibits;
- (2) Office of Management and Budget Circulars A-110, A-122, A-133, and 24CFR Part 84
- (3) Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990;
- (4) Executive Orders 11246, 11478, 11625, 12432, the Davis Bacon Act, and Section 3 of the Housing and Community Development Act of 1968, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended;
- (5) Executive Orders 11063, 12259, 12892, the Fair Housing Act of 1988, and Section 109 of the Housing and Community Development Act of 1974, as amended;
- (6) Florida Statutes, Chapter 112;
- (7) Palm Beach County Purchasing Code;
- (8) Federal Community Development Block Grant Regulations (24 CFR Part 570), as amended;
- (9) The Agency's personnel policies and job descriptions;
- (10) The Agency's incorporation Certificate and Articles of Incorporation;
- (11) The Agency's By-laws;
- (12) The Agency's Certificate of Insurance;

- (13) Current list of the Agency's officers and members of its Board of Directors; and (14) Proof of the Agency's 501(c)(3) certification from the Internal Revenue Service.
- (15) Contract number 07DB-3V-10-60-01-Z07 between Palm Beach County and the State of Florida, Department of Community Affairs.

All of these documents will be maintained on file at HCD. The Agency shall keep an original of this Agreement, including its Exhibits, and all amendments thereto, on file at its principal office.

14. TERMINATION

In event of termination for any of the following reasons, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared, and capital equipment secured by the Agency with funds under this Agreement shall be returned to HCD or the County.

In the event of termination, the Agency shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement by the Agency, and the County may withhold any payment to the Agency for set-off purposes until such time as the exact amount of damages due to the County from the Agency is determined.

(1) TERMINATION FOR CAUSE

If through any cause either party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if either party shall violate any of the covenants, agreements, or stipulations of this Agreement, either party shall thereupon have the right to terminate this Agreement in whole or part by giving a fifteen (15) working day written notice of such termination to the other party and specifying therein the effective date of termination.

(2) TERMINATION DUE TO CESSATION

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

15. SEVERABILITY OF PROVISIONS

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

16. AMENDMENTS

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

17. NOTICES

All notices required to be given under this Agreement shall be sufficient when delivered to HCD at its office at 160 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, and to the Agency when delivered to its office at the address listed on page one (1) of this Agreement.

18. INDEPENDENT AGENT AND EMPLOYEES

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

19. NO FORFEITURE

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

20. PUBLIC ENTITY CRIMES

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



**DELRAY ELDERLY, L.P.**

**21. COUNTERPARTS OF THE AGREEMENT**

This Agreement, consisting of twenty (20) enumerated pages which include the exhibits referenced herein, shall be executed in three (3) counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

**22. ENTIRE UNDERSTANDING**

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

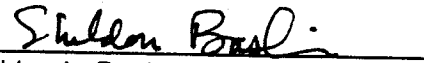
WITNESS our Hands and Seals on this \_\_\_\_ day of JUL 31, 2007.

(AGENCY SEAL BELOW)

**DELRAY ELDERLY, L.P.**

By its General Partner:  
**DELRAY ELDERLY CORPORATION,**  
A foreign corporation registered to do  
business in the State of Florida

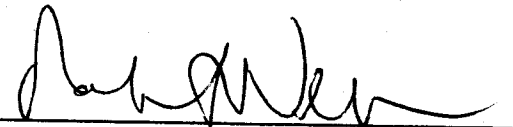
BY:   
Henry Hyatt, President

By:   
Sheldon L. Baskin, Secretary

BY: \_\_\_\_\_  
Attorney for Agency  
(Signature Optional)

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

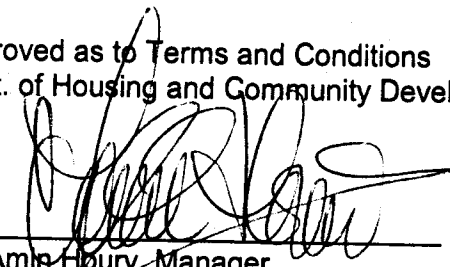
**FOR ITS BOARD OF COUNTY COMMISSIONERS**

By:   
Robert Weisman, County Administrator

Approved as to Form and  
Legal Sufficiency

BY:   
Tammy K. Fields  
Senior Assistant County Attorney

Approved as to Terms and Conditions  
Dept. of Housing and Community Development

By:   
Amin Houry, Manager  
Housing and Capital Improvements

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

**I. THE AGENCY AGREES TO:**

- A. **PROFESSIONAL SERVICES:** The Agency shall, at its own expense, procure the services of an engineering consultant for this project to provide design services to create plans and specifications for the purchase and installation of generators for Delray Elderly, L.P. located at 600 Lindell Blvd., in the City of Delray Beach. The consultant shall also prepare, obtain and review bids, prepare contract documents, inspect work in progress, recommend payment to contractor and provide other professional services customarily provided by similar professionals. The consultant shall also coordinate the design and construction work with the asbestos abatement contractor, should such abatement become necessary.

The Agency's engineering consultant for this project shall also provide the below described certification upon completion of the project.

- B. **PROJECT SCOPE :** The scope of this project subject to funding availability shall include the following work at 600 Lindell Blvd., in the City of Delray Beach :

Purchase and installation of five generators, one for each of the two (2) five-story buildings, one for each of the two (2) three-story buildings, and one for the clubhouse. The work includes construction of a concrete slab for each generator, the installation of the generators, and all electrical connections and automatic transfer switches.

**NOTE 1: The generators must be permanently installed by permanently attaching each generator to a concrete slab at each building location.**

NOTE 2: The Agency shall submit its bid package (drawings/specifications and instructions to bidders), and an itemized opinion of probable construction cost prepared by its consultant, to HCD and obtain a letter of approval prior to bidding the construction work. In submitting the bid package and drawings/specifications to HCD, the Agency shall also demonstrate that it has submitted its drawings/specifications to the City of Delray Beach building department for plan review, and that these drawings/specifications comply with all applicable building and zoning codes. The Agency recognizes that HCD must obtain the approval of the State before it is able to provide such letter, and the Agency hereby covenants that it shall plan its bid process to allow for the necessary time to fully accomplish this approval process.

NOTE 3: Construction work that has been approved for bidding by HCD shall be advertised for bid for a period of not less than twelve (12) days.

NOTE 4: The Agency shall prioritize the work in the project, and shall bid such work in a manner that would allow the receipt of itemized costs from bidders which would then allow the award of items that can be funded by the budget provided that the extent of work awarded will result in a functioning facility in the opinion of HCD.

NOTE 5: The Agency shall not award the construction contract for the project until sufficient funding is available to complete the established scope of work. All construction work shall be included in one contract. The Agency shall obtain HCD approval prior to awarding the construction contract to be funded through this Agreement. The Agency recognizes that HCD must obtain the approval of the State before HCD is able to approve the award of the construction contract, and the Agency hereby covenants that it shall plan its contract award process to allow for the necessary time to fully accomplish this approval process. After awarding such contract, the Agency shall obtain HCD approval prior to executing any change orders to such contract. Furthermore, after awarding the construction contract, the Agency shall provide HCD with a copy of the executed contract, and within thirty (30) days from the execution of the construction contract, the Agency shall provide HCD with a copy of the prime contractor's schedule for the completion of the construction work under the contract.

NOTE 6: Should the construction contract amount for this project exceed the amount to be funded by the County for construction costs through this Agreement, then the Agency shall fund all amounts in excess of the amount to be funded by the County. The Agency shall not request the County for reimbursement of any of the County's funds for construction costs until after it has expended all amounts in excess of the amount to be funded by the County.

NOTE 7: The Agency shall not request reimbursement from HCD for materials or equipment received and stored on the project site or elsewhere. The Agency shall only request reimbursement for materials and equipment that have been installed.

NOTE 8: Upon completion of the project, the Agency shall cause its architectural/engineering consultant to provide HCD a written certification. Such certification shall indicate that the project has met the specifications of the design, as may have been amended by change order, and the date of completion of construction.

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

- C. **ASBESTOS REQUIREMENTS:** The Agency shall comply with all applicable requirements contained in Exhibit D, attached hereto, for construction work in connection with the project funded through this Agreement.
- D. **DAVIS-BACON ACT:** The Agency shall request the County to obtain a Davis-Bacon wage decision for the project prior to advertising the construction work. The Agency shall incorporate a copy of the Davis-Bacon wage decision and disclose the requirements of the Davis-Bacon Act in its construction bid solicitation and contract.
- E. **BONDING REQUIREMENTS:** The Agency shall comply with the requirements of OMB Circular A-110 and 24CFR Part 84 in regard to bid guarantees, performance bonds, and payment bonds.
- F. **CONSTRUCTION PAYMENT RETAINAGE:** The Agency shall apply a retainage of at least 5% on all construction draws which retainages shall be released in conjunction with the final draw upon satisfactory completion of the project. The Agency agrees not to release such retainages until it has obtained approval from the County that the contractor and subcontractors have complied with the requirements of the Davis-Bacon Act.
- G. **FORMER PROJECTS:** The Agency shall maintain all previously completed CDBG funded projects. Failure to do so will result in forfeiture of future CDBG funds and will delay funding for ongoing activities.
- H. **WORK SCHEDULE:** The time frame for completion of the outlined activities shall be May 31, 2008.

Complete Design & Bid Documents by	Oct 15, 2007
Advertise & Accept Bids by	Nov 30, 2007
Award Contract by	Dec 31, 2007
Start Construction by	Jan 31, 2008
Complete Construction by	May 31, 2008

- I. **REPORTS:** The Agency shall submit to HCD detailed monthly and semi-annual reports as described below:
  - (a) **MONTHLY REPORT:** The Agency shall submit to HCD detailed monthly progress reports in the form provided as Exhibit B to this Agreement. Each report must account for the total activity for which the Agency is funded under this Agreement. The progress reports may be used by HCD as an additional basis for invoice reimbursement.
  - (b) **SEMI-ANNUAL REPORT:** The Agency shall submit to HCD detailed semi-annual reports in the form provided as Exhibit C to this Agreement. During the term of this Agreement, the Agency shall each 31<sup>st</sup> day of March submit such report for the prior six month period beginning on the preceding 1<sup>st</sup> day of October, and ending on said 31<sup>st</sup> day of March. In addition, during the term of this Agreement, the Agency shall each 30<sup>th</sup> day of September submit such report for the prior six month period beginning on the preceding 1<sup>st</sup> day of April, and ending on said 30<sup>th</sup> day of September.
- J. **USE OF THE PROJECT FACILITY:** The Agency agrees in regard to the use of the facility whose acquisition or improvements are being funded in part or in whole by CDBG funds as provided by this Agreement, that it will comply with the provision of Exhibit E. Upon execution of this Agreement the Agency shall execute and deliver to the County Exhibit E, which the County shall record in the public records. Recording fees associated with this Exhibit shall be charged to the project budget identified in this Agreement.
- K. **SECTION 3 REQUIREMENTS:** The Agency agrees to comply with all Section 3 requirements applicable to contracts funded through this Agreement. Information on Section 3 is available at HCD upon request. The Agency shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract for every Section 3 covered project:

**Section 3 Clause**

- (a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U. S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

**II. THE COUNTY AGREES TO:**

- A. Provide funding for the above specified improvements as described above in "Project Scope", during the term of this Agreement, in the amount of \$150,000. However, the County shall not provide any funding for the construction work until the Agency provides documentation showing that sufficient funds are available to complete the project.
- B. Provide project administration and inspection to the Agency to ensure compliance with U.S. HUD and the Department of Labor, and applicable State, Federal and County laws and regulations.
- C. Monitor the Agency at any time during the term of this Agreement. Visits may be scheduled or unscheduled as determined by HCD, be conducted by HCD staff or its contractor, and will serve to ensure compliance with State and U.S. Department of HUD regulations, that planned activities are conducted in a timely manner, and to verify the accuracy of reporting to HCD on program activities.
- D. The County shall perform an environmental review of the project, and review and approve project design and bids submitted for the work. The County shall also perform Davis Bacon Act Labor Standards monitoring and enforcement. Environmental review costs incurred by the County may be charged to the project budget identified above.
- E. Allowable costs that may be paid by the County under this Agreement in addition to those stated in II.A above:
  - (a) Costs of asbestos surveys, asbestos abatement, and abatement monitoring.
  - (b) Costs of any other services customarily associated with projects of the nature of the project contemplated by this Agreement.

The County shall review requests by the Agency for expenditures on the above items prior to undertaking the services associated with them, and approve any such expenditures it deems appropriate for this project.

**EXHIBIT B**

**PALM BEACH COUNTY**

**HOUSING & COMMUNITY DEVELOPMENT**

**MONTHLY NARRATIVE REPORT**

<b>Report For:</b>	Month: _____ Year: _____
<b>Subrecipient Name:</b>	Delray Elderly, L.P.
<b>Project Name:</b>	Generators
<b>Report Prepared By:</b>	_____
	Name _____ Signature _____ Date _____

**BUDGETING AND EXPENDITURES**

Amounts Expended this Reporting Period: CDBG Funds:\$ \_\_\_\_\_ Other Funds:\$ \_\_\_\_\_

**Amounts Expended to Date:**

////////////////////////////////////	BUDGETED	EXPENDED	PERCENTAGE
CDBG Funds:	\$ _____	\$ _____	%
Other Funds: _____	\$ _____	\$ _____	%
Other Funds: _____	\$ _____	\$ _____	%
<b>TOTAL:</b>	\$ _____	\$ _____	%

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

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

Describe your efforts to obtain any additional funds for the project during this reporting period (if your project is underfunded): \_\_\_\_\_

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

**PROJECT ACTIVITIES**

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

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

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

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

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

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

Send report to: Amin Houry  
 Department fo Housing and Community Development  
 160 Australian Avenue, Suite 500, West Palm Beach, FL 33406

S:\CapImprv\2005DisasterRecovery\Initiative\DelrayElderlyLP\_Generators\AgmtAgency.WPD

EXHIBIT C

CONTRACTUAL OBLIGATIONS AND MBE REPORT

<b>Project Name:</b>	Delray Elderly, L.P. - Generators	<b>Report Date:</b>		<b>Page</b> ___ <b>of</b> ___ <b>Pages</b>
<b>Report Period:</b>	[ ] October 1, 200___, to March 31, 200___	[ ] April 1, 200___, to September 30, 200___	<b>Prepared By:</b>	

(1) Contractor/Subcontractor name and address (fill in for each contractor or subcontractor) Include all professional services such as consultants, engineers, architects, etc. that are funded under the agreement for this project. All contractors and subcontractors (with contracts over \$10,000) that are paid with CDBG funds must be included. Do not list previously reported information.	(2) Prime Contractor Employer Identification Number*	(3) Subcontractor Employer Identification Number* (see below)	(4) Contract Period		(5) Amount of Contract or Subcontract	(6) Type of Trade (1 thru 3) (see below)	(7) Contractor or Subcontractor Racial/Ethnic Code (1 thru 7) (see below)	Procurement Compliance Checklist				
			(a) Start Date	(b) End Date				(8) Section 3 (yes or no)	(9) WBE (yes or no)	(10) Small Business (yes or no)	(11) Davis Bacon (yes or no)	(12) Type of Procurement (see below)
Name: Street: City: State & Zip Code:												
Name: Street: City: State & Zip Code:												
Name: Street: City: State & Zip Code:												
Name: Street: City: State & Zip Code:												
Name: Street: City: State & Zip Code:												
(3) When subcontractor employer identification number is used, information in columns 4 through 11 must reflect the subcontractor information, not the prime contractor's information; also include the prime contractor's employer identification number.  * Employer identification number or social security number		(6) Type of Trade Codes: 1 = New construction (including rehab, water, and sewer) 2 = Education/Training 3 = Other (including supply, professional services and other activities except construction and education/training)	(7) Racial/Ethnic Code: 1 = White American    5 = Asian/Pacific American 2 = Black American    6 = Hasidic Jews 3 = Native American    7 = Other 4 = Hispanic American (9) WBE = Women Business Enterprise				(12) Type of Procurement Code: CB = Competitive Bid E = Emergency Purchase CN = Competitive Negotiation NC = Non-Competitive Negotiation SP = Small Purchase					

**EXHIBIT D**

**ASBESTOS REQUIREMENTS**  
**SPECIAL CONDITIONS FOR DEMOLITION AND RENOVATION OF BUILDINGS**

The provisions of this part apply to all demolition and renovation work contemplated in this Agreement and described in Exhibit A of this Agreement.

**I. DEFINITIONS**

ACBM: Asbestos Containing Building Materials  
AHERA: Asbestos Hazard Emergency Response Act  
EPA: Environmental Protection Agency  
FLAC: Florida Licensed Asbestos Consultant  
HCD: Palm Beach County Department of Housing and Community Development  
NESHAP: National Emission Standards for Hazardous Air Pollutants  
NRCA: National Roofing Contractors Association  
NVLAP: National Voluntary Laboratory Accreditation Program  
OSHA: Occupational Health and Safety Administration  
PBCAC: Palm Beach County Asbestos Coordinator (in Risk Management)  
TEM: transmission electron microscopy

**II. ASBESTOS SURVEYS**

All properties scheduled for renovation or demolition are required to have a comprehensive asbestos survey conducted by a Florida Licensed Asbestos Consultant (FLAC). The survey shall be conducted in accordance with AHERA guidelines. Analysis must be performed by a NVLAP accredited laboratory.

For Renovation Projects (projects which will be reoccupied):

- Point counting must be done for all asbestos containing building materials (ACBM) indicating less than 1% asbestos (to determine if any asbestos is present).
- Samples of vinyl floor tile indicating asbestos not detected must be confirmed by transmission electron microscopy (TEM).
- Joint compound shall be analyzed as a separate layer.
- Roofing material shall be sampled only if a renovation requires the roof to be disturbed (in lieu of sampling the roof, it may be presumed to contain asbestos).

For Demolition Projects:

- Point counting must be done for all "friable" asbestos containing building materials (ACBM), indicating less than 1% asbestos. This includes joint compounds (to be analyzed as a separate layer), and vinyl asbestos tile.
- Roof materials shall be presumed to be asbestos containing.

If the Agency has a recent asbestos survey report prepared by a licensed asbestos consultant, a copy may be provided to HCD and PBCAC for review to determine if the survey is adequate to proceed with renovation/demolition work. If no survey is available, a survey may be initiated by the Agency or requested by HCD. A copy of the completed survey will be forwarded to the Agency. All asbestos survey's shall be forwarded to the PBCAC.

**III. ASBESTOS ABATEMENT**

**A. RENOVATION**

- (a) Prior to a renovation, all asbestos containing materials that will be disturbed during the renovation, must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC. Exceptions may be granted by HCD prior to the removal, (such as asbestos containing roofs, transite pipe). The Agency must obtain approval for all exceptions from HCD. HCD will request the PBCAC to review and approve all exceptions.
- (b) Asbestos Abatement work may be contracted by the Agency or by HCD upon request.
- (c) If the Agency contracts the asbestos abatement, the following documents are required to be provided to the HCD and the PBCAC.
  1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
  2. Pre and Post Job submittals, reviewed and signed by the FLAC.

- (d) If the Agency requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Agency.
- (e) Materials containing <1% asbestos are not regulated by EPA/NESHAPS. However, OSHA compliance is mandatory. OSHA requirements including training, wet methods, prompt cleanup in leak tight containers, etc. The renovation contractor must comply with US Dept of Labor, Standard Interpretation (OSHA), Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003. The renovation contractor must submit a work plan to HCD and the PBCAC prior to removal of the materials.

**B. DEMOLITION**

All "friable" ACM must be removed by a Florida Licensed Asbestos Contractor under the direction of a FLAC prior to demolition. Friable materials include: resilient asbestos tile and mastic which is not intact, linoleum, asbestos containing joint compound, asbestos containing cement panels (e.g. transite), etc.

Intact resilient tile and asbestos roof materials may be demolished with adequate controls (e.g. wet method) by a demolition contractor provided the contractor is aware of the asbestos containing materials present and exercises adequate control techniques (wet methods, etc.). In all cases, demolition work should be monitored by a FLAC to insure proper control measures and waste disposal. Any exceptions to these guidelines may be requested through HCD prior to the removal, (such as asbestos containing roofs, transite pipe). Exceptions may be granted by HCD prior to the removal, (i.e. asbestos containing roofs, transite pipe). The Agency must obtain approval for all exceptions from HCD and the PBCAC.

- (a) Asbestos Abatement work may be contracted by the Agency or by HCD upon request.
- (b) If the Agency contracts the asbestos abatement, the following documents must be provided to the PBC/HCD and reviewed by the PBCAC.
  - 1. An Asbestos Abatement Specification (Work Plan), sealed by an FLAC.
  - 2. Pre and Post Job submittals, reviewed and signed by the FLAC.
- (c) If the Agency requests HCD to contract the asbestos abatement, HCD will initiate the request through the PBCAC who will contract the asbestos abatement. HCD will provide a copy of all contractor and consultant documents to the Agency.
- (d) Recycling, salvage or compacting of any asbestos containing materials or the substrate is strictly prohibited.
- (e) In all cases, compliance with OSHA "Requirements for demolition operations involving material containing <1% asbestos is mandatory.
- (f) For all demolitions involving asbestos containing floor tile, asbestos containing roofing material and materials containing <1%, the Demolition Contractor shall submit the following documents to HCD. HCD will provide a copy of these documents to PBCAC.
  - 1. Signed statement that the demolition contractor has read and understood the requirements for complying with EPA, OSHA and the State of Florida Licensing regulations for demolition of structures with asbestos materials.
  - 2. Submit a plan for the demolition of asbestos containing roofing and floor tile. State if these materials are likely to remain intact. Include in the plan what shall occur if materials become "not intact".
  - 3. Submit a plan for compliance with OSHA requirements such as but not limited to: competent person, establishing a regulated area, asbestos training of workers, respiratory protection, use of disposable suits, air monitoring, segregation of waste, containerizing asbestos waste, waste disposal.
- (g) If materials are discovered that are suspect asbestos materials that were not previously sampled, stop all work that will disturb these materials and immediately notify HCD.



#### IV. NESHAPS NOTIFICATION

##### A. RENOVATION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to an asbestos renovation that includes regulated asbestos containing material greater than 160 square feet or 260 linear feet or 35 cubic feet. For lesser quantities, the Agency (or its contractor) shall provide a courtesy notification to the Palm Beach County Health Department at least ten working days prior to an asbestos renovation. The removal of vinyl asbestos floor tile and linoleum shall be considered regulated. Asbestos roof removal requires a notification at least 3 working days prior to the removal.

##### B. DEMOLITION

A NESHAP form must be received by the Palm Beach County Health Department at least ten working days prior to the demolition.

- C. The NESHAP notification shall be sent return receipt requested to the address shown below with a copy to HCD. HCD shall provide a copy to the PBCAC. All fees shall be paid by the Agency.

Palm Beach County Department of Health  
Asbestos Coordinator  
901 Evernia Street  
Post Office Box 29  
West Palm Beach, Florida 33401

#### V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES

The Agency, through its demolition or renovation contractor, shall comply with the following asbestos regulations/guidelines. This list is *not* all inclusive:

- (a) Environmental Protection Agency (EPA) NESHAP, 40 CFR Parts 61 Subpart M – National Emission standard for Asbestos, revised July 1991
- (b) Occupational Health and Safety Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101
- (c) EPA: A Guide to Normal Demolition Practices Under the Asbestos NESHAP, September 1992
- (d) Demolition practices under the Asbestos NESHAP, EPA Region IV
- (e) Asbestos NESHAP Adequately Wet Guidance
- (f) Florida State Licensing and Asbestos Laws
  1. Title XVIII, Chapter 255, Public property and publicly owned buildings.
  2. Department of Business and Professional Regulations, Chapter 469 Florida Statute, Licensure of Asbestos Consultants and Contractors
- (g) Resilient Floor Covering Institute, NRCI, Updated Recommended Work Practices and Asbestos Regulatory Requirements, September 1998.
- (h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995
- (i) US Dept of Labor, Standard Interpretation (OSHA)
  1. Application of the asbestos standard to demolition of buildings with ACM in Place, 8/26/2002.
  2. Requirements for demolition operations involving material containing <1% asbestos, 8/13/1999.
  3. Compliance requirements for renovation work involving material containing <1% asbestos, 11/24/2003.

EXHIBIT E

Return to:  
Palm Beach County  
Housing & Community Development  
160 Australian Avenue, Suite 500  
West Palm Beach, Florida 33406  
Prepared by: Tammy K. Fields,  
Senior Assistant County Attorney  
Attention: Amin Houry

DECLARATION OF RESTRICTIONS

The undersigned, Delray Elderly, L.P., a foreign limited partnership duly registered to do business in the State of Florida, having its principal office at 200 E. Randolph Street, Suite 2100, Chicago, IL, 60601, hereinafter referred to as "Declarant", for the property described below, in consideration of funding in the amount of One Hundred Fifty Thousand Dollars (\$150,000) received from the Palm Beach County Board of County Commissioners (the "County") does hereby grant to the County the following restrictions against the subject property, hereinafter referred to as the Property, and described as:

Parcel I:

Tracts 1 and 2, together with that part of Lake Del lying Southeastwardly on the Southeasterly line of Hungerford Canal Easement, as shown on the Plat of Lake Delray Apartments, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court, in and for Palm Beach County, Florida, recorded in Plat Book 28, page 237, said lands situate, lying and being in Palm Beach County, Florida.

Parcel II:

Tracts 3 and 4, together with that part of Lake Del lying Northwestwardly of the Northwesterly line of Hungerford Canal Easement, as shown on the Plat of Lake Delray Apartments, according to the Plat thereof on file in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book 28, page 237, said lands situate, lying and being in Palm Beach County, Florida.

Property Control Number(s): 12-43-46-29-08-001-0000

1. These restrictions shall be deemed a covenant running with the land and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and executed with the same formalities as this document.
2. In consideration of the County's grant in the amount of \$150,000 (in CDBG dollars) as provided through a grant Agreement with the County dated July 31, 2007, the Declarant hereby covenants and agrees for a period of 10 years commencing with the expiration date of said grant Agreement (as may be amended from time to time) to use the subject property as described in the Declarant's funding application to the County, and as described in said grant Agreement, and the Declarant further agrees to maintain insurance as required in the grant Agreement.
3. The Declarant agrees in regard to the use of the facility/property whose acquisition or improvements were funded through the grant Agreement that for a period of ten (10) years after the expiration date of said Agreement (as may be amended from time to time):
  - (a) The Declarant may not change the use or planned use, or discontinue use, of the facility/property (including the beneficiaries of such use) from that for which the acquisition or improvements were made, unless the Declarant provides affected citizens with reasonable notice of, and opportunity to comment on, any such proposed change and either:
    1. The new use of the facility/property, in the opinion of the County, qualifies as meeting one of the national objectives defined in the regulations governing the CDBG program, and is not a building for the general conduct of government; or
    2. The requirements of paragraph 3(b) of this section are met.

- (b) If the Declarant determines after consultation with affected citizens, that it is appropriate to change the use of the facility/property to a use which does not qualify under Paragraph 3(a)(1) of this section or discontinue use of the facility/property, it may retain or dispose of the facility for such use if the County is reimbursed in the amount of the current fair market value of the facility/property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to the facility/property. The final determination of the amount of any such reimbursement to the County under this paragraph shall be made by the County.
- (c) Following the reimbursement of CDBG funds by the Declarant to the County pursuant to Paragraph 3(b) above, the facility/property will then no longer be subject to these restrictions, and the County shall then release these restrictions as described above.

In the event of any proposed sale, conveyance or transfer of the subject property, the Declarant must obtain approval of the County, through its Housing and Community Development Department. Any approved sale or conveyance of the subject property by the Declarant will be contingent upon the receipt of the payment by the County in accordance with the provisions of Paragraph 3(b) above, or the receipt of a commitment, executed by a subsequent owner acceptable to the County, confirming its acceptance of the restrictions and conditions provided herein for the duration of this Declaration.

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

4. The Declarant agrees to notify the County of any liens, judgements or pending foreclosure on the subject property within five (5) working days of the receipt of said notice by the Declarant.

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

5. Declarant relinquishes all rights to alter, amend, modify, or release these covenants prior to the completion of the ten year period described above.

6. In the event of any litigation necessary to enforce the terms of the Declaration, the Declarant agrees to reimburse the County for attorneys fees and costs associated with litigation.

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

**DELRAY ELDERLY, L.P.**

By its General Partner:  
**DELRAY ELDERLY CORPORATION,**  
 A foreign corporation registered to do  
 business in the State of Florida

**(DO NOT SIGN THIS EXHIBIT)**

By: \_\_\_\_\_  
**Henry Hyatt, President**

(CORPORATE SEAL ABOVE)

STATE OF FLORIDA  
 COUNTY OF PALM BEACH

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

**(DO NOT SIGN THIS EXHIBIT)**

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

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

(NOTARY SEAL ABOVE)

SEP 12 2008



September 10, 2008

Housing and Community Development  
Housing & Capital Improvements  
160 Australian Ave Suite #500  
West Palm Beach, Fl 33444

Re: 2005 Disaster Recovery Initiative Program  
Delray Elderly, LP – Purchase/Installation of Generators  
Request for Completion Date Extension

Dear Mr. Houry:

On February 1, 2008, I petitioned your office to allow us a 4 month extension to the Time of Performance requirements of our agreement. Your office was very cooperative and granted the extension. Unfortunately, due to several extenuating circumstances, I am forced to ask for another extension.

We received the electrical site plan from our consulting engineers, Teele and Associates, during February of 2008. The electrical site plan as developed by Teele and Associates was considerably more extensive than we had anticipated. The ordinance from the City of Delray Beach requires that our buildings have auxiliary generators that will power corridor lighting, exit signs and one elevator for each building. Teele and Associates determined that my 2 five story buildings would require 100 KW generators, and my 2 three story buildings would require 80 KW generators. These were considerably larger than was originally expected. Additionally, the ordinance requires that these generators be capable of operating for no less than 120 hours continuous. This would require that we maintain approximately 600 gallons of diesel fuel per generator. The size and scope of the installation of these generators necessitated our hiring of A. William Seegers architects to facilitate the project.

Mr Seegers initial findings showed that due to the size of the generators, proper location and placement would be crucial. We hired Renner, Burgess, Inc. in March 2008 to conduct a site survey of the property that would allow us to determine the proper location and elevations for the concrete pads that the generators would require.

Of considerable concern for this project was the requirement that we maintain approximately 600 gallons of diesel fuel for each of the generators. At the current price

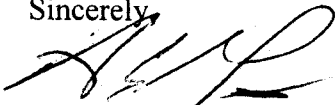
of fuel, this is a considerable expense, and unless the generators are run constantly, the diesel will not be replenished and will eventually deteriorate. In an effort not to store diesel fuel, we explored the alternative of using either natural gas or propane to power these generators. Mr Seegers consulted with Florida Public Utilities and Amerigas for their proposals to provide alternative fuel sources. Unfortunately, both natural gas and propane do not provide the same BTU output as diesel fuel, and it was necessary to determine the feasibility of using these alternative fuels.

In our discussion with ThyssenKrupp Elevators, we determined that our elevators have an "across the line" starting system for the hydraulic pumps. This starting system has a tremendous initial amperage draw. ThyssenKrupp told us that with the lower BTU output of alternative fuels, the generators would have a voltage drop every time the elevator starting system kicked on, and would eventually lead to the system failing. ThyssenKrupp suggested three alternatives. We could remain with diesel fuel. We could use alternative fuel and increase the size of the generators from 100KW to 110KW and 80KW to 100KW. We could replace the "across the line" starting system on the elevators with a new "solid state" circuitry at a total cost of approximately \$22000.00. We experienced significant delays in having engineers and architects evaluating each of these options to insure we incorporate the appropriate solution.

We have finally finished our evaluations, and are in the final stages of completion. We are scheduling with City of Delray Beach Planning and Zoning to review the site plan. We are asking for an extension of 6 months to finish our generator installations. I have discussed the time frame extensively with Mr Seegers, and he feels that this is the necessary time for obtaining all necessary approvals from both city and county as well as an appropriate bid period and final construction. Please allow us until March 30, 2009 to complete this project.

If you need any further information, please contact me in the management office.

Sincerely,



Harold E. Ginn  
Agent for Owner  
Delray Elderly, LP