

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 21, 2011 [X] Consent [ ] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Housing and Community Development

Submitted By: Housing and Community Development

I. EXECUTIVE BRIEF

**Motion and Title: Staff recommends motion to approve:**

- A) Mortgage and Note Assumption and Modification Agreement, and
- B) A Mortgage Subordination Agreement with Groves of Delray II, Ltd.

**Summary:** On November 2, 1993, Palm Beach County (County) entered into a Loan Agreement (R93-1447D) with Groves of Delray, Ltd. The Loan Agreement provided \$400,000 from the County's Housing Trust Fund for the acquisition of land where 158 apartments were to be constructed. Groves of Delray, Ltd. executed a Mortgage and Security Agreement (Mortgage), and a Promissory Note in exchange for the funding and commitment to rent these apartments to low and very-low income households. On November 15, 1994, the County approved an additional \$79,000 to fund impact fees associated with the construction of these new apartments. The additional funding was provided as a future advance on the Mortgage and Groves of Delray, Ltd. executed another Promissory Note to secure these funds. Since that time, they have paid off the \$400,000 loan, and have paid down the \$79,000 Promissory Note to its current balance of \$15,126.15.

*Continued on Page 3.*

**Background and Justification:** The Groves of Delray apartment project was built in 1995, and is located in Delray Beach on SW 10 Avenue, between Linton Blvd. and SW 11 Street. The new owner, Groves of Delray II, Ltd., intends to finance the acquisition and rehabilitation of the property using first mortgage financing in the amount of \$9,350,000 and second mortgage financing in the amount of \$1,502,000 from Florida Housing Finance Corporation.

**Attachments:**

- 1. Location Map
- 2. Mortgage and Note Assumption and Modification Agreement with Groves of Delray II, Ltd.
- 3. Mortgage Subordination Agreement with Exhibit A
- 4. Loan Agreement (R93-1447D) with Groves of Delray, Ltd. with Exhibits A and B
- 5. Mortgage and Security Agreement
- 6. Notice of Future Advance

Recommended by: Edward W. Howell 6/8/2011  
Department Director Date

Approved By: Sharon G. By 6/13/2011  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2011	2012	2013	2014	2015
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes \_\_\_ No \_\_\_  
 Budget Account No.:

Fund \_\_\_ Dept \_\_\_ Unit \_\_\_ Object \_\_\_ Program Code/Period \_\_\_

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

No Fiscal Impact.

**C. Departmental Fiscal Review:** Shairette Major 6-7-11  
 Shairette Major, Fiscal Manager I

**III. REVIEW COMMENTS**

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

Maturity date extended to July 31, 2026

Shairette Major 6/10/11  
 OFMB 2/8/11 6/9/11

Dr. J. Jacobson 6/10/11  
 Contract Development and Control

**B. Legal Sufficiency:**

[Signature] 6/13/11  
 Senior Assistant County Attorney

**C. Other Department Review:**

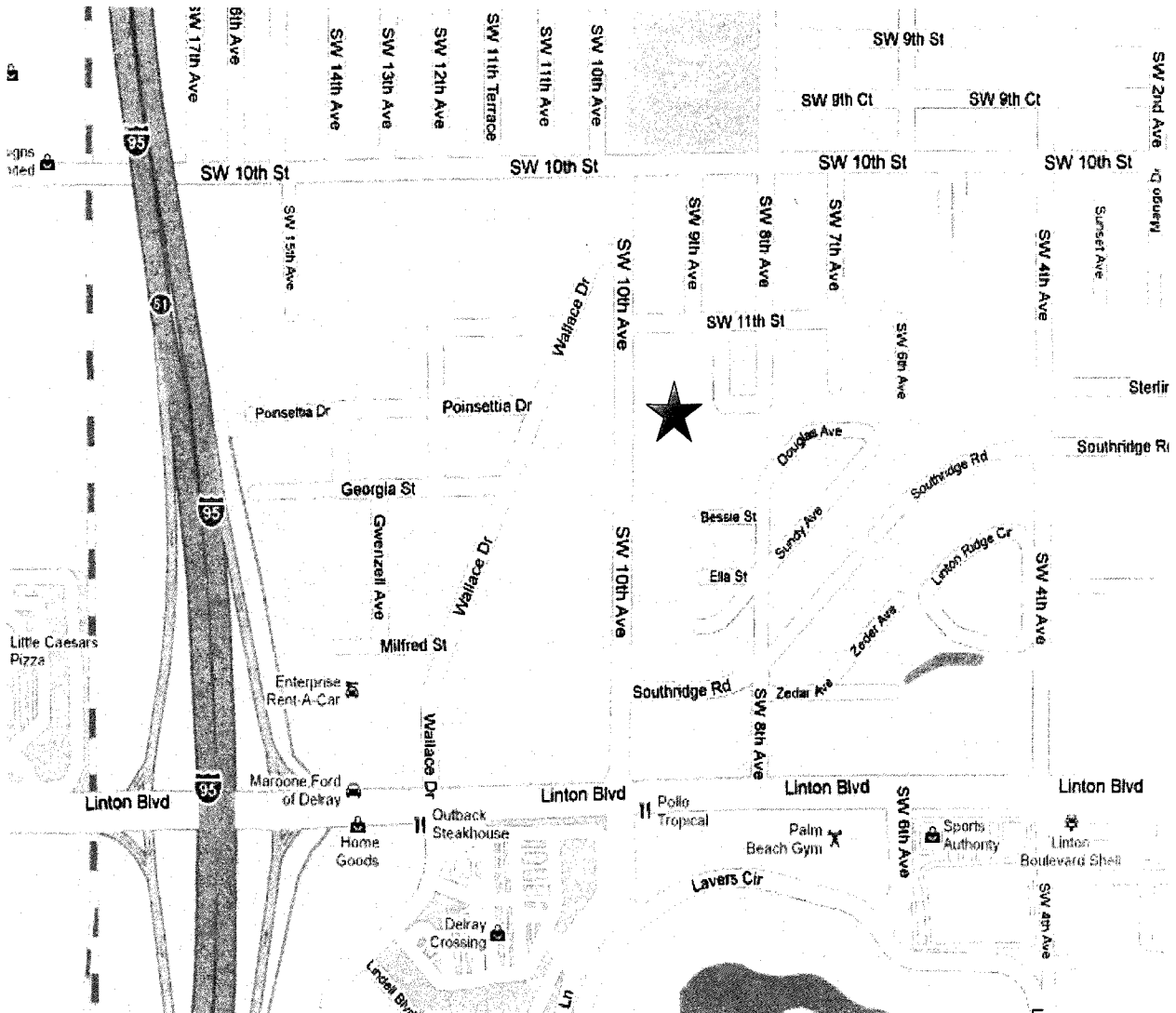
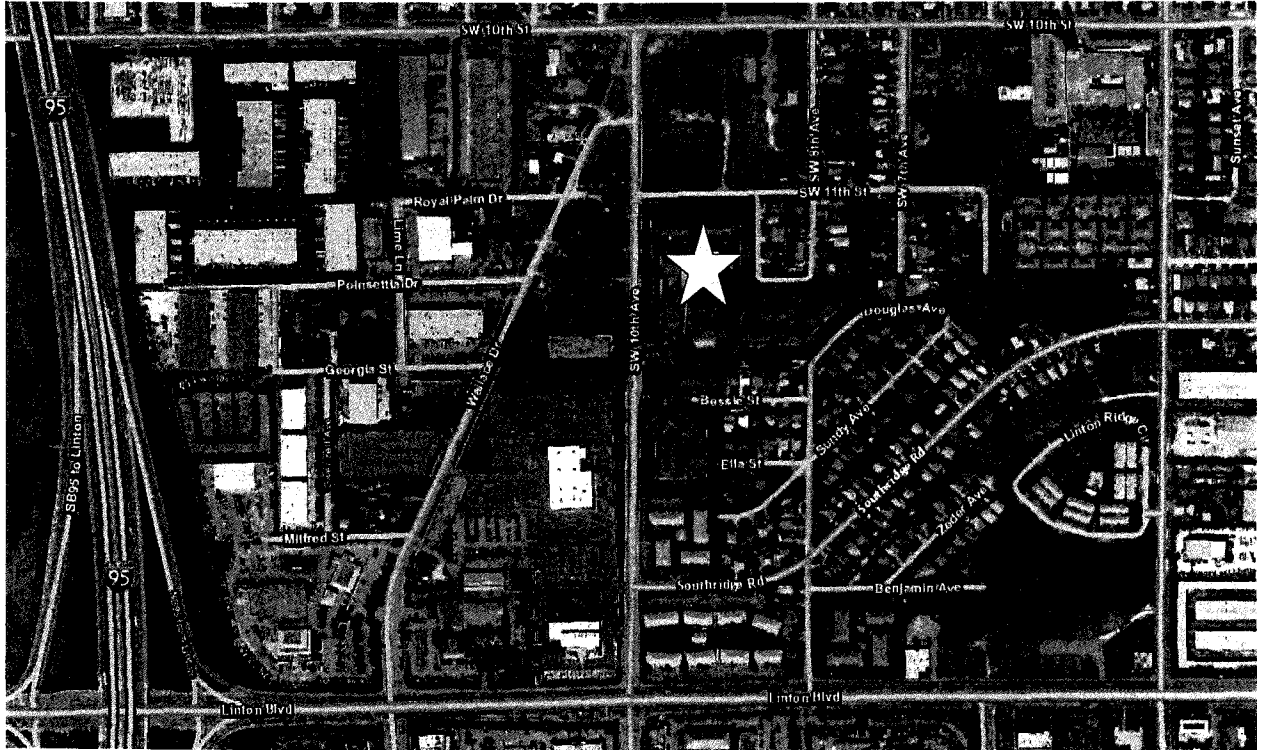
\_\_\_\_\_  
 Department Director

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

**Summary: Continued from Page 1**

Groves of Delray, Ltd., is being sold to Groves of Delray II, Ltd., who intends to acquire and rehabilitate the property using First Mortgage financing from First Housing Development Corporation of Florida, and Second Mortgage financing from Florida Housing Finance Corporation. They have requested the assumption of the remaining balance of the County's Promissory Note, and the extension of its maturity date by 15 years to coincide with the maturity date of the proposed Second Mortgage. Approval of the Mortgage and Note Assumption and Modification Agreement will authorize the requested assumption and extension, will allow the project to benefit from Low Income Housing Tax Credits as part of the new financing arrangement, and will continue the affordability period for rental to low and very-low income households for an additional 15 years. Approval of the Mortgage Subordination Agreement will subordinate Palm Beach County's interest in the Mortgage to that of the proposed First and Second Mortgages. **These are State Housing Initiatives Partnership (SHIP) funds which require no local match.** (Contract Development) District 7 (TKF)

**Groves of Delray II, Ltd.  
Location Map**



 Groves of Delray Apartments

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

**MORTGAGE AND NOTE ASSUMPTION AND MODIFICATION AGREEMENT**

THIS MORTGAGE AND NOTE ASSUMPTION AND MODIFICATION AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between GROVES OF DELRAY II, LTD., a Florida Limited Partnership, and PALM BEACH COUNTY, a political subdivision of the State of Florida.

**WITNESSETH**

WHEREAS, for and in consideration of Palm Beach County's forbearance on its right to collect on a Promissory Note (the "Note") bearing the principal amount of Seventy-Nine Thousand Dollars (\$79,000) as advanced by Palm Beach County under that certain Mortgage and Security Agreement (the "Mortgage") dated December 1, 1993, executed by GROVES OF DELRAY, LTD., as Mortgagor, in favor of Palm Beach County, by and through its Board of County Commissioners, as Mortgagee, and recorded on December 3, 1993, in the Public Records of Palm Beach County, Florida at Official Record Book 8010, Page 412, a Notice of Future Advance for which was given by the Mortgagee on March 21, 1995, and recorded on April 6, 1995, in the Public Records of Palm Beach County, Florida at Official Record Book 8690, Page 477, upon the transfer of title to the real property described in the aforesaid Mortgage from the Mortgagor to GROVES OF DELRAY II, LTD., as the New Owner, the New Owner wishes to assume and to agree to pay the obligations of the Mortgagor, and to be bound by all the conditions and covenants of the Mortgage and Note, and

WHEREAS, the New Owner also wishes to modify the Maturity Date, as described and established in the Note, and

WHEREAS, the Mortgagee wishes to agree to the aforesaid assumption and modification.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable considerations paid by the New Owner to the Mortgagee, receipt of which is hereby acknowledged by Mortgagee, it is mutually understood and agreed as follows:

1. Upon the transfer of title to the real property described in the Mortgage from the Mortgagor to the New Owner, the New Owner shall assume and agree to pay the obligations of the Mortgagor, and to be bound by all the conditions and covenants of the Mortgage and Note. Furthermore, the New Owner acknowledges that the amount of the obligation to be assumed is \$15,126.15, which is the outstanding principal balance on the loan secured by the Mortgage.
2. The Maturity Date of July 31, 2011, established in the Note is hereby deleted and replaced with July 31, 2026.

Attachment # \_\_\_\_\_

**2**

3. All other terms and conditions of the original Mortgage and Note, unless specifically changed herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names and have caused their seals to be affixed by their respective proper officers thereunto duly authorized.

**GROVES OF DELRAY II, LTD.,**  
a Florida Limited Partnership

By: GROVES GP, LLC,  
a Florida Limited Liability Company,  
its General Partner

By: Auburn Management, Inc.,  
A Florida corporation,  
Its Managing Memeber

By: B. J. H.  
Brian J. Hinners, Chief Executive Officer

**STATE OF FLORIDA**  
**COUNTY OF PALM BEACH**

The forgoing instrument was acknowledged before me this 27<sup>th</sup> day of May, 2011,  
by Brian J. Hinners, who is personally known to me, or who has produced \_\_\_\_\_  
as identification, and who did (did not) take an oath.



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

Signature: Janey Gamble

Notary Name: Janey Gamble  
Notary Public - State of Florida

(NOTARY SEAL ABOVE)

(COUNTY SEAL BELOW)

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

By: \_\_\_\_\_  
Karen T. Marcus, Chair  
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: Journey Beard  
Journey Beard, Director of Contract  
Development and Quality Control

## EXHIBIT A

### PARCEL I:

Lots 23, 24, 25, 26, 27, and 28, Block 5, Plat 2 of 2, SOUTHRIDGE SUBDIVISION, 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 13, Page 39, said lands situate, lying, and being in Palm Beach County, Florida.

### PARCEL II:

Lots 7 through 10, inclusive, Block 1; Lots 1 through 10, inclusive, Block 2; Lots 1 through 5, inclusive, Block 3, STRICKLAND SUBDIVISION, as per Plat thereof on file in the Office of the Clerk of the Circuit Court in Plat Book 23, Page 173, Public Records of Palm Beach County, Florida;

AND

The West Half (W ½) of the East Half (E ½) of Lot 30, of the Subdivision of Section 20, Township 46 South, Range 43 East, as recorded in Plat Book 1, Page 4, Public Records of Palm Beach County, Florida.

### PARCEL III:

Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and Tract E, LINTON FOREST PLAT 1, 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 44, Page 177; said lands situate, lying, and being in Palm Beach County, Florida.

### PARCEL IV:

Tracks A, B, C and D, LINTON FOREST PLAT 1, 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 44, Page 177; said lands situate, lying, and being in Palm Beach County, Florida.

**MORTGAGE SUBORDINATION AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS:

Palm Beach County as present legal holder and owner of that certain Mortgage and Security Agreement (the "Mortgage") dated December 1, 1993, and executed by Groves of Delray, Ltd., as Mortgagor, to Palm Beach County, as Mortgagee, said Mortgage being recorded on December 3, 1993, in Official Record Book 8010, Page 412, in the Public Records of Palm Beach County, Florida, encumbering the real property situate, lying and being in Palm Beach County, Florida, as described in Exhibit A attached hereto, and as the issuer of that certain Notice of Future Advance dated March 21, 1995, and recorded on April 6, 1995, in the Public Records of Palm Beach County, Florida at Official Record Book 8690, Page 477.

Palm Beach County hereby recognizes that the Mortgagor intends to transfer title to the real property described in Exhibit A to Groves of Delray II, Ltd., and that Groves of Delray II, Ltd., intends to encumber said property with a First Mortgage to First Housing Development Corporation of Florida, and intends to encumber said property with a Second Mortgage to Florida Housing Finance Corporation.

For good and valuable consideration, to wit: Palm Beach County, Mortgagee, has and by these presents does waive the priority of the lien of the above described Mortgage insofar as the following described mortgages are concerned, but not otherwise:

That certain First Mortgage dated \_\_\_\_\_, from Groves of Delray II, Ltd., to First Housing Development Corporation of Florida, as First Mortgagee, securing payment of a Note for a term of 480 months, at a fixed interest rate not to exceed 4.22% per annum, and in the original principal amount which shall not exceed \$9,350,000.00, plus all future advances and payments made for taxes, insurance, and to cure borrower's default.

That certain Second Mortgage dated \_\_\_\_\_, from Groves of Delray II, Ltd., to Florida Housing Finance Corporation, as Second Mortgagee, securing payment of a Note for a term of 180 months, at a fixed interest rate not to exceed 3.34% per annum, and in the original principal amount which shall not exceed \$1,502,000.00, plus all future advances and payments made for taxes, insurance, and to cure borrower's default.

The undersigned Palm Beach County hereby consenting that the lien of the Mortgage first above described be taken as third and inferior to the above described First Mortgage, which shall be a first mortgage, and inferior to the above described Second Mortgage, which shall be a second mortgage.

**WITNESS** my hand and seal this day of \_\_\_\_\_.

(COUNTY SEAL BELOW)

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

ATTEST: Sharon R. Bock,  
Clerk & Comptroller

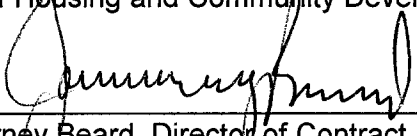
By: \_\_\_\_\_  
Karen T. Marcus, Chair  
Board of County Commissioners

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

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:   
Journey Beard, Director of Contract  
Development and Quality Control



LOAN AGREEMENT

THIS AGREEMENT, dated as of this        day of NOV 2 1993, 1993, by and between Palm Beach County, a political subdivision of the State of Florida, (here in after referred to as the "County" and the "Lender") and The Groves of Delray, Ltd., a Florida limited partnership whose Federal I.D. number is 65-0329328, (the "Borrower").

1. RECITALS.

(a) Borrower has a contract to purchase an approximately 14.2 acre tract of certain real property fronting on S.W. 10th Avenue in the City of Delray Beach, Palm Beach County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Premises").

(b) Borrower has applied to the County for a loan in the principal amount of \$400,000.00 (the "Loan") to be used by Borrower to finance the purchase of the Premises. Borrower intends to construct an apartment complex with a total of 158 units and related facilities, as affordable housing, on the Premises (the "Improvements").

(c) Borrower and the County have negotiated the terms and conditions of, and wish to enter into, this Agreement in order to set forth the terms and conditions for the disbursement of the Loan.

(d) Borrower has applied to the Consortium for Affordable Home Financing, Inc., for a first mortgage loan in the amount of \$4,200,000.00 to be used to finance a portion of the construction of the improvements upon the land, secured by a separate mortgage, encumbering the Premises (the "First Mortgage").

(e) The Florida Housing Finance Agency, 2574 Seagate Drive, Suite 101, Tallahassee, Florida 32301-5026, under the State Apartment Incentive Loan program ("SAIL"), has agreed to finance up to \$1,502,000 of the construction of the improvements pursuant to a separate loan to Borrower, secured by a separate mortgage, encumbering the Premises (the "Second Mortgage"), which loan will be serviced and monitored by First Housing Development Corporation as agent for Florida Housing Finance Agency.

NOW, THEREFORE, in consideration of the premises, and of the mutual covenants and agreements set forth below the receipt and sufficiency of which is hereby acknowledged, Borrower and the County agree as follows:

2. THE LOAN. The County shall make the Loan to Borrower in an amount not to exceed \$400,000 upon the terms and conditions set forth herein, and Borrower shall take the Loan and expressly agrees to comply with and to perform all of the terms and conditions of this Loan Agreement, the Note, the Mortgage and any other Documents evidencing and securing this Loan (collectively hereinafter referred to as the "Loan Documents"). The closing of the Loan including the execution of the Note and Mortgage, shall occur at the offices of the County Attorney or such other mutually agreed upon site no later than December 1, 1993.

3. RIGHT TO AUDIT. The Borrower shall maintain adequate records to justify all charges, expenses and costs incurred for completion of the project for at least three (3) years after completion. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Borrower's place of business.

4. CONDITIONS PRECEDENT TO CLOSING. The conditions listed below are a condition precedent to the County's acceptance of the Mortgage documents and disbursement of funds and shall be complied with in form and substance satisfactory to the County prior to the closing:

Attachment 4

(a) Title Insurance:

(i) Within thirty (30) days of the effective date hereof, Borrower shall deliver to County a title commitment issued by a title insurance company qualified to do business in the State of Florida and acceptable to County, agreeing to issue to County upon recordation of the Mortgage a Lenders Title Insurance Policy in the amount of said Mortgage, subject only to the Permitted Exceptions listed on Exhibit "B" attached hereto and made a part hereof. Said commitment shall have attached to it copies of all exceptions referred to in the title commitment. The cost of said title commitment and policy and any premium therefore shall be borne by Borrower.

(ii) County shall have fifteen (15) days after receipt of the title insurance commitment in which to review the same. In the event the title insurance commitment shall show as an exception any matter other than the Permitted Exceptions, County shall notify Borrower of its objections there to and Borrower shall act to remove such exceptions, which exception shall be deemed to constitute title defects. The Borrower shall be entitled to thirty (30) days from the day of notification (with the term of Closing Date if necessary) within which to cure such defects or make arrangements with the title insurer for the removal of any such objections from the commitment. If the defect shall not have been so cured or removed from the commitment by endorsement thereto with the termination of said thirty (30) day period, the County shall have the option of accepting title as it then exists or terminating this Loan Agreement, by giving written notice thereof to Borrower, in which event the parties shall be relieved of all further obligations hereunder.

(iii) The title insurance commitment shall be endorsed at closing to remove any and all requirements of pre-conditions to the issuance of a Lenders Title Insurance Policy, and to delete any exceptions for: (a) any rights or claims or parties in possession not shown by the public records; (b) encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Premises; (c) unrecorded easements and claims of liens; (d) taxes for the year of closing and all prior years; (e) matters arising or attaching subsequent to the effective date of the commitment but before the Mortgage becomes recorded in the Public Records.

(b) Survey: Borrower shall deliver to the County a current certified survey prepared by a surveyor acceptable to the County of the Premises showing the following:

(i) the location of the perimeter of the Premises by courses and distances and perimeter footings in place, and by reference to Township, Range, Section:

(ii) the location of and the identification by reference to recording data of all easements, rights-of-way, conditions and restrictions on or appurtenant to the Premises:

(iii) the location of all building setback lines:

(iv) the lines of the streets abutting the Premises and the width thereof;

(v) all encroachments, and the extent thereof in feet and inches upon the Premises;

(vi) if the Premises are described as being on a filed map, a legend relating the plat of survey to such map;

(vii) flood zone certification; and

(viii) any other notations required for the deletion of the survey exception from the Title Insurance Policy to be issued in accordance with paragraph 4(a) above and any other requirements requested by the County.

(c) Note: The Note, in a form acceptable to the County Attorney, shall be duly authorized, executed and delivered to the County;

(d) Mortgage: The Mortgage, in a form acceptable to the County Attorney, shall be duly authorized, executed, acknowledged, delivered to the County, and when recorded, which shall be a valid first mortgage lien on the Premises and on all fixtures and personal property owned by Borrower to be used in connection with the Improvements.

(e) Mortgagor's Affidavit: An affidavit of Borrower shall be executed and delivered to the County as required by the Title Insurer as noted in paragraph 4 (a) above, certifying to all such facts as are required to delete the Standard Exceptions from the Lenders Title Insurance Policy and certifying that no liens exist on the Premises for taxes not yet due and payable and that no other parties are entitled to possession except as otherwise provided herein.

(f) Public Requirements: Borrower shall deliver to the County:

(i) letters from local utility companies or municipal authorities stating that electricity, telephone, sewer and water facilities will be available to the Premises upon the completion of the intended improvements,

(ii) a letter from the appropriate Zoning Department certifying as to compliance with all zoning and land use regulations including but not limited to compliance with parking requirements, a copy of the applicable zoning ordinances certified by an appropriate official to be a complete and accurate statement thereof, and an up-to-date zoning map similarly certified,

(iii) evidence satisfactory to the County that all roads necessary for the full utilization of the intended improvements for their intended purposes have either been acquired by the appropriate governmental authorities or have been dedicated to public use and accepted by such governmental authorities and that all necessary steps have been taken by Borrower and such governmental authorities to assure the complete construction and installation thereof,

(iv) copies of subdivision plats, restrictive covenants, plans of developments, and all other documents required by the local zoning and subdivision ordinances, and such other documents required by and satisfactory to the County; and evidence satisfactory to the County and its counsel that the Final Plans conform to all federal, state, and local laws, ordinances, rules and regulations, including, but not limited to, laws of the State of Florida regulating air and water pollution and land use,

(v) copies of all necessary approvals from appropriate environmental protection agencies, and

(vi) satisfactory soil test report;

(g) Partnership Documents: Borrower shall deliver to the County the following documents:

(i) The Certificate of Limited Partnership of the Borrower and all amendments thereof, certified by the appropriate official of the State of Florida, together with a certificate of such official to the effect that such limited partnership is in good standing therein,

(ii) a certified copy of the Limited Partnership Agreement.

(iii) incumbency certificates specifying by name the partners of the Borrower certified by the Secretary of the General Partner of such limited partnership, and

(iv) certified resolutions of the managing partners or partners of Borrower authorizing the execution and

delivery of this Agreement, the Mortgage, Note and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement;

(h) Flood Insurance: Borrower shall deliver to the County evidence satisfactory to the County either that the Premises are not within a hazardous flood area as designated by the Department of Housing and Urban Development and any other governmental authority, or if the Premises are within such a hazardous area, that the Premises are covered by flood insurance supplied by the federal Insurance Administration to the maximum amount available, all as provided in the Flood Disaster Protection Act of 1973, as amended, together with appropriate endorsements thereto providing for the County's interests in the same manner as the Builder's Risk Insurance, including without limitation that such insurance will not be canceled without 30 days notice to the County. Borrower agrees that the County shall have the right to take any action necessary to continue said insurance in full force and effect including, but not limited to, paying premiums. Any funds disbursed to continue said policies in full force and effect shall be considered as Disbursements hereunder and shall bear interest from the date of disbursement at the same rate as other Disbursements and payment of said funds and interest shall be secured by the Mortgage. Satisfactory evidence of flood area designation shall be a certification from the Surveyor appearing on the survey drawing;

(i) Opinion of Borrower's Counsel: Borrower shall deliver to the County an opinion of counsel for Borrower and addressed to the County, such counsel to be reasonably satisfactory to the County, to the effect that:

(i) This Loan Agreement and all Loan Documents and any other documents required to be delivered hereunder have been duly authorized, executed and delivered and are valid, binding and enforceable in accordance with their terms.

(ii) that Borrower is a limited partnership in good standing under the laws of the State of Florida and has all the necessary power and authority to undertake its obligations hereunder,

(iii) that Borrower is in compliance with all laws, regulations, ordinances and orders of all governmental authorities, including, but not limited to, if applicable, the Interstate Land Sales Full Disclosure Act, all applicable federal and state securities laws, and all laws of the State of Florida, applicable to the type of developments contemplated hereunder,

(iv) that the proposed construction of the Improvements and proposed use of the Premises comply with all applicable zoning and building laws and regulations, and all other applicable federal, state and local laws, ordinance and regulations, and that all permits and approvals required by all governmental agencies regulating air and water pollution have been obtained, and Florida Statute Chapter 380 pertaining to Development of Regional Impact (including the Aggregation Rule) as it relates to the Premises is not applicable,

(v) that there is no charter or bylaw of Borrower and no provision of any existing mortgage, indenture, contract or agreement known to such counsel binding on Borrower or affecting its property which could conflict with or in any way prevent the execution, deliver and carrying out of the terms of this Agreement,

(vi) that to counsel's knowledge there are no proceedings pending or threatened before any court or administrative agency which will materially adversely affect the financial condition or operation of Borrower of the Premises, including but not limited to bankruptcy, reorganization or insolvency proceeding or any other debtor-creditor proceedings under the Bankruptcy Code or any similar statute, nor to counsel's knowledge are there any finance circumstances within counsel's knowledge which could lead to such proceedings,

(vii) that the lien of the Mortgage is valid first lien on the Premises and the security interest described in the mortgage are good and valid security interests.

(viii) such other matters as the County may reasonable require.

(j) Expenses: Borrower shall have paid all those fees and charges due and payable or ordered paid by the County as provided herein under Paragraph 6 of this Loan Agreement entitled Expenses;

(k) Other Documents: Borrower shall deliver to the County such other documents and information as the County may reasonably require; and

(l) Representations and Warranties: The representations and warranties of Borrower as set forth in this Agreement and the Loan Documents are true and correct.

5. DISBURSEMENT OF LOAN FUNDS: Disbursement of Loan Funds shall be made by the County to the Borrower at the closing of the purchase of the Premises, following execution of the Mortgage and Note.

6. EXPENSES: Borrower shall pay fees and charges incurred in the procuring and making of this Loan, if applicable, and other expenses incurred by the County during the term of the Loan, including the Title Insurance Company's fees and premiums, charges for examination of title to the Premises, expenses of surveys, Florida Documentary Stamp Taxes, recording expenses, any and all insurance premiums, taxes, assessments, water rates, sewer rates and other charges, liens and encumbrances upon the Premises, and any other amounts necessary for the payment of the costs of Improvements.

7. SPECIAL PROVISIONS: Borrower expressly agrees to the following terms and conditions:

(a) Borrower agrees that the Improvements will consist of a 158 unit apartment complex, and that one hundred (100%) percent of the apartment units to be constructed on the Premises shall be reserved for households who have low or very low income pursuant to U.S. Government HUD guidelines for a period of fifty (50) years.

(b) The Borrower shall not discriminate on the basis of race, creed, religion, color, sex, marital status, sexual orientation, national origin or handicap in the use, or occupancy of any housing constructed on the Premises. Age discrimination and discrimination on the basis of familial status are also not permitted, except when units are specifically designed and meet the requirements of housing for older persons as defined by HUD.

(c) The Mortgage shall not be subject to any prepayment penalty.

(d) The Mortgage shall become immediately due and payable upon sale, transfer, or refinancing.

(e) The Mortgage shall be non-assumable.

(f) Borrower agrees to require the general contractor to use all good faith efforts necessary to obtain a minimum of twenty (20%) percent M/WBE participation in the performance of the construction contracts and to provide documentation to the County as requested verifying the participation.

Conditions (a) and (b) above shall, upon closing become covenants running with the land and shall survive the closing, and the payment or other termination of the Mortgage and Note. These conditions and covenants will be recorded in the land records of Palm Beach County, Florida by inclusion in the mortgage and/or by separate document satisfactory to the County's Attorney citing the granting of this loan and mortgage as consideration.

8. REPRESENTATIONS AND WARRANTIES OF BORROWER. Borrower represents and warrants (which representations and warranties shall be deemed continuing) as follows:

(a) Organization Status. Borrower is a limited partnership duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein. The general partners, The Groves of Delray Joint Venture, are duly authorized to borrow from County the principal sum of \$400,000.00 and execute all for a Loan the documents pertaining thereto.

(b) Financial Statements. The Financial statements of Borrower heretofore reviewed with the County are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles, and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no additional borrowings have been made by Borrower since the date thereof;

(c) Authority to Enter into Loan Documents. The Borrower has full power and authority to enter into the Loan Documents and consummate the transactions contemplated hereby, and the facts and matters expressed or implied in the opinions of its legal counsel are true and correct;

(d) Validity of Loan Documents. The Loan Documents have been approved by those persons having proper authority, and to the best of Borrower's knowledge are in all respects legal, valid and binding according to their terms;

(e) Conflicting Transactions of Borrower. The consummation of the transaction hereby contemplated and the performance of the obligations of Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any other Agreement to which Borrower is a party or by which it may be bound or affected;

(f) Pending Litigation. There are no actions, suits or proceedings pending before any court of law equity, or any Administrative Board, or, to the knowledge of the Borrower, threaten against or affecting it or the Premises, or, involving the validity or enforceability of the Mortgage, or of any of the Loan Documents.

(g) Availability of Utilities. All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are available at the boundaries of the Premises, including water supply, storm and sanitary sewer facilities, and electric and telephone facilities, and Borrower has obtained all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the intended improvements;

(h) Condition of Premises. The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, and there are no soil conditions which would interfere with the construction of the Improvements;

(i) Availability of Roads. All roads necessary for the full utilization of the intended improvements for their intended purposes have either been completed or the necessary rights of way therefor have either been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Borrower and such local authorities to assure the complete construction and installation thereof;

(j) No Default. There is no default on the part of the Borrower under this Loan Agreement, the Note or the Mortgage, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute a default under any provision thereof; and

(k) Advertising. During the period of the construction of the Improvements, the County shall have the right to install and maintain on the Premises one or more signs identifying the County, or to be identified on such signs installed by others, as one of the institutions financing the Premises. Sign or signs will be provided by the County and erected at Borrower's expense.

(l) Hazardous Waste. Borrower is in compliance with all provisions of the federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980 and Solid Waste Disposal Act, Florida Statutes, Chapter 376, and other similar federal, state and local statutory schemes imposing liability on Borrower relating to the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and order issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts or competent jurisdiction with respect thereto, and not assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by the Borrower. Borrower has paid any environmental excise taxes imposed pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

(m) The Borrower and its General Partner(s) have filed all Federal, State and local tax reports and returns required by any law or regulation to be filed by them, and have either duly paid all taxes, duties and charges indicated due on the basis of such returns and reports, or made adequate provisions for the payment thereof, and the assessment of any material amount of additional taxes in excess of those paid and reported is now reasonably expected.

9. ADDITIONAL COVENANTS OF BORROWER. Borrower covenants and agrees with the County as follows:

(a) Mechanics' Liens. Borrower (i) will allow no work or construction to be commenced on the Premises, or goods specially fabricated for incorporation therein, which has not been fully paid for prior to the recording of the Mortgage and Notice of Commencement or which could constitute a lien on the Premises (ii) will cause a certified copy of the Notice of Commencement to be posted as required by Chapter 713, Florida Statutes, as soon as possible after recording the Notice of Commencement, (iii) shall notify the County of any and all Notices to Borrower as Owner as that term is defined in Chapter 713, Florida Statutes, within five (5) days of receipt thereof, and (iv) will comply with all provisions of the Florida Mechanics' Lien Law, including but not limited to, payment and notice provisions contained therein. Borrower shall indemnify and hold the County harmless from the claims of any mechanics' lien or equitable lien and pay promptly upon demand any loss or losses which the County may incur as a result of the filing of any such lien, including the reasonable cost of defending same and the County's reasonable attorneys' fees in connection therewith.

In addition, Borrower agrees, at its sole cost and expense, to have any mechanics' lien or equitable lien which may be filed against the Premises or undisbursed funds of this Loan released or bonded within thirty (30) days of the date of filing same, time being of the essence. The County shall be under no obligation to make further disbursements while any such lien remains outstanding against the Premises. If Borrower fails, after demand, to cause said lien or liens to be released or bonded as aforesaid the County may take such steps as it deems necessary and any funds expended shall be charged to Borrower's Loan Account and shall bear interest as provided by the Loan Documents.

Borrower hereby authorizes the County to demand, on Borrower's behalf, the statement of account referred to in Section 713.16(2)



of the Florida Statutes, or any potential lienor filing a Notice to Owner. It is specifically understood and agreed, however, that the County's right to request such statements of account will in no way impose any obligation on the County to use such authority, and the exercise of such authority on one or more occasion shall not create or imply any obligation on such party to exercise such authority on subsequent occasions.

(b) No Transfer of Premises. Except as specifically set forth in the Mortgage or herein, the Premises or any part thereof shall not be sold, leased, conveyed, mortgaged or encumbered in any way without the prior written consent of the County except as provided elsewhere herein or in the Mortgage, it being understood and agreed that part of the consideration for the Loan is the obligation of Borrower.

(c) Compliance with Laws. Borrower will comply promptly with all federal, state and local laws, ordinances and regulations relating to the construction, use, and leasing of the Premises, and will obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for construction and use of the Improvements.

(d) Brokerage Commissions. Borrower will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to the Loan, and Borrower will indemnify and hold County harmless from the claims of any broker(s) arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

(e) Financial Statements to be Furnished. Borrower shall furnish to the County:

(i) Upon the County's request, a complete and current financial statement of all assets and liabilities, contingent or otherwise, prepared in accordance with generally accepted accounting principles and verified by affidavit of Borrower and its general partners, and, at the request of the County, certified (in form satisfactory to the County) by an independent certified public accountant acceptable to the County;

(ii) within ninety (90) days after the end of each fiscal year of Borrower, a balance sheet and statements of income, surplus, and cash flow, together with schedules, all compiled and presented by an independent accounting firm in accordance with standard and uniform accounting practices showing the financial condition of Borrower at the close of each year and the results of operations of Borrower during each year;

(iii) with the statements submitted under (ii) above, a certificate signed by the principal financial officer of Borrower to the effect that no event of default specified herein, nor any event which upon notice or lapse of time or both, would constitute such an event of default, has occurred; and

(iv) promptly, from time to time, such other information regarding the operations, business, affairs and financial condition of Borrower as the County may reasonably request.

(f) Borrower to Maintain Bookkeeping System. Borrower shall, if required by the County, maintain a bookkeeping system to the construction project in form and content sufficient for the County and Inspector to conduct reviews, inspections, certifications and reports required by this Agreement. The County shall have full (but confidential) access, as allowed under the Public Records Law, at any reasonable time to the books, records and contracts pertaining to the Premises and Borrower.

(g) Insurance Proceeds. The Borrower shall keep the Premises continually insured in an amount not less than full insurable value of the Premises, which coverage shall insure the Premises against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the County, in its sole discretion, shall from time to time require, for the benefit of the County. All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to



the County, with loss, if any, payable to the County, as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be satisfactory to the County; and forthwith upon the issuance of such policies they will deliver to the County receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies. Any policies furnished the County shall become its property in the event the County becomes the owner of the Premises by foreclosure or otherwise. Should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Premises, then in such event, County and Borrower may jointly elect to use the proceeds for the reconstruction and repair of the Premises or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not.

(h) Indebtedness. With respect to the Premises encumbered by the Borrower of even date herewith, Borrower will not incur, create, assume or permit to exist any indebtedness constituting the deferred purchase price of any property or assets, or any indebtedness or liability evidenced by notes, bonds, debentures or similar obligations without the written approval of the County, except indebtedness owed the County, and the aforementioned First Mortgage and Second Mortgage; provided however, that the First Mortgage and Second Mortgage shall not exceed the amounts contained in the recitals incorporated in this Loan Agreement.

(i) Further Assurances and Preservation of Security. Borrower will do all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Loan Agreement, as the County shall reasonably require from time to time, and will do such other acts necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Note, as the County may require.

(j) No Assignment. Borrower shall not assign this Loan Agreement or any interest therein and any such assignment is void and of no effect.

10. INSPECTIONS. Borrower will permit County, or its representatives to enter upon the Premises, inspecting improvements and all materials to be used in the construction thereof, and to examine all details, plans and shop drawings which are kept at the construction site, and will cooperate, and cause Borrower's general contractor and subcontractors to cooperate with the County's representative.

11. DEFAULT. The following events shall be deemed Events of Default:

(a) Bankruptcy. If there is filed by or against Borrower a petition in bankruptcy or a petition for the appointment of a receiver or trustee of the property of Borrower and any such petition not filed by Borrower is not dismissed within sixty (60) days of the date of filing, or if Borrower files a petition for reorganization under any of the provisions of the Bankruptcy Code or of any assignment for the benefit of creditors or makes any insolvency assignment or is adjusted insolvent by any court of competent jurisdiction; or

(b) Breach of Covenants, Warranties and Representations. If any warranty or representation made by Borrower in this Loan Agreement or pursuant to the terms hereof shall at any time be false or misleading in any material respect, or if Borrower shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Loan Agreement, the Note, the Mortgage, the Loan Documents, and any other document given in connection with the Loan or development of the improvement (provided, that with respect to nonmonetary defaults, the County shall give written notice to Borrower, who shall have fifteen (15) days to cure), or is unwilling to meet its obligations thereunder; or

(c) Material Adverse Change of Borrower. If any material adverse change shall occur in the financial condition of Borrower

at any time during the term of the Loan from the financial condition revealed in statements already presented to and accepted by the County; or

(d) Borrower shall default under the First Mortgage or the Second Mortgage.

(e) Borrower shall fail to close on the First Mortgage and the Second Mortgage within six (6) months of the closing of this Loan Agreement.

(f) Borrower shall fail to complete construction of the Improvements and secure a Certificate of Occupancy for the Improvements within three (3) years of the closing of this Loan Agreement.

12. REMEDIES OF LENDER. Upon the happening of an Event of Default, then the County may, at its option, upon written notice to Borrower:

(a) Cancel this Loan Agreement;

(b) Commence an appropriate legal or equitable action to enforce performance of this Loan Agreement;

(c) Accelerate the payment of the Note and any other sums secured by the Mortgage, and commence appropriate legal and equitable action to foreclose the Mortgage and collect all such amounts due the County;

(d) Exercise any other rights or remedies the County may have under the Mortgage or other Loan Documents executed in connection with the Loan or which may be available under applicable law.

13. SUBORDINATION. Lender shall approve a First Mortgage and a Second Mortgage provided the aggregate principal amount of both Mortgages combines shall not \$5,702,000 and further agrees to subordinate to said First and/or Second Mortgages. The Chair of the Board of County Commissioners of Palm Beach County and the Clerk of the Court for Palm Beach County, Florida are hereby authorized to execute subordination agreement(s) and any estoppel letters required herein without further approval of the Board of County Commissioners of Palm Beach County, Florida, provided such documents are in a form acceptable to the County Attorney.

14. GENERAL TERMS. The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

(a) Rights of Third Parties. All conditions of the County hereunder are imposed solely and exclusively for the benefit of the County and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that the County will make Disbursements in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Loan Agreement or the Loan Documents, any provisions of which may be freely waived in whole or in part by the County at any time if, in its sole discretion, it deems it desirable to do so. In particular, the County makes no representations and assumes no duties or obligations as to third parties concerning the quality of the construction by Borrower of the Improvements or the absence therefrom of defects.

(b) Borrower is not the County's Agent. Nothing in this Agreement, the Note, the Mortgagor or any other Loan Document shall be construed to make the Borrower the County's agent for any purpose whatsoever, or the Borrower and the County partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

(c) The County Not Liable for Damage or Loss. All inspections and other services rendered by or on behalf of the County shall be rendered solely for the protection and benefit of the County. Neither Borrower nor other third persons shall be entitled to claim any loss of damage against the County or against

its agents or employees for failure to properly discharge their duties.

(d) The County Not Obligated to Insure Proper Disbursement of Funds to Third Parties. Nothing contained in this Agreement, or any Loan documents, shall impose upon the County any obligation to oversee the proper use or application of any disbursements and disbursements of funds made hereunder.

(e) Indemnification from Third Party Claims. Borrower shall indemnify and hold County harmless from any liability, claims or losses resulting from the disbursement of the Loan proceeds to Borrower or from the condition of the Premises, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Loan. This provision shall survive the repayment of the Loan and shall continue in a full force and effect so long as the possibility of such liability, claims, or losses exists.

(f) Rights of Subcontractors, Laborers and Materialmen. In no event shall this Agreement be construed to make the County, Title Company or agent of the County liable to Borrower's Contractor or any subcontractors, laborers, materialmen, craftsmen, or others for labor, materials, or services delivered to the Premises or goods specially fabricated for incorporation therein, or for debts or liens accruing or arising to such persons or parties against Borrower or Borrower's Contractor. It is distinctly understood and agreed that there is no relation of any type whatsoever, contractual or otherwise, whether express or implied, between the County and Borrower's Contractor, any materialman, subcontractor, craftsman, laborer or any other person or entity supplying any labor, materials or services to the Premises or specially fabricating goods to be incorporated therein. Except as otherwise specifically provided herein, no such person or entities are intended to be third party beneficiaries of this Agreement or any document or instrument related to the Loan or to have any claim or claims in or to any undisbursed or retained Loan proceeds.

(g) Evidence of Satisfaction of Conditions. The County shall, at all time, be free independently to establish to its good faith and satisfaction, and in its absolute discretion, the existence or nonexistence of a fact of facts which are disclosed in documents or other evidence required by the terms of this Agreement.

(h) Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.

(i) Invalid Provisions to Affect No Others. If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

(j) Application of Interest to Reduce Principal Sums Due. In the event that any charge, interest or late charge is above the maximum rate provided by law, then any excess amount over the lawful rate shall be applied by the County to reduce the principal sum of the Loan or any other amounts due the County hereunder.

(k) Governing Law. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement and the venue shall be in Palm Beach County.

(l) Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.

(m) Agreement. This Loan Agreement constitutes the entire understanding and agreement between the parties with respect the subject matter hereof and may not be modified or amended, except in writing and signed by all parties hereto.

(n) Waiver. If the County shall waive any provisions of the Loan Documents, or shall fail to enforce any of the conditions or provisions of this Loan Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the County shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

(o) Notices. All notice from the Borrower to the County and the County to Borrower required or permitted by any provision of this agreement shall be in writing and sent by registered or certified mail and addressed as follows:

TO LENDER: Board of County Commissioners  
c/o Palm Beach County Attorney's  
Office  
Suite 601  
301 N. Olive Avenue  
West Palm Beach, FL 33401

TO BORROWER: Florida Affordable Housing, Inc.  
499 Boynton Bay Circle  
Boynton Beach, FL 33435  
Attn: Thomas G. Hinnners  
Executive Director

WITH A COPY TO: County Attorney's Office  
P.O. Box 1989  
West Palm Beach, FL 33402

Such addresses may be changed by written notice to the other party.

(p) Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors and assigns; but nothing herein shall authorize the assignment hereof by the Borrower.

(q) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.

(r) Waiver of Jury Trail. BORROWER WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS LOAN OR GRANT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY'S EXTENDING CREDIT TO BORROWER AND NO WAIVER OF LIMITATION OF THE COUNTY'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON THE COUNTY'S BEHALF.

15. ENFORCEMENT COSTS. In the event of any action, suit or proceeding as commence with the respect to interpretation or enforcement of this Loan Agreement, the prevailing party therein shall be entitled to recover all costs, expenses and fees, including without limitation, reasonable attorney's fees, expended or incurred by such party in connection therewith, including any such costs, expenses and fees upon appeal and imposed judgement proceedings.

16. EFFECTIVE DATE OF AGREEMENT. This Agreement is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners, and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners. The Effective Date shall be the date on which this Loan Agreement is executed by the Board of County Commissioners.

IN WITNESS WHEREOF, Borrower and the County have caused this Agreement to be executed on the date first above written.

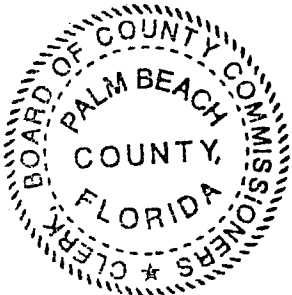
Signed, sealed and delivered in the presence of:

Frank L. Brock

THE GROVES OF DELRAY, LTD.

Jean C. Grill

BY: THE GROVES OF DELRAY  
JOINT VENTURE



FLORIDA AFFORDABLE HOUSING, INC.

BY: Thomas G. Hinners  
Thomas G. Hinners

Title: Executive Director

ATTEST:  
DOROTHY H. WILKEN, CLERK

PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida  
BY ITS BOARD OF COUNTY COMMISSIONERS

BY: Dorothy Wilken  
Deputy Clerk

BY: Mary McCarty  
Chair

R93 1447D NOV 2 1993

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY: [Signature]  
County Attorney

STATE OF FLORIDA

PALM BEACH COUNTY

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of OCTOBER, 1993 by THOMAS G. HINNERS who is personally known to me or who has produced N/A as identification and who did/did not take an oath.

[Signature]  
(Signature of Notary)

RENÉE FOWER  
(Typed, Printed, or Stamped)

Name of Notary

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. JAN. 29, 1994  
GORGED THRU GENERAL INS. UND.

[G:\gengovt\EBH\Grove-LN.AGR:]  
[cmm: 10/27/93]

R93 1447D

WC #35  
Book

400,000

This instrument prepared by  
and to be returned to:  
Ellie B. Halperin, Esq.  
Palm Beach County Attorney's Office  
P.O. Box 1989  
West Palm Beach, FL 33402

DEC-03-1993 2:26pm 93-392054  
ORB 8010 Pg 412  
Con 400,000.00 Doc 1,400.00  
Int 800.00

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE INDENTURE, executed this 1st day of December, 1993, by GROVES OF DELRAY, LTD., a Florida Limited Partnership, (the "Mortgagor"), as party of the first part, and PALM BEACH COUNTY, a political subdivision of the State of Florida (the "Mortgagee") (which term as used in every instance shall include the Mortgagee's successors and assigns), as party of the second part;

WITNESSETH:

The Mortgagor is the owner of the premises described in Exhibit "A" attached hereto (hereinafter the "Premises") and made a part hereof. Mortgagee has this date loaned Four Hundred Thousand Dollars (\$400,000.00) to Mortgagor and in connection therewith Mortgagor has this date executed and delivered to Mortgagee its Promissory Note in that amount (the "Note"). A true copy of the Note is annexed hereto as Exhibit "B" and forms a part hereof.

This mortgage is given in accordance with that certain Loan Agreement executed on the 2nd day of November, 1993 between Mortgagor and Mortgagee. This Mortgage and Security Agreement, the Note, and the Loan Agreement shall hereinafter collectively be referred to as the "Loan Documents".

GRANTING CLAUSE

NOW, THEREFORE, the Mortgagor in consideration of the premises and in order to secure payment of both the principal of, and the interest and any other sums payable on, the Note or this Mortgage, and the performance and observance of all the provisions hereof, and of the loan documents, hereby gives, leases, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee, all of the Mortgagor's estate, right, title and interest in, to and under any and all of the Premises, improvements (including improvements to be made hereafter), fixtures here and below described and located on the Premises which sometimes collectively referred to hereinafter as the "Mortgaged Property".

TOGETHER with all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor including but not limited to all of Mortgagor's sewer capacity rights, and Mortgagor's rights under contracts, permits, licenses and all other documents and payments affecting the Premises, reserving only the right to the Mortgagor to collect the same so long as the Mortgagor is not in default hereunder and so long as the same are not subjected to garnishment levy, attachment or lien.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in fee simple and has good right to convey the same, that the same are unencumbered excepting taxes accruing subsequent to 1993, and those certain exceptions appearing on the Mortgagee's Title Insurance Policy given in connection herewith and specifically approved by Mortgagee, and that the Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinafter expressly provided.

Notwithstanding the foregoing, this Mortgage shall be subject and subordinate to separate mortgage and security agreements and related loan documents encumbering the Premises upon their execution by Mortgagor in favor of a first mortgage lender in an original aggregate principal amount not to exceed \$4,200,000 ("First Mortgage"), and in favor of the Florida Housing Finance Agency in an original aggregate principal amount not to exceed \$1,502,000 ("Second Mortgage").

PROVIDED ALWAYS that if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note, which Note is in the original principal amount of \$400,000.00 and has a maturity date of November 30, 2008 unless such maturity is accelerated as set forth in the Note, and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents, then in such event this Mortgage and Security Agreement and the estate hereby created shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

1.1 Payments of Indebtedness. The Mortgagor shall punctually pay the principal and interests and all other sums to become due in respect to the Note. At the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all and any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

1.2 Taxes, Liens and Other Charges.

(a) The Mortgagor, from time to time when the same shall become due and payable, will pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges and all other public charges, whether of a like or different nature, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

(b) The Mortgagor shall pay, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and other persons or entities which, if unpaid, might result in or permit the creation of, a lien on Mortgaged Property or any part hereof, or on the revenues, rents, issues, income and profits arising therefrom whether such lien is or may become prior or remain inferior to the Mortgage and also, irrespective of the priority of such other lien(s), Mortgagor in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

(c) The Mortgagor shall pay any taxes except income taxes imposed on the Mortgagee by reason of the Mortgagee's ownership of the Note or this Mortgage.

1.3 Insurance. The Mortgagor will keep the Mortgaged Property continuously insured in an amount no less than full insurable value which coverage shall insure the Mortgaged Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the Mortgagee, in its sole discretion, shall from time to time require, for the benefit of the Mortgagee. All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to the Mortgagee, with loss, if any, payable to the Mortgagee as its interest may appear, pursuant to a noncontributory mortgage clause which shall be satisfactory to the Mortgagee; and forthwith upon the issuance of such policies they will deliver to the Mortgagee receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies.

Any policies furnished the Mortgagee shall become its property in the event the Mortgagee becomes the owner of the Premises by foreclosure or otherwise. The Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property. Each insurance company is hereby authorized and directed to make payment for all such losses to the Mortgagor and the Mortgagee jointly. Should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Mortgaged Property, then in such event, Mortgagee and Mortgagor may jointly elect to use the proceeds for the reconstruction and repair of the Mortgaged Property or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not.

#### 1.4 Care of Premises.

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) If the Premises or any part thereof is damaged by fire or any other cause, the Mortgagee will give immediate written notice of the same to the Mortgagee.

(c) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours.

(d) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(e) If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor will, upon request of the Mortgagee, promptly restore the Premises to the equivalent of its condition immediately prior to such damage, and if a part of the Premises shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Premises in a manner satisfactory to the Mortgagee.

1.5 Further Assurances; Modifications. At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, exercise and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any failure by the Mortgagor so to do the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.6 Expenses. In addition to the expenses described in subparagraph 2.7(b) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs and expenses, including those in connection with appellate proceedings, incurred by the Mortgagee in any proceedings or in any action, legal proceeding or dispute of any kind which relate to or arise from the Mortgage of the interest created herein, or the Premises, including but not limited to the exercise of the power of sale of this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

1.7 Estoppel Affidavits. The Mortgagor, upon ten days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets of defenses exist against such principal and interest.



1.8 Subrogation. The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.9 Performance by Mortgagee of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; in the performance of any covenant, term or condition of any leases affecting all or any part of the Premises; or in the performance or observance of any covenant, condition or term of this Mortgage; then the Mortgagee, at its option, may perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the maximum rate provided by law. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgage.

1.10 Condemnation. In the event of a condemnation (which term when used in the Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof) either temporarily or permanently, of any part of the Premises constituting twenty percent (20%) or more of the full value of the Premises, or in the event such condemnation makes the Premises unusable for the purposes contemplated herein and in the Loan Agreement, then in such event, the entire indebtedness secured hereby shall at the option of the Mortgagee, become immediately due and payable. Such events shall be a Condemnation Event ("Condemnation Event"); however, any condemnation for less than twenty percent (20%) of value, or not rendering the Premises unusable, shall not be affected by this section. In the event of a Condemnation Event: The Mortgagee shall be entitled to all compensation, awards, and other payments or relief thereof, and is hereby authorized at its option to commence, appear in, and prosecute, in its own, or the Mortgagor's name, any action or proceeding relating to any condemnation, any to settle or compromise any claim in connection therewith; and all such compensation, awards, damages, claims, rights of action and proceeds, and the right thereto from any Condemnation Event are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom, all its expenses, including attorneys fees, may release any monies received by it without further affecting this Mortgage and may apply the same in such manner as the Mortgagee shall determine, to the reduction of the sum secured hereby, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds from a Condemnation Event as the Mortgagee may require.

1.11 Environmental Representations.

(a) The Mortgagor covenants with the Mortgagee that the Premises have not been used and will not be used in whole or in part for the storage of hazardous waste.

(b) No violation of any Federal, State or local environmental regulations now exists regarding the Mortgage Property.

(c) Mortgagor shall comply with all Federal, State and local environmental regulations during the construction of the improvements on the Premises.

(d) Mortgagor shall give written notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any hazardous substances on the Mortgage Property or of any hazardous substances contamination thereon, or of any notices received by Mortgagor that are violations or potential violations of any environmental regulation laws, ordinances, rules or regulations exists on the Mortgage Property.

ARTICLE II.

2.1 Due on Sale or Further Encumbrance Clause. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, found it acceptable and continues to rely upon the same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and continues to rely upon same as the means of maintaining the value of the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress or any kind for all of the terms and conditions of the loan, including this provision. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) could detract from the value of the Premises should Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security both of repayment by Mortgagor and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntarily or by operation of law) without the Mortgagee's prior written consent, which may be withheld for any reason, shall be an event of default hereunder. For the purpose of and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder.

(a) any sale, conveyance, assignment or other transfer of or the grant of a security interest in, all or any part of the title to the premises, other than the First Mortgage and Second Mortgage.

(b) any new or additional liabilities without the prior written consent of Mortgagee, other than the First Mortgage and Second Mortgage.

(c) any increase in the original principal amount of the First Mortgage or the Second Mortgage above the amounts approved herein.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

2.2 Default. A default shall have occurred hereunder if:

(a) The Mortgagor shall fail to pay in full within fifteen (15) days from the date due and payable any installment of principal, interest, late charges or escrow deposits as required by the Note, this Mortgage and otherwise; or

(b) The Mortgagor shall fail to duly observe on time any other covenant, condition or agreement of this Mortgage the Loan Documents or of any other instrument evidencing, security or executed in connection with the indebtedness secured hereby, and such failure continues for a period of fifteen (30) days following written notice by the Mortgagee; or

(c) Any warranties or representations made or agreed to be made in any of the Loan Documents shall be breached by the Mortgagor or shall prove to be false or misleading; or

(d) Any lien for labor or material or otherwise shall be filed against the Premises, and such lien it not canceled, removed or transferred within thirty (30) days; or

(e) A levy shall be made under any process on, or a receiver be appointed for, the Premises or any other property of the Mortgagor; or

(f) The Mortgagor shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for the Mortgagor under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtor; or

(g) The Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any part of the Premises or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or

(h) The Mortgagor shall made any general assignment for the benefit of creditors; or

(i) In any legal proceeding the Mortgagor shall be alleged to be insolvent or unable to pay the Mortgagor's debts as they become due and is not dismissed within 60 days of Filing

(j) The Mortgagor shall do, or shall omit to do, any act, or any event shall occur, as a result of which any obligation of the Mortgagor, not arising hereunder, may be declared immediately due and payable by the holder thereof; or

(k) A breach by Mortgagor of any covenant, representation, or warranty set forth in the Loan Agreement, or an Event of Default occurs under the terms of the Loan Agreement or any of the other Loan Documents, pertaining to the Note and Mortgage; or

(l) The Mortgagee shall default under the First Mortgage or the Second Mortgage.

(m) One Hundred Percent (100%) of the Mortgaged Property shall cease to be reserved for households who have low or very low income pursuant to U.S. Government HUD guidelines for a period of fifty (50) years from the date hereof.

(n) The Mortgagee shall reasonably suspect the occurrence of any one or more of the above said defaults and the Mortgagor, upon the request of the Mortgagee, shall fail to provide evidence reasonably satisfactory to the Mortgagee that such default has not in fact occurred.

### 2.3 Special Conditions.

(a) Upon sale, transfer, or refinancing of the Premises, all available proceeds of the sale shall be applied to pay the following items in order of priority:

- (1) Expenses of the sale;
- (2) First Mortgage debt in full, including fees;
- (3) Second Mortgage debt in full, including fees;
- (4) All accrued but unpaid interest on the Note;

(b) All of the principal and interest of the indebtedness secured hereby shall be due and payable upon sale, transfer, or refinancing.

(c) The indebtedness secured hereby shall be serviced by the Mortgagee or by a lending institution selected by Mortgagee.

(d) The discrimination provision of §420.516, Florida Statutes, shall apply to the loan secured hereby.

A violation of any of the above stated Special Conditions by Mortgagor shall constitute a default hereunder.

2.4 Acceleration of Maturity. If a default shall have occurred hereunder, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of the Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

2.5 Right of Lender to Enter and Take Possession.

(a) If any default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Premises and if, and to the extent permitted by law, the Mortgagee may enter and take possession of the Premises and may exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom. In the event Mortgagee exercises its rights pursuant to this subparagraph (a), the Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Premises.

(b) For the purpose of carrying out the provisions of this paragraph 2.6, the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Premises.

(c) Whenever all such defaults have been cured and satisfied, the Mortgagee shall surrender possession of the Premises to the Mortgagor, provided that the right of the Mortgagee to take possession, from time to time, pursuant to subparagraph 2.6(a) shall exist if any subsequent default shall occur and be continuing.

2.6 Appointment of a Receiver and Foreclosure.

(a) If a default shall have occurred hereunder, then the whole debt secured by this Mortgage, with all interest thereon, and all other amounts hereby secured shall, at the option of Mortgagee, become immediately due and payable, and may forthwith or at any time thereafter be collected by suit at law, foreclosure of or other proceeding upon this Mortgage or by any other proper, real or equitable procedure without declaration of such option and without notice.

(b) In any suit to foreclose the lien hereon, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication cost and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstract of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional debt secured hereby and shall be immediately due and payable with

interest thereon at the maximum rate provided by law, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

(c) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period.

(d) Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Premises, and in case of foreclosure thereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Premises by reason of such foreclosure.

2.7 Discontinuance of Proceedings and Restoration of the Parties. In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adverse to the Mortgagee, then in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

2.8 Remedies Cumulative. No right, power or remedy conferred upon or reserved by the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.9 Stamp and Excise Tax. It is contemplated that the Mortgagor will pay documentary stamp taxes applicable to the full face amount of the Note. If any additional stamp or excise tax shall become applicable with respect to this Mortgage, the Note, any loan or credit extended hereunder, or any security agreement, guaranty, the loan agreement or other document, the Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall hold the Mortgagee harmless with respect thereto. The Mortgagor's liability under this paragraph 2.10 will survive the repayment of indebtedness under the Note.

#### ARTICLE III.

3.1 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder

without the prior written consent of the Mortgagee, which shall not be unreasonably withheld.

3.2 Headings. The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only and shall not limit or otherwise affect any of the terms hereof.

3.3 Invalid Provisions to Affect No Others. If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by Mortgagor include interest in excess to the reduction of the unpaid principal amount due and pursuant hereto.

3.4 Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

#### ARTICLE IV.

4.1 Notice. Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in person or sent by United States Certified Mail, postage prepaid, to the parties being given such notice at the following addresses:

Mortgagor:

Groves of Delray, Ltd.  
499 Boynton Bay Circle  
Boynton Beach, FL 33435  
Attn: Thomas G. Hinners,  
Executive Director

Mortgagee:

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

and to:

Timothy L. Whalen  
Whalen & