

Agenda Item #:

3I-4

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: June 8, 2010

☒ Consent

☐ Regular

☐ Public Hearing

Department: Housing & Community Development

Submitted By: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: A Subordination Agreement with Florida Housing Finance Corporation, and Villages at Delray Apartments, and an Intercreditor and Subordination Agreement with Village at Delray, Ltd., PNC Bank, National Association, and Florida Housing Finance Corporation, dated May 6, 2010, for the Village at Delray Apartments.

Summary: The Board of County Commissioners authorized the Chair to execute these Subordination Agreements and Intercreditor Agreement pursuant to the Loan Agreement approved on February 23, 2010 (Document R-2010-0260). (District 7) TKF

Background and Justification:

Attachments:

1. Subordination Agreement with Florida Housing Finance Corporation
2. Intercreditor & Subordination Agreement with PNC Bank, National Association, And Florida Housing Finance Corporation

Recommended by:

Maureen Tault
County Attorney

For Denise Nien

Date

5/20/10

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____ Object _____

Reporting Category _____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

NO NEGATIVE fiscal impact.
5/25/10
5/26/10
5/26/10
OFMB Fiscal and/or Contract Development and Control
Contract Development and Control
E. June 5/26/10

B. Legal Sufficiency:

5/19/10
Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

THIS INSTRUMENT PREPARED
BY AND RETURN TO:
Jan Albanese Carpenter, Esq.
Latham, Shuker, Eden & Beaudine, LLP
P.O. Box 3353
Orlando, Florida 32802

ABOVE SPACE RESERVED FOR
RECORDING PURPOSES ONLY

SUBORDINATION AGREEMENT
(Third Mortgage)

(Villages at Delray Apartments)
(Tax Credit Assistance Program / HOME / RFP 2009-03 / 2009-037CT / 2010-003CT)

THIS SUBORDINATION AGREEMENT (this "Agreement") is made and entered into as of May 4th, 2010, by (i) FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Senior Mortgagee") (which term as used in every instance shall include Senior Mortgagee's successors and assigns); (ii) PALM BEACH COUNTY, a political subdivision of the State of Florida (the "Subordinate Mortgagee"); and (iii) VILLAGE AT DELRAY, LTD., a Florida limited partnership (the "Borrower").

RECITALS

A. Borrower executed and delivered to the Subordinate Mortgagee a Promissory Note dated April 28, 2010 (the "Subordinate Note") in the original principal amount of \$750,000 evidencing a loan (the "Subordinate Loan") secured by that certain Mortgage and Security Agreement dated April 28, 2010, to be recorded in the public records of Palm Beach County, Florida. The aforesaid Mortgage encumbers the real property described in Exhibit "A" attached hereto and made a part hereof, the improvements thereon, and certain personal property relating thereto (collectively, the "Property"). Hereinafter the aforesaid Subordinate Note and the Mortgage in favor of the Subordinate Mortgagee are collectively referred to as the "Subordinate Mortgage."

B. Borrower executed and delivered to the Senior Mortgagee a TCAP Promissory Note (the "TCAP Note") evidencing a loan under the Tax Credit Assistance Program in the original principal amount of \$7,384,100 (the "TCAP Loan") and a HOME Promissory Note (the "HOME Note", and together with the TCAP Note referred to herein collectively as the "Senior Note") evidencing a loan under the HOME Investment Partnerships Program in the original principal amount of \$115,900 (the "HOME Loan", and together with the TCAP Loan referred to herein collectively as the "Senior Loan") secured by a TCAP and HOME Consolidated Mortgage

Subordination Agt (3rd Mtge)
Villages at Delray (TCAP)

and Security Agreement dated as of May 6, 2010. Hereinafter the aforesaid Senior Note and the Mortgage and Security Agreement in favor of Senior Mortgagee are collectively referred to as the "Senior Mortgage."

C. Senior Mortgagee will not make the Senior Loan unless it is secured by a mortgage upon and security interest in the Property, second in priority only to (i) that certain Multifamily Mortgage, Assignment of Rents and Security Agreement securing a construction loan in the original principal amount of \$6,280,000 (the "Construction Mortgage") and (ii) that certain Multifamily Mortgage, Assignment of Rents and Security Agreement securing a bridge loan in the original principal amount of \$6,270,000 (the "Bridge Mortgage", and together with the Construction Mortgage collectively referred to herein as the "First Mortgage"), both in favor of PNC BANK, NATIONAL ASSOCIATION, a national banking association ("First Mortgagee") and both to be recorded in the Public Records of Palm Beach County, Florida.

D. To induce the Senior Mortgagee to make the Senior Loan, the Subordinate Mortgagee is willing to subordinate the Subordinate Mortgage to the Senior Mortgage.

AGREEMENT

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, from one to the other paid, the receipt and sufficiency whereof is hereby acknowledged, and to induce Senior Mortgagee to make the Senior Loan, the parties do hereby agree:

1. **Recitals.** The Recitals are true and correct and are made a part hereof.
2. **Subordination.**

(a) The Subordinate Mortgage is now and forever hereafter made subordinate and inferior to the Senior Mortgage and to all debt evidenced or secured thereby including principal, interest, costs and expenses, and to any and all extensions, modifications, amendments, enlargements or renewals thereof or future advances made thereunder. Further, the terms of the Subordinate Mortgage and all rights and remedies of the Subordinate Mortgagee available to the Subordinate Mortgagee pursuant to the Subordinate Mortgage, including but not limited to the right to claim or receive any insurance or condemnation awards or proceeds, are hereby expressly subordinate to the terms of the Senior Mortgage and the rights and remedies of Senior Mortgagee under the Senior Mortgage.

(b) The indebtedness of Borrower, and any other obligor pursuant to the Subordinate Note, and any and all other indebtedness and other obligations of Borrower to Subordinate Mortgagee, and the Subordinate Mortgage and all other liens, encumbrances and security interests given to secure the payment of the Subordinate Note and any other obligations of payment or performance of Borrower to Subordinate Mortgagee, whether now existing or hereafter created or acquired, shall be and hereby are subordinated in lien, priority and payment of principal and interest and all other charges and fees, including, without limitation, taxes and insurance premiums paid by Senior Mortgagee and interest accruing after any default or petition

in bankruptcy, to the indebtedness of Borrower pursuant to the Senior Note, and all liens, encumbrances and security interests given to secure the payment thereof, whether now existing or hereafter created or acquired, including, without limitation, the Senior Mortgage and to any and all other loans, advances, extensions of credit, or other accommodations to or for the account of Borrower as Senior Mortgagee may elect to make from time to time, and any and all other indebtedness of Borrower to Senior Mortgagee, whether now existing or hereafter created or acquired, and any and all liens, encumbrances, and security interests given to secure the repayment or payment thereof, whether now existing or hereafter created or acquired, and to such renewals and extensions thereof as Senior Mortgagee may elect to make from time to time.

