

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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**Meeting Date:** April 21, 2009 ☐ Consent ☒ Regular  
☐ Public Hearing

**Department:** Housing and Community Development

**Submitted By:** Housing and Community Development

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: Execution of a Subordination Agreement in connection with a Mortgage executed by Village Centre Apartments, Ltd. in favor of Palm Beach County.

**Summary:** On October 16, 2007, the Board of County Commissioners (BCC) approved a Funding Agreement (R2007-1868) with Village Centre Apartments, Ltd. allocating a total of \$1,300,000 for the development and construction of Village Centre Apartments (a low to moderate income home ownership project). The project owner now wishes to borrow \$200,000 from the state's Florida Housing Finance Corporation and is requesting Palm Beach County subordinate its interest in the existing mortgage to that of the new mortgage with the State. Evaluation of this request indicates that the County's financial interest in the encumbered Village Centre Apartments property will not be adversely affected as a result of this transaction. (District 7) (TKF)

**Background and Justification:** The Board of County Commissioners (BCC) approved a Funding Agreement (R2007-1868) with Village Centre Apartments, Ltd. on October 16, 2007 to provide \$1,300,000 to assist in the development and construction of Village Centre Apartments which is an eighty-four (84) unit workforce housing project. The new loan from the Florida Housing Finance Corporation is a three (3) year short term transaction which will pay for pre-development expenses. Once this loan has been repaid by Village Centre Apartments, the County will move back into its original lien position. As a result of the County's funding, eleven (11) of these units will be set aside for elderly and disabled homebuyers, and twenty (20) other units will be set-aside for homebuyers earning up to moderate income (120% AMI). The sales price of the disabled/elderly units will be reduced by \$81,818 and the other units' sales price will be reduced by \$20,000. These are SHIP and HOME funds which have been allocated to affordable housing development.

**Attachments:**

1. Mortgage Subordination Agreement

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**Recommended by:** Edward W. Foyne 3/30/09  
Date

Department Director

**Approved By:** Sharon G. Byrd 4/8/09  
Date

Assistant County Administrator

## 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					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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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:

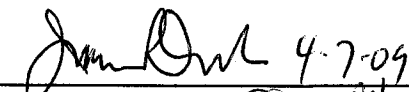
**No fiscal impact**


### C. Departmental Fiscal Review:

 3-30-09  
 Shairette Major, Fiscal Manager I

## III. REVIEW COMMENTS

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

 4-7-09  
 OFMB

 4/7/09  
 Contract Development and Control

### B. Legal Sufficiency:

 4/7/09  
 Senior Assistant County Attorney

### C. Other Department Review:

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

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

Prepared by and return to:

Robert J. Pierce, Assistant General Counsel  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, Florida 32301-1329

**SUBORDINATION AGREEMENT**  
(VILLAGE CENTRE PLP LOAN 07-154)

THIS SUBORDINATION AGREEMENT (this "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between FLORIDA HOUSING FINANCE CORPORATION, a public body corporate and politic organized and existing under the laws of the State of Florida, whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 (the "Senior Lender"), and PALM BEACH COUNTY, a political subdivision of the State of Florida, whose address is \_\_\_\_\_ (the "Subordinate Lender").

**RECITALS**

A. The Senior Lender has agreed to make a loan (the "Senior Mortgage Loan") to Village Centre Apartments, Ltd., a Florida limited partnership, (the "Borrower") in the original principal amount of \$200,000.00 under the Senior Lender's Predevelopment Loan Program. As security for the Senior Mortgage Loan and contemporaneously with the closing thereof, the Borrower will be required to execute and deliver to and in favor of the Senior Lender a senior mortgage lien entitled Mortgage and Security Agreement (the "Senior Mortgage") encumbering certain real property owned by the Borrower located in Palm Beach County, Florida, as more fully described in Exhibit A attached hereto (together with any improvements thereon, the "Property"), which said Senior Mortgage shall be recorded in the public records of Palm Beach County, Florida.

B. The Subordinate Lender previously made a loan (the "Subordinate Loan") to the Borrower in the principal amount of \$1,300,000.00. The Subordinate Lender is the owner and holder of the note evidencing the Subordinate Loan and the mortgage (the "Subordinate Mortgage") given by the Borrower as security therefor. The Subordinate Mortgage encumbers the Property or portions thereof and is evidenced by that certain Mortgage and Security Agreement recorded in Official Records Book 22228, page 756, of the public records of Palm Beach County, Florida.

C. As a condition of making the Senior Mortgage Loan and advancing funds thereunder, the Senior Lender requires that the Subordinate Mortgage be made subordinate and inferior to the lien of the Senior Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Mortgage Loan, including but

Subordination Agreement  
Village Centre PLP Loan 07-154

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not limited to, a promissory note, loan agreement, land use restriction agreement and environmental indemnity agreement (collectively, the "Senior Mortgage Loan Documents").

D. The Subordinate Lender has agreed to subordinate the Subordinate Mortgage to the lien of the Senior Mortgage and the other Senior Mortgage Loan Documents.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The above recitals are true and correct and form a part of this Agreement.
2. The Senior Lender and the Subordinate Lender agree that (i) the indebtedness evidenced by the Subordinate Mortgage is and shall be subordinated in right of payment to the prior payment in full of the indebtedness evidenced by the Senior Mortgage and the other Senior Mortgage Loan Documents, and (ii) the Subordinate Mortgage is and shall be subject, inferior and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage and the other Senior Mortgage Loan Documents and to all advances which may be made pursuant to the Senior Mortgage and the other Senior Mortgage Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Mortgage, curing defaults by the Borrower under the Senior Mortgage Loan Documents or for any other purpose expressly permitted by the Senior Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).
3. The Senior Lender and the Subordinate Lender agree that the subordination of the Subordinate Mortgage to the lien of the Senior Mortgage shall have the same force and effect as if the Senior Mortgage and the other Senior Mortgage Loan Documents had been executed, delivered, and recorded prior to the execution, delivery, and recording of the Subordinate Mortgage.
4. If any proceedings are brought by the Subordinate Lender against the Property, whether foreclosure proceedings are commenced on the Subordinate Mortgage or in execution of any judgment on any obligation or agreement that it secures, the judicial sale in connection with the proceedings shall not discharge the lien of the Senior Mortgage nor shall such proceedings affect the terms, conditions and covenants of the other Senior Mortgage Loan Documents, including, specifically the land use restriction agreement executed by the Borrower and the Senior Lender in connection with the Senior Mortgage Loan. Any such proceedings shall be subject and subordinate in all respects to the lien and payment of the Senior Mortgage and to the terms, covenants and conditions of the other Senior Mortgage Loan Documents.
5. This Agreement shall be recorded contemporaneously with the recording of the Senior Mortgage.

6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, without limitation.

7. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

**SIGNATURE PAGE FOR SUBORDINATION AGREEMENT**

This Agreement is given, executed and delivered by the undersigned as of the day and year first written above.

WITNESSES:

Sheila A. Freaney  
Print Name: Sheila A. Freaney

Sherry M. Green  
Print Name: Sherry M. Green

FLORIDA HOUSING FINANCE  
CORPORATION

By: [Signature]  
Name: Stephen P. Auger  
Title: Executive Director

"SENIOR LENDER"

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me on the 18<sup>th</sup> day of March, 2009, by Stephen P. Auger, as Executive Director of Florida Housing Finance Corporation, on behalf of the corporation. Such person is (check one): ☒ personally known to me or ☐ produced a valid driver's license as identification.

(NOTARY SEAL)

Sheila A. Freaney  
Notary Public, State of Florida



**Sheila A. Freaney**  
Commission # DD572738  
Expires October 23, 2010  
Borrower Title Form - 11/04/08, 100-300-7010

**SIGNATURE PAGE FOR SUBORDINATION AGREEMENT**

This Agreement is given, executed and delivered by the undersigned as of the day and year first written above.

(COUNTY SEAL)

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

BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
\_\_\_\_\_, Chairperson

ATTEST:

“SUBORDINATE LENDER”

\_\_\_\_\_, Clerk & Comptroller  
Clerk of the Circuit Court

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

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

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

BY: \_\_\_\_\_  
Assistant County Attorney

BY: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, Chairperson of the Board of County Commissioners of Palm Beach County, Florida, a political subdivision of the State of Florida, on behalf of the County. Such person is (check one): \_\_\_\_ personally known to me or \_\_\_\_ produced a valid driver's license as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public, State of Florida

**EXHIBIT A  
TO SUBORDINATION AGREEMENT**

**Lots 35 through 44, inclusive, Block 17, NORTHWOOD ADDITION TO WEST PALM BEACH (PLAT NO. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.**