3. **Conditions Precedent to Remedial Action.** If a default occurs under the Subordinate Mortgage (a "Subordinate Loan Default") and is continuing, the Subordinate Mortgagee agrees that, without the Senior Mortgagee's prior written consent, it will not commence foreclosure proceedings with respect to the Property under the Subordinate Mortgage or exercise any other rights or remedies it may have under the Subordinate Mortgage, including, but not limited to accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Mortgage), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Mortgagee at least thirty (30) days' prior written notice. The Senior Mortgagee shall have the right, but not the obligation, to cure any Subordinate Loan Default within the same time period for curing a default which is given to the Borrower under the Subordinate Loan Documents, except that the Senior Mortgagee's time period for cure shall begin on the date on which it receives notice of the Subordinate Loan Default. All amounts advanced or expended by the Senior Mortgagee to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Mortgagee pursuant to, and shall be secured by the lien of, the Senior Mortgage.

4. **Insurance, Condemnation.** In the event of partial or total destruction of the Property which results in the payment of insurance proceeds, or in the event of a condemnation or similar proceeding which results in the payment of an award, the proceeds or award shall be applied in accordance with the relevant provisions of the Senior Mortgage.

5. **Modifications to Subordinate Mortgage.** Borrower agrees that it will not modify the Subordinate Mortgage without the prior written consent of the Senior Mortgagee.

6. **Notices.** Each notice, request, demand, consent, approval or other communication (hereinafter in this section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Mortgagee or the Subordinate Mortgagee is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been

received two (2) days after mailing in the United States), addressed to the respective parties as follows:

Senior Mortgagee: Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Attention: Executive Director
Phone: (850) 488-4197
Fax: (850) 488-9809

with a copy to: Latham, Shuker, Eden & Beaudine, LLP
390 North Orange Ave., Suite 600
Orlando, Florida 32801
Attention: Jan Albanese Carpenter, Esq.
Phone: (407) 481-5800
Fax: (407) 481-5801

Subordinate
Mortgagee: Board of County Commissioners
c/o Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401
Phone: (561) 355-2225
Fax: (561) 355-4398

Borrower: Village at Delray, Ltd.
777 E. Atlantic Avenue, Suite 200
Delray Beach, Florida 33483
Attention: Thomas Hinnars
Phone: (561) 278-3901
Fax: (561) 274-3903

with a copy to: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Attention: Brian J. McDonough, Esq.
Phone: (305) 789-3350
Fax: (305) 789-3395

with a copy to: PNC Bank, National Association
500 W. Jefferson Street, Suite 2300
Louisville, Kentucky 40202
Attention: Commercial Real Estate Loan Administration
Phone: () -
Fax: () -

with a copy to: Kutak Rock LLP
 1650 Farnam Street
 Omaha, Nebraska 68102
 Attention: Gregg Yeutter, Esq.
 Phone: (402) 346-6000
 Fax: (402) 346-1148

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

7. **No Waiver.** The giving of consent by Senior Mortgagee to the giving of the Subordinate Mortgage is not and shall not be deemed a waiver of the Senior Mortgagee's rights to prohibit any other junior mortgage of the Property. No delay on the part of Senior Mortgagee or Subordinate Mortgagee in the exercise of any right or remedy hereunder or under the Senior Mortgage or Subordinate Mortgage, respectively, shall operate as a waiver of any right hereunder.

8. **Counterparts.** The parties hereto agree that this Subordination Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

9. **Costs of Enforcement.** Should suit be brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees incurred both at trial and on appeal.

10. **Paragraph Headings.** The headings of the various paragraphs of this Subordination Agreement have been inserted only for the purposes of convenience, and are not part of this Subordination Agreement and shall not be deemed in any manner to modify, explain or restrict any of the provisions of this Subordination Agreement.

11. **Choice of Law.** This Agreement shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Florida, excluding the principles thereof governing conflicts of law. If any provision shall be held prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating any other provision of this Agreement.

12. **Binding Effect.** This Agreement shall be binding upon the Borrower and the Subordinate Mortgagee and their respective successors and assigns and shall inure to the benefit of the Senior Mortgagee, its successors and assigns.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT
(Third Mortgage)


(Villages at Delray Apartments)
(Tax Credit Assistance Program / HOME / RFP 2009-03 / 2009-037CT / 2010-003CT)


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
day and year first written above.

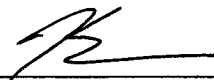
SENIOR MORTGAGEE:

WITNESSES:

FLORIDA HOUSING FINANCE
CORPORATION


Print: Karin Brown


Print: Blake C. Poston

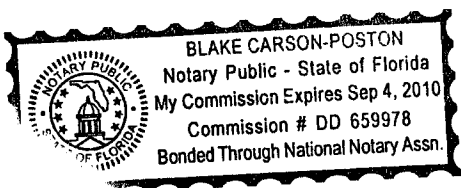
By: 
Kevin L. Tatreau
Director of Multifamily Development
Programs

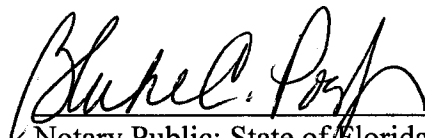
Address: 227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

[SEAL]

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 28TH day of April, 2010, by
KEVIN L. TATREAU, as Director of Multifamily Development Programs of the FLORIDA
HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and
politic duly created and existing under the laws of the State of Florida, on behalf of Florida
Housing. Said person is personally known to me or has produced a valid driver's license as
identification.




Notary Public; State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT
(Third Mortgage)


(Villages at Delray Apartments)
(Tax Credit Assistance Program / HOME / RFP 2009-03 / 2009-037CT / 2010-003CT)

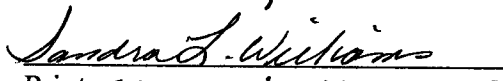
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
day and year first written above.

SUBORDINATE MORTGAGEE:

WITNESSES:

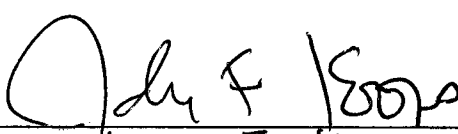
PALM BEACH COUNTY,
a political subdivision of the State of Florida


Print: Kimberly A. Coklin


Print: SANDRA L. WILLIAMS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

COUNTY ATTORNEY

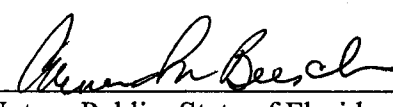
By: 
Print: John F. Koons
Title: _____

Address: _____

[SEAL]

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 6th day of May, 2010, by
John F. Koons, as Past Chair Board of County Comm of
PALM BEACH COUNTY, a political subdivision of the State of Florida, on behalf of the
County. Said person is personally known to me or has produced a valid driver's license as
identification.


Notary Public; State of Florida
Print Name: Carmen M. Bersch
My Commission Expires: Dec. 18, 2010
My Commission No.: DD 608879



Carmen M. Bersch
Commission # DD608879
Expires December 18, 2010
Bonded Troy Fain - Insurance, Inc. 800-385-7019

**COUNTERPART SIGNATURE PAGE TO
SUBORDINATION AGREEMENT
(Third Mortgage)**

**(Villages at Delray Apartments)
(Tax Credit Assistance Program / HOME / RFP 2009-03 / 2009-037CT / 2010-003CT)**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

BORROWER:

WITNESSES:

VILLAGE AT DELRAY, LTD.,
a Florida limited partnership

By: Village at Delray GP, LLC,
a Florida limited liability company,
its sole general partner

By: Auburn Management, Inc., a Florida
corporation, its manager

T. Cicero
Print: TINA CICEPARO

Ignacio Bequistan
Print: Ignacio Bequistan

By: Brian J. Hinnners
Brian J. Hinnners
Chief Executive Officer

Address: 777 E. Atlantic Avenue, Suite 200
Delray Beach, Florida 33483

[SEAL]

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 28th day of April, 2010, by BRIAN J. HINNERS, as Chief Executive Officer of AUBURN MANAGEMENT, INC., a Florida corporation, the manager of VILLAGE AT DELRAY GP, LLC, a Florida limited liability company, the sole general partner of VILLAGE AT DELRAY, LTD., a Florida limited partnership, on behalf of the corporation, the limited liability company and the limited partnership. Said person is personally known to me or has produced a valid driver's license as identification.



Janey Gamble
COMMISSION #DD753531
EXPIRES: JAN. 29, 2012
WWW.AARONNOTARY.COM

Janey Gamble
Notary Public; State of Florida
Print Name: Janey Gamble
My Commission Expires: 1-29-12
My Commission No.: DD753531

Subordination Agt (3rd Mtge)
Villages at Delray (TCAP)

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1 (FEE ESTATE):

Tract C-1, VILLAGE AT DELRAY, according to the plat thereof, as recorded in Plat Book 112, Pages 35-41, of the Public Records of Palm Beach County, Florida.

Said lands situate, lying and being in the City of Delray Beach, Palm Beach County, Florida.

also known as:

Tract "G" and a portion of Tract "C", AUBURN TRACE, according to the plat thereof, as recorded in Plat Book 64, at pages 184 through 186 of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Begin at the Southeast Corner of Tract "C", AUBURN TRACE, according to the plat thereof, as recorded in Plat Book 64, at pages 184 through 186, of the Public Records of Palm Beach County, Florida; thence South 89°29'23" West, along the South Line of said Tract "C", for a distance of 1190.53 feet; thence North 27°00'00" East, along the West Line of Tract "G" and Tract "C" of said AUBURN TRACE plat, said West Line being coincident with the East Right-of-Way Line of Auburn Avenue, for a distance of 129.69 feet to a point on a tangent curve; thence Northeasterly, along the arc of a circular curve to the right and concave to the Southeast, having a radius of 150.00 feet and a central angle of 18°03'00" for an arc distance of 47.25 feet to a Point of Tangency; thence North 45°03'00" East for 142.17 feet; thence South 89°57'00" East, along the South Line of Tract "A" of said AUBURN TRACE plat for a distance of 280.60 feet; thence North 00°03'00" East for 200.15 feet; thence North 45°03'00" East for 70.00 feet; thence North 50°50'53" West for 51.24 feet, said last three described courses being on the East Boundary of Tract "A" of said plat; thence North 89°29'23" East for 715.42 feet; thence South 00°17'16" West, along the East Line of said Tract "C" for a distance of 531.54 feet to the Point of Beginning.

Said lands situate in the City of Delray Beach, Palm Beach County, Florida.

PARCEL 2 (EASEMENT PARCEL):

Easement over "Easement Parcel One" being a portion of Tract B, of AUBURN TRACE, pursuant to Cross-Easement Agreement recorded in Official Records Book 20273, Page 1347.

PARCEL 3 (EASEMENT PARCEL):

Drainage Easement dedicated by the Plat of Auburn Trace as recorded in Plat Book 64, Page 184 for the benefit of Tract A over and across the most southerly part of the 12 foot by 60 foot drainage easement bisecting Auburn Avenue as shown on Sheet 2 of said Plat.

AFTER RECORDING

RETURN TO:

Richard K. Bonness, Esq.
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102

KUTAK ROCK LLP
DRAFT 04/30/10

Loan No. _____

**INTERCREDITOR AND SUBORDINATION AGREEMENT
VILLAGE AT DELRAY**

**(Villages at Delray Apartments)
(Tax Credit Assistance Program / HOME / RFP 2009-03 / 2009-037CT /
2010-003CT)**

THIS INTERCREDITOR AND SUBORDINATION AGREEMENT (this "Agreement") is made as of April 30, 2010, by and among **VILLAGE AT DELRAY, LTD.**, a Florida limited partnership ("Partnership"), **PNC BANK, NATIONAL ASSOCIATION**, a national banking association ("PNC"), **FLORIDA HOUSING FINANCE CORPORATION**, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida, ("FHFC") and **PALM BEACH COUNTY, FLORIDA**, a political subdivision of the State of Florida (the "County"). FHFC, County and PNC shall each be referred to individually as a "Lender" or an "Advancing Party" and all of them collectively as the "Lenders" or "Advancing Parties."

INTRODUCTORY STATEMENTS

Partnership intends to develop Village at Delray (the "Project"), located on the real property described in Exhibit A, consisting of 144 multifamily housing units, all of which will be eligible for housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").

PNC has agreed to make a construction loan to Partnership up to the total principal amount of \$[6,392,000] (the "Construction Loan") and a bridge loan up to the total principal amount of \$[6,450,000] (the "Bridge Loan") to assist in financing the development and construction of the Project (collectively, the Construction Loan and the Bridge Loan, the "PNC Loan"), and has entered into a Construction Loan, Bridge Loan and Security Agreement dated as of April 30, 2010 (the "PNC Loan Agreement"), with Partnership setting forth, among other things, the terms for PNC's approval of disbursements of proceeds of the PNC Loan and conditions of the PNC Loan. The PNC Loan Agreement, together with two certain promissory notes, a certain mortgage, security agreement and assignment of rents and leases and fixture filing securing the Construction Loan, a certain mortgage, security agreement and assignment of

rents and leases and fixture filing securing the Bridge Loan and all other documents evidencing or securing the obligations under the PNC Loan Agreement or the PNC Loan shall be referred to collectively as the "PNC Loan Documents."

FHFC has entered into the Construction Loan Agreement (FHFC Loan) Village at Delray (the "FHFC Loan Agreement") with Partnership dated as of April 30, 2010, pursuant to which FHFC will make a loan to Partnership up to the total principal amount of \$7,500,000 to assist in financing the development and construction of the Project (the "FHFC Loan"). The FHFC Loan Agreement, together with two promissory notes, a FHFC mortgage, security agreement and assignment of leases and rents, a Land Use Restrictions Agreement and all other documents evidencing the FHFC Loan, shall be referred to collectively as the "FHFC Loan Documents."

County has entered into the Construction Loan Agreement (the "County Loan Agreement") with Partnership dated as of February 23, 2010, pursuant to which County will make a loan to Partnership up to the total principal amount of \$750,000 to assist in financing the development and construction of the Project (the "County Loan"). The County Loan Agreement, together with a promissory note, a County mortgage, security agreement and assignment of leases and rents, and all other documents evidencing the County Loan, shall be referred to collectively as the "County Loan Documents."

Village at Delray GP, LLC, a Florida limited liability company, as general partner ("General Partner"), PNC Tax Credit Capital Institutional Fund 44 Limited Partnership, a Delaware limited partnership, or Columbia Housing/PNC Institutional Fund XX Limited Partnership, a Massachusetts limited partnership ("Investment Limited Partner"), Columbia Housing SLP Corporation, an Oregon corporation ("Special Limited Partner") and the original limited partner named therein, have entered into an Amended and Restated Agreement of Limited Partnership dated as of April 30, 2010 (the "Partnership Agreement"), pursuant to which Limited Partner, subject to the terms and conditions of the Partnership Agreement, will make certain capital contributions to Partnership (the "Capital Contributions") to assist in financing the development and construction of the Project.

Each of the parties hereto desires to set forth the order in which the proceeds of the PNC Loan, the FHFC Loan and the County Loan (collectively, the "Loans") will be disbursed to Partnership and the procedures governing the disbursement of the Loans (the "Advances").

Each of the parties hereto further desires to clarify the rights and responsibilities of the parties in case of certain extraordinary events, including casualty, eminent domain taking, or default under any of the Loans.

AGREEMENT

NOW, THEREFORE, the parties hereto, intending to be legally bound, have entered into this Agreement as follows:

Section 1. Initial Draw Request and Advance at Closing. On the later of (a) the date on which the Loans shall have been closed as evidenced by the execution of the respective Loan Documents with respect to each Loan and the recordation in the public records of Palm Beach County, Florida, of any of the PNC Loan Documents, the FHFC Loan Documents and the

County Loan Documents (collectively, the “Loan Documents”) which are approved by Lenders and required to be recorded, and (b) the effective date of the Partnership Agreement (the “Closing”):

(a) Partnership shall apply the first “construction draw” of the First Installment (as defined in the Partnership) of the Capital Contributions to certain costs of Partnership due at Closing, as such costs are set forth in a draw request as approved by Investment Limited Partner at Closing (the “Initial Draw Request”).

Section 2. Draw Requests and Approvals.

(a) ***In General.*** After Closing, Partnership shall submit draw requests on the forms required by Lenders (a “Draw Request”) to the Advancing Parties for their review and approval as set forth in this Section 2. After such review and approval of a Draw Request, each Advancing Party will advance its Loan, to the extent approved under the Draw Request in accordance with Section 3 and in accordance with its loan documents.

(b) ***Submission of Draw Requests.*** Partnership shall, when and as provided herein, but not more frequently than once every 30 days, submit to the Advancing Party a Draw Request, together with such additional information, materials and exhibits as may be required by the applicable Lender in its respective Loan Documents. Without limiting the foregoing, each Draw Request shall be accompanied by requisition forms identifying the construction work performed and/or materials delivered to the Project for which the Advance is sought on such forms as are required by such Lender’s Loan Documents, and shall include, without limitation, supporting invoices and vouchers for “soft costs” and such other information as may be reasonably requested by any Advancing Party to substantiate the Draw amount. Each Draw Request shall be signed by Partnership and the Project architect prior to being submitted to the Advancing Parties. Partnership shall simultaneously provide copies of all Draw Requests to Investment Limited Partner.

(c) ***[Intentionally Omitted].***

(d) ***Final Submission of Draw Requests.*** Partnership shall forward to the Advancing Parties a final Draw Request for their review and approval in accordance with its respective Loan Documents. Each Advancing Party shall, within not more than 10 business days after receipt of the final Draw Request (the “Review Period”), notify Partnership and the other Lender of its decision to approve or disapprove, in whole or part, the Draw Request. Each Advancing Party shall provide to the other Advancing Party any documentation upon which it relied in making a decision with respect to the Draw Request upon written request from such other Advancing Party.

(e) ***Independent Approvals of Draw Requests.*** Each Advancing Party shall be free to make its own decisions with respect to whether or not to approve a Draw Request and shall not be bound by the action or inaction of any other Advancing Party with respect to approval of a specific Draw Request. Each Advancing Party shall make its own decisions upon a Draw Request consistent with its respective Loan Documents. Each Advancing Party shall not be bound by or limited by the terms and conditions of

any loan documents or agreements of other parties to which the Advancing Party is not bound, and if a determination is made by an Advancing Party not to fund the Advance or to withhold a portion of such Advance, any dispute with Partnership regarding withholding the Advance shall be resolved pursuant to the terms of the applicable Loan Documents.

(f) **PNC Loans.** Without limiting such additional conditions as may be set forth elsewhere in this Agreement or under PNC's Loan Documents, the initial Advance by PNC of the Construction Loan, shall also be subject to the FHFC having fully funded the FHFC Loan (except those items identified on the Budget) and the County having fully funded the County Loan, as provided in Section 3(c) below.

Section 3. Advances.

(a) **Retainage.** Each Advancing Party may retain 10% of the amount of "hard costs" of construction funded by it pursuant to the Initial Draw Request and in any subsequent Draw Request (the "Retainage") until fifty percent (50%) of the construction of the Improvements are complete, at which time no further Retainage shall be withheld. Retainage shall be held by such Advancing Party and accounted for separately from other funds of such Advancing Party, including other funds to be advanced hereunder. Retainage held by an Advancing Party shall be held by such Lender, respectively, until such time as it is required hereunder to release Retainage. Retainage held by an Advancing Party shall not be available for disbursement pursuant to any subsequent Draw Request, except to the extent that Retainage is released as provided herein. Lenders agree that Retainage shall not apply to Project "soft costs." Provided no Event of Default exists under any of the Loan Documents or the Partnership Agreement, each Advancing Party shall, upon request by Partnership, release to Partnership any and all funds withheld by such Advancing Party as Retainage upon certification by the Joint Inspector and confirmation by Partnership and the General Partner that construction of the Project has been satisfactorily completed and, if applicable, receipt of such further evidence of completion of the Project as may be specified in such Advancing Party's Loan Documents.

(b) **[Intentionally Omitted].**

(c) **Sequence of Advances.** After the Advance made at Closing, and subject to the requirements of each Lender's respective Loan Documents and in accordance with the budget attached as Exhibit B to this Agreement, Advances shall be made in the following sequence:

(i) at closing, the First Installment on a "construction draw" basis as provided in the Partnership Agreement;

(ii) next, the FHFC Loan (except those items identified on the Budget) subject to Retainage;

- (iii) next, the County Loan subject to Retainage;
- (iv) next, the Construction Loan, subject to Retainage;
- (v) last, the Bridge Loan, subject to Retainage.

(d) **Timing of Advances.** For the period of time during which one or more Advancing Parties is required to fund or approve Advances, subject to satisfaction of the conditions for an Advance under this Agreement and each Lender's respective Loan Documents:

(i) FHFC shall advance to Partnership proceeds of the FHFC Loan in the amount approved pursuant to the Draw Request, less Retainage, within ten business days after FHFC's approval of a Draw Request;

(ii) County shall advance to Partnership proceeds of the County Loan in the amount approved pursuant to the Draw Request, less Retainage, within ten business days after County's approval of a Draw Request;

(iii) PNC shall advance to Partnership proceeds of the PNC Loan in the amount approved pursuant to the Draw Request, less Retainage, within ten business days after PNC's approval of the Draw Request.

Section 4. Cooperation Among Advancing Parties.

(a) **In General.** Each of the Lenders shall cooperate with the other Advancing Party by sharing information and scheduling inspections of the Project at the same time to the extent reasonably practicable. Each Advancing Party shall employ reasonable means to resolve disagreements or disputes with regard to whether or not a specific Draw Request should be approved and the amount to be approved.

(b) **Reports.** Each Advancing Party shall provide copies of any reports issued to that Advancing Party by its construction consultants, architect, engineer or inspector for the Project to any other Advancing Party requesting such reports, at the cost of the Advancing Party requesting said reports. Such reports shall be informational only. No other party shall be permitted, however, to rely upon the reports provided by another Advancing Party unless otherwise agreed to by an Advancing Party. It is expressly agreed that Lenders have no duty to inspect the Improvements (as defined in the PNC Loan Agreement) and, if a Lender should inspect the Improvements, such Lender shall have no liability or obligation to Partnership or the other Lender arising out of such inspection or reports or information resulting therefrom.

(c) **Construction Consultants and Inspectors.** Each of the Advancing Parties shall have the right to engage an architect, engineer, construction consultant or inspector to periodically review and inspect the ongoing construction of the Project as provided herein, and, unless otherwise agreed to by an Advancing Party, any such consultants, architect, engineer or inspector shall act solely for the Advancing Party employing them and in accordance with the respective practices and requirements of each Advancing

Party. There is no intent or obligation, express or implied, that the findings of any consultant, architect, engineer or inspector will concur with the findings of any other consultant, architect, engineer or inspector. None of the Advancing Parties shall be entitled to rely on the findings or information provided by the consultant, architect, engineer or inspector engaged by any of the other Advancing Party for any purpose, unless the other Advancing Parties consents to such reliance, and neither Partnership, any guarantor or other party primarily or secondarily liable on the Loans nor any person or party claiming by, through or under Partnership shall be entitled to claim any loss, damage or offset either against such Lender or its representatives for failure to properly inspect the Project or the Improvements. Unless otherwise provided in its respective Loan Documents or Partnership Agreement, each Advancing Party shall be solely responsible for the cost of any such consultants or inspectors hired by it with respect to the Project. Notwithstanding any provision hereof to the contrary, FHFC and PNC shall each employ Consulatech and Associates, Inc., based in Florida, as their consultant and inspector for purposes of this Agreement (the "Joint Inspector").

(d) ***Obligations of the Advancing Parties.*** The duties and obligations of each of the Advancing Parties to each other shall be determined solely by the express provisions of this Agreement and shall be limited to such duties and obligations as are specifically set forth herein. None of PNC, FHFC or County shall be bound in any way by the Partnership Agreement or any other agreement or contract with any of them to which they are not a party regardless of whether either of them has knowledge thereof.

(e) ***Reliance and Communication.*** Each Advancing Party shall be entitled to act on and rely upon the genuineness and authorization of any written advice, certificate, notice, direction, instruction, request or other document which each Advancing Party reasonably believes to be genuine and to have been signed or presented by the proper parties and may assume, unless the Advancing Party has knowledge to the contrary, that any person reporting to give such advice, certificate, notice, direction, instruction or request has been duly authorized to do so.

(f) ***Modification or Waiver of Standards.*** In the event that any Advancing Party modifies or alters any of its standards or criteria for disbursing or funding its Advances, it shall give notice of that modification or alteration to the other Advancing Party and Partnership. No waiver, at any time, of the provisions or conditions of this Agreement or any other Loan Documents shall be construed as a waiver of any of the other provisions or conditions, nor shall a waiver of any such provision or condition be construed to confer a right to subsequent waiver of the same provision or condition.

(g) ***Access for Inspection.*** Partnership will permit Lenders and their representatives to enter upon the Project at reasonable times, to inspect the Improvements and all materials to be used in the construction thereof and to examine the Project's plans and specifications (the "Plans") and shop drawings which are or may be kept at the construction site, and all books and records of Partnership relating to the Project, and will cooperate with Lenders and their representatives to enable them to perform their functions hereunder.

(h) **Change Orders.** All change orders that effect a change in the Plans or the budget for the Project must be approved in writing by Lenders and Investment Limited Partner before Partnership becomes committed to the same; provided, however, that Lenders' and Investment Limited Partner's approval shall not be required for change orders which (i) cost less than \$25,000 each and less than \$50,000 in the aggregate; (ii) will not delay the construction schedule; (iii) will not reduce the quality of materials or construction methods used in the Improvements; and (iv) will not reduce the usable square footage of, or reduce the number of units in, the Improvements. In addition, any proposed increase in the budget for the Project, or any changes in the various categories thereof, shall be submitted to and approved by Lenders and Special Limited Partner prior to the time that Partnership shall become committed to making any such increases or changes.

Section 5. Lien Priorities; Lien Subordination. Partnership and each of the Lenders acknowledge and agree, notwithstanding the actual order of recording, that the relative priority of the following instruments and related liens and encumbrances shall be in the order set forth below, and each Lender consents to the Partnership's encumbrance of the Project by such liens and encumbrances:

- (a) first, the mortgage securing the Construction Loan;
- (b) next, the mortgage securing the FHFC Loan; and
- (c) last, the mortgage securing the County Loan.

FHFC hereby subordinates and subjects the liens and encumbrances created under the FHFC Loan Documents (collectively, the "Subordinate Liens"), to the liens and encumbrances created under the PNC Loan Documents. FHFC agrees to execute, acknowledge (if required) and deliver to PNC a subordination agreement, an estoppel certificate and/or such other and further documents in a form reasonably satisfactory to PNC and FHFC as PNC may request to effectuate and confirm the subordination reflected in the preceding provisions of this Section 5. County hereby subordinates and subjects the liens and encumbrances created under the County Loan Documents (collectively, the "Subordinate Liens"), to the liens and encumbrances created under the PNC Loan Documents and the FHFC Loan Documents. County agrees to execute, acknowledge (if required) and deliver to PNC a subordination agreement, an estoppel certificate and/or such other and further documents in a form reasonably satisfactory to PNC and County as PNC may request to effectuate and confirm the subordination reflected in the preceding provisions of this Section 5.

Section 6. Payment Subordination, Standstill and Consent to Assignment.

(a) **Payment Subordination.** PNC and FHFC agree that the right of payment evidenced and secured by the FHFC Loan Documents is and shall be subject and subordinated in right of payment to the prior payment in full in cash of the indebtedness evidenced and secured by the PNC Loan Documents. PNC and County agree that the right of payment evidenced and secured by the County Loan Documents is and shall be

subject and subordinated in right of payment to the prior payment in full in cash of the indebtedness evidenced and secured by the PNC Loan Documents.

(b) *Default Under Subordinate Loan Documents.*

(i) So long as the PNC Loan remains outstanding, upon a default or event of default under the FHFC Loan Documents ("FHFC Loan Default"), FHFC shall not exercise any rights or remedies that it may have under its Loan Documents, including, without limitation, the right to ask, demand, sue for, exercise or take other enforcement actions with respect to any right of setoff or take or receive payment of, or discharge Partnership from, all or any part of its Loan until the PNC Loan is repaid in full in cash. FHFC shall deliver to PNC a notice of an FHFC Loan Default within five business days in each case where FHFC has given a notice thereof to Partnership. As between Lenders, notwithstanding anything to the contrary in the Loan Documents, upon the distribution of any of Partnership's assets, whether by reason of sale, reorganization, liquidation, dissolution, arrangement, bankruptcy, receivership, assignment for the benefit of creditors, foreclosure or otherwise, PNC shall be entitled to receive payment in full in cash of all amounts due the under the terms of the PNC Loan Documents (including, without limitation, interest arising subsequent to the date of the filing by or against Partnership of any petition for relief under the Federal Bankruptcy Code or the making of any assignment for the benefit of creditors, whether or not such interest is recoverable from or provable against Partnership) prior to the payment of all or any part of the FHFC Loan. So long as the PNC Loan remains outstanding, FHFC hereby waives any rights that it may have to act as a petitioning creditor of Partnership under Section 303 of the Bankruptcy Code, 11 U.S.C. 101 et seq.

(ii) So long as the PNC Loan remains outstanding, upon a default or event of default under the County Loan Documents ("County Loan Default"), County shall not exercise any rights or remedies that it may have under its Loan Documents, including, without limitation, the right to ask, demand, sue for, exercise or take other enforcement actions with respect to any right of setoff or take or receive payment of, or discharge Partnership from, all or any part of its Loan until the PNC Loan is repaid in full in cash. County shall deliver to PNC a notice of an County Loan Default within five business days in each case where County has given a notice thereof to Partnership. As between Lenders, notwithstanding anything to the contrary in the Loan Documents, upon the distribution of any of Partnership's assets, whether by reason of sale, reorganization, liquidation, dissolution, arrangement, bankruptcy, receivership, assignment for the benefit of creditors, foreclosure or otherwise, PNC shall be entitled to receive payment in full in cash of all amounts due the under the terms of the PNC Loan Documents (including, without limitation, interest arising subsequent to the date of the filing by or against Partnership of any petition for relief under the Federal Bankruptcy Code or the making of any assignment for the benefit of creditors, whether or not such interest is recoverable from or provable against Partnership) prior to the payment of all or any part of the County Loan.

So long as the PNC Loan remains outstanding, County hereby waives any rights that it may have to act as a petitioning creditor of Partnership under Section 303 of the Bankruptcy Code, 11 U.S.C. 101 et seq.

(c) ***Default under PNC Loan Documents.***

(i) Partnership agrees that, after it receives notice (or otherwise acquires knowledge) of an Event of Default under the PNC Loan Documents ("PNC Loan Default"), it will not make any payments under or pursuant to the FHFC Loan Documents (including, but not limited to, principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the FHFC's subordinate deed to secure debt) without PNC's prior written consent. FHFC agrees that, after it receives such notice from PNC with written instructions directing FHFC not to accept payments from Partnership on account of the FHFC Loan, it will not accept any payments under or pursuant to the FHFC Loan Documents (including, but not limited to, principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by FHFC's subordinate deed to secure debt) without PNC's prior written consent. If FHFC receives written notice from PNC that the PNC Loan Default which gave rise to FHFC's obligation not to accept payments has been cured, waived or otherwise suspended by PNC, the restrictions on payment to FHFC in this paragraph shall terminate, and PNC shall have no right to any subsequent payments made to FHFC by Partnership prior to FHFC's receipt of a new default notice from PNC in accordance with the provisions of this paragraph.

If, after the FHFC receives a PNC Loan Default notice in accordance with this subsection (c), FHFC receives any payments under the FHFC Loan Documents, FHFC agrees that such payment or other distribution will be received and held in trust for PNC and, unless PNC otherwise notifies FHFC in writing, will be promptly remitted, in kind to PNC, properly endorsed to PNC, to be applied to the principal of, interest on and other amounts due under the PNC Loan Documents. By executing this Agreement, Partnership specifically authorizes FHFC to endorse and remit any such payments to PNC and specifically waives any and all rights to have such payments returned to Partnership or credited against the FHFC Loan. Partnership and PNC acknowledge and agree that payments received by FHFC and remitted to PNC under this Section shall not be applied or otherwise credited against the FHFC Loan, nor shall the tender of such payment to PNC waive any FHFC Loan Default which may arise from the inability of FHFC to retain such payment or apply such payment to the FHFC Loan.

(ii) Partnership agrees that, after it receives notice (or otherwise acquires knowledge) of an Event of Default under the PNC Loan Documents ("PNC Loan Default"), it will not make any payments under or pursuant to the County Loan Documents (including, but not limited to, principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any

other sums secured by the County's subordinate deed to secure debt) without PNC's prior written consent. County agrees that, after it receives such notice from PNC with written instructions directing County not to accept payments from Partnership on account of the County Loan, it will not accept any payments under or pursuant to the County Loan Documents (including, but not limited to, principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by County's subordinate deed to secure debt) without PNC's prior written consent. If County receives written notice from PNC that the PNC Loan Default which gave rise to County's obligation not to accept payments has been cured, waived or otherwise suspended by PNC, the restrictions on payment to County in this paragraph shall terminate, and PNC shall have no right to any subsequent payments made to County by Partnership prior to County's receipt of a new default notice from PNC in accordance with the provisions of this paragraph.

If, after the County receives a PNC Loan Default notice in accordance with this subsection (c), County receives any payments under the County Loan Documents, County agrees that such payment or other distribution will be received and held in trust for PNC and, unless PNC otherwise notifies County in writing, will be promptly remitted, in kind to PNC, properly endorsed to PNC, to be applied to the principal of, interest on and other amounts due under the PNC Loan Documents. By executing this Agreement, Partnership specifically authorizes County to endorse and remit any such payments to PNC and specifically waives any and all rights to have such payments returned to Partnership or credited against the County Loan. Partnership and PNC acknowledge and agree that payments received by County and remitted to PNC under this Section shall not be applied or otherwise credited against the County Loan, nor shall the tender of such payment to PNC waive any County Loan Default which may arise from the inability of County to retain such payment or apply such payment to the County Loan.

(d) ***Consent to Assignment.*** FHFC acknowledges and consents to the assignment of Partnership's rights under the FHFC Loan Documents to PNC as security for the performance of Partnership's obligations to PNC. County acknowledges and consents to the assignment of Partnership's rights under the County Loan Documents to PNC as security for the performance of Partnership's obligations to PNC.

Section 7. Application of Insurance and Condemnation Proceeds. The Lenders and Partnership each acknowledge and agree that (a) PNC shall make all determinations as to sufficiency of available insurance proceeds or condemnation award proceeds ("Proceeds") and feasibility of restoration of the Project in accordance with the PNC Loan Documents. If PNC determines that the Proceeds are not sufficient to make the repair and restoration of the Project feasible, then PNC shall give prompt written notice of such determination to FHFC, whereupon the Proceeds shall be applied in accordance with their respective Loan Documents, in the same order and manner as the lien priorities governing such Loan Documents as set forth above.

Section 8. Opportunity To Cure. Lenders shall each deliver a copy of any default notice delivered to Partnership to the other Lender and Special Limited Partner. Partnership shall have the right to cure, and each Lender and Special Limited Partner shall have the concurrent right, but not the obligation, to cure, any default under the Loan Documents for which a default notice has been given. For FHFC or County, such cure shall be completed within the same cure period, if any, as provided the Partnership under the PNC Loan Documents. For PNC and Special Limited Partner, such cure shall be completed within 20 days following the delivery of such default notice to PNC and Special Limited Partner for any default curable by the payment of money, within 10 days following the delivery of such default notice for any default caused by failure to maintain required insurance coverage, and within 60 days following the delivery of such default notice to the PNC and Special Limited Partner for any nonmonetary default, provided that, with respect to any such nonmonetary default, PNC or Special Limited Partner, as applicable, shall (a) promptly provide FHFC and County with written notice of its intent to effect a cure, and thereafter (b) commence action, within 30 days following delivery of the default notice, to cure the noticed default. Amounts, if any, paid by a Lender as determined in its sole and absolute discretion, with respect to curing a default under any of the Loan Documents shall constitute indebtedness owed by Partnership to such Lender.

Section 9. Certain Limited Partner Remedies.

(a) Lenders acknowledge that Partnership Agreement provides that in the event of certain defaults thereunder, Investment Limited Partner and Special Limited Partner, respectively, are entitled to replace the General Partner with a substitute general partner which will be either Special Limited Partner or its affiliate with prompt notice to FHFC. Lenders hereby consent to any such replacement which replacement shall not constitute a default under their Loan Documents.

(b) Lenders acknowledge that the Partnership Agreement provides that, in the event of certain defaults thereunder, Investment Limited Partner and Special Limited Partner, respectively, are entitled to require the management agent for the Project to be replaced. FHFC and County consent to such replacement and agree it will not constitute any default under its Loan Documents.

(c) Lenders consent to the transfer of Investment Limited Partner's interest in Partnership to an affiliate of Investment Limited Partner.

(d) If Special Limited Partner removes Partnership's general partner to cure a default by general partner under the Partnership Agreement, then neither Special Limited Partner nor the substitute general partner shall have any liability for any actions of the replaced general partner before such replacement.

Section 10. [Intentionally Omitted.]

Section 11. [Intentionally Omitted.]

Section 12. Modification.

(a) No modifications, changes or amendment of this Agreement shall be valid or enforceable unless in writing and approved by each of the parties hereto.

(b) No Lender may (a) take or direct any action (including increases in interest rates other than as set forth in the Loan Documents as of the date hereof, without amendment) which has the effect of increasing the indebtedness outstanding under its respective Loan Documents; (b) modify construction start or completion dates; (c) amend, modify or supplement in any material respect any provision of its respective Loan Documents; or (d) enter into or require any additional material agreement with Partnership in connection with its respective Loan(s) or the Project, without, in each instance, the prior written consent of the other Lender, which consent will not be unreasonably delayed, conditioned or withheld; provided, however, that one extension of the maturity date(s) of the PNC Loan in accordance with the terms of the PNC Loan Documents shall not require the prior consent of the other Lender or Investment Limited Partner.

Section 13. Miscellaneous Provisions.

(a) ***Termination of Agreement.*** The terms of this Agreement, and the rights of each party as provided in this Agreement, are applicable and available to each Lender only until the repayment of the obligations of Partnership to that Lender which are subject to this Agreement. Upon the repayment in full in cash of such obligations and, where applicable, expiration of such regulatory instruments, that Lender shall no longer be a party to this Agreement and the various priorities included above shall be deemed amended by the deletion of that (former) Lender and its respective Loan Documents from this Agreement, except that in the event that such (former) Lender is required, pursuant to Section 547 of the Bankruptcy Reform Act of 1978 or a successor provision to repay any amount paid to that (former) Lender by Partnership in satisfaction of such liabilities, then such Lender shall be deemed a party to this Agreement entitled to all benefits under this Agreement to the extent that any of Partnership's assets are thereafter distributed pursuant to this Agreement.

(b) ***Governing Law.*** This Agreement shall be governed by and construed in accordance with the law of the State of Florida. Venue for the adjudication of any legal dispute arising out of this Agreement shall be in any court of competent jurisdiction in the State of Florida.

(c) ***Notices.*** All notices under this Agreement shall be in writing and shall be effective when sent by mail, reputable overnight delivery service or facsimile (with confirmation of receipt) to persons at the addresses as set forth below unless otherwise designated in writing by the respective party:

Partnership:	Village at Delray, Ltd. c/o Auburn Group, LLC Suite 200
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777 East Atlantic Avenue
Delray Beach, FL 33843
Attention: Mr. Tom Hinners
Facsimile: (561) 278-3901

with a copy to: Stearns, Weaver, Miller, Weissler,
Alhadeff & Sitterson, P.A.
Suite 2200
150 West Flagler Street
Miami, FL 33130
Attention: Brian McDonough, Esq.
Facsimile: (305) 789-3396

PNC: PNC Bank, National Association
Suite 2300
500 West Jefferson Street
Louisville, KY 40202
Attention: Commercial Real Estate Loan Administration
Facsimile: (502) 581-3831

with copy to: Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102-2186
Attention: Richard K. Bonness, Esq.
Telephone: (402) 346-6000
Facsimile: (402) 346-1148

FHFC: Latham, Shuker, Eden & Beaudine, LLP
390 N. Orange Avenue, Suite 600
Orlando, Florida 32801
Attention: Jan Albanese Carpenter, Esq.
Phone: (407) 481-5800
Fax: (407) 481-5801

with a copy to: Shuffield, Lowman & Wilson, P.A.
Suite 1700
1000 Legion Place
Orland, Florida 32801
Attention: Jan Albanese Carpenter, Esq.
Facsimile: (407) 581-9801

County: Palm Beach County
c/o County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

Investment Limited
Partner or Special
Limited Partner:

PNC Tax Credit Capital Institutional Fund 44 Limited
Partnership or Columbia Housing SLP Corporation or
Columbia Housing/PNC Institutional Fund XX Limited
Partnership
% PNC Real Estate
Suite 1300
121 SW Morrison Street
Portland, OR 97204-3143
Attention: Fund Manager
Facsimile: (503) 808-1301

with a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Gregg Yeutter, Esq.
Facsimile: (402) 346-1148

(d) **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and shall be deemed executed on the date on which it was signed by the final signatory.

(e) **Binding on Successors and Assigns.** This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

(f) **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(g) **Waiver of Trial by Jury.** Each party to this Agreement hereby waives any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement. Each party (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that the entering into of this Agreement has been induced by, among other things, the waivers and certifications set forth in this section. Each party further acknowledges that it has been represented (or has had the opportunity to be represented) in the signing of this Agreement and in the making of the waivers herein contained by independent legal counsel, selected of its own free will, and has had the opportunity to discuss said waivers with counsel.

(h) **Third-party Beneficiary.** This Agreement is for the benefit of Investment Limited Partner and Special Limited Partner only as third-party beneficiaries. This

Agreement does not create any right on the part of Partnership or any other Advancing Party against Investment Limited Partner or Special Limited Partner or any obligation on the part of Investment Limited Partner or Special Limited Partner.


(i) ***Payment and Performance Bond.*** Borrower and Lenders acknowledge and agree that Borrower shall deliver or cause to be delivered a payment and performance bond in a form and substance satisfactory to Lenders to be held by PNC.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement the day and year first above written.

VILLAGE AT DELRAY, LTD.,
a Florida limited partnership

By **VILLAGE AT DELRAY GP, LLC,**
a Florida limited liability company, its
General Partner

By **AUBURN MANAGEMENT, INC.,** a
Florida corporation, its Sole Manager

By: 
Thomas G. Hinners
Chairman

FLORIDA HOUSING FINANCE
CORPORATION, a public corporation and a
public body corporate and politic duly created and
existing under the laws of the State of Florida

By _____
Name _____
Title _____

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have executed this Agreement the day and year first above written.

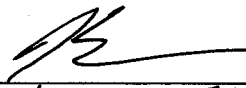
VILLAGE AT DELRAY, LTD.,
a Florida limited partnership

By VILLAGE AT DELRAY GP, LLC,
a Florida limited liability company, its
General Partner

By AUBURN MANAGEMENT, INC., a
Florida corporation, its Sole Manager

By: _____
Thomas G. Hinners
Chairman

FLORIDA HOUSING FINANCE
CORPORATION, a public corporation and a
public body corporate and politic duly created and
existing under the laws of the State of Florida

By  _____
Name Kevin L. Tetreay
Title Director of Multi-Family Development Programs

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

By Its Board of County Commissions

By: John F. Koon
for Burt Aaronson
Chair

PNC BANK, NATIONAL ASSOCIATION

By Wendy S. Bade
Wendy Bade
Senior Vice President

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By Tammy K. Fields
Tammy K. Fields
County Attorney, Palm Beach County, Florida

STATE OF FLORIDA)
COUNTY OF Palm Beach) ss

The foregoing Intercreditor and Subordination Agreement was acknowledged before me on the 30th day of April, 2010 by Thomas G. Hinnars, in his capacity as Chairman of Auburn Management Inc., a Florida corporation, in its capacity as Sole Manager of Village at Delray GP, LLC, a Florida limited liability company, in its capacity as the general partner of Village of Delray, Ltd., a Florida limited partnership.



Janey Gamble
COMMISSION #DD753531
EXPIRES: JAN. 29, 2012
WWW.AARONNOTARY.COM

Janey Gamble
Notary Public in and for the
State of Florida
My Commission Expires: 1-29-12

STATE OF FLORIDA)
COUNTY OF _____) ss

The foregoing Intercreditor and Subordination Agreement was acknowledged before me on the ____ day of April, 2010 by _____, as _____ of the Florida Housing Finance Corporation, a public corporation and public body corporate and politic duly created and existing under the laws of the State of Florida, on behalf of Florida Housing Finance Corporation.

Notary Public in and for the
State of Florida
My Commission Expires: _____

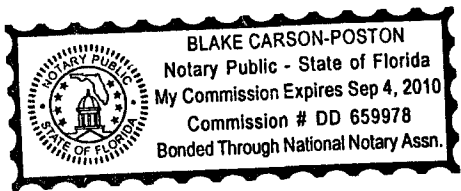
STATE OF FLORIDA)
) ss
COUNTY OF _____)

The foregoing Intercreditor and Subordination Agreement was acknowledged before me on the ____ day of April, 2010 by Thomas G. Hinnners, in his capacity as Chairman of Auburn Management Inc., a Florida corporation, in its capacity as Sole Manager of Village at Delray GP, LLC, a Florida limited liability company, in its capacity as the general partner of Village of Delray, Ltd., a Florida limited partnership.

Notary Public in and for the
State of Florida
My Commission Expires: _____

STATE OF FLORIDA)
) ss
COUNTY OF LEON)

The foregoing Intercreditor and Subordination Agreement was acknowledged before me on the 30th day of April, 2010 by KEVIN TATREAU, as DIRECTOR OF MULTIFAMILY DEVELOPMENT PROGRAMS of the Florida Housing Finance Corporation, a public corporation and public body corporate and politic duly created and existing under the laws of the State of Florida, on behalf of Florida Housing Finance Corporation.



Blake Carson-Poston

Notary Public in and for the
State of Florida
My Commission Expires: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

John J. Koores
for
The foregoing Intercreditor and Subordination Agreement was acknowledged before me on the 6th day of May, 2010 by Burt Aaronson, as Chair of the Board of County Commissions for Palm Beach County, Florida, a political subdivision of the State of Florida, on behalf of the Palm Beach County, Florida.

Carmen M. Bersch

Notary Public in and for the
State of Florida

My Commission Expires: December 18, 2010



Carmen M. Bersch
Commission # DD608879
Expires December 18, 2010
Bonded Troy Fain - Insurance, Inc. 800-385-7019

COMMONWEALTH OF KENTUCKY)

)ss.

COUNTY OF JEFFERSON)

The foregoing Intercreditor and Subordination Agreement was acknowledged before me on this 29th day of April, 2010, by Wendy Bade, Senior Vice President of PNC Bank, National Association, a national banking association, on behalf of such national banking association.

Lane D. Spang

Notary Public

My commission expires: July 23, 2010

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1 (FEE ESTATE):

Tract C-1, VILLAGE AT DELRAY, according to the plat thereof, as recorded in Plat Book 112, Pages 35-41, of the Public Records of Palm Beach County, Florida.

Said lands situate, lying and being in the City of Delray Beach, Palm Beach County, Florida.

also known as:

Tract "G" and a portion of Tract "C", AUBURN TRACE, according to the plat thereof, as recorded in Plat Book 64, at pages 184 through 186 of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Begin at the Southeast Corner of Tract "C", AUBURN TRACE, according to the plat thereof, as recorded in Plat Book 64, at pages 184 through 186, of the Public Records of Palm Beach County, Florida; thence South 89°29'23" West, along the South Line of said Tract "C", for a distance of 1190.53 feet; thence North 27°00'00" East, along the West Line of Tract "G" and Tract "C" of said AUBURN TRACE plat, said West Line being coincident with the East Right-of-Way Line of Auburn Avenue, for a distance of 129.69 feet to a point on a tangent curve; thence Northeasterly, along the arc of a circular curve to the right and concave to the Southeast, having a radius of 150.00 feet and a central angle of 18°03'00" for an arc distance of 47.25 feet to a Point of Tangency; thence North 45°03'00" East for 142.17 feet; thence South 89°57'00" East, along the South Line of Tract "A" of said AUBURN TRACE plat for a distance of 280.60 feet; thence North 00°03'00" East for 200.15 feet; thence North 45°03'00" East for 70.00 feet; thence North 50°50'53" West for 51.24 feet, said last three described courses being on the East Boundary of Tract "A" of said plat; thence North 89°29'23" East for 715.42 feet; thence South 00°17'16" West, along the East Line of said Tract "C" for a distance of 531.54 feet to the Point of Beginning.

Said lands situate in the City of Delray Beach, Palm Beach County, Florida.

PARCEL 2 (EASEMENT PARCEL):

Easement over "Easement Parcel One" being a portion of Tract B, of AUBURN TRACE, pursuant to Cross-Easement Agreement recorded in Official Records Book 20273, Page 1347.

PARCEL 3 (EASEMENT PARCEL):

Drainage Easement dedicated by the Plat of Auburn Trace as recorded in Plat Book 64, Page 184 for the benefit of Tract A over and across the most southerly part of the 12 foot by 60 foot drainage easement bisecting Auburn Avenue as shown on Sheet 2 of said Plat.

**[EXHIBIT B
BUDGET]**

4819-2747-7765.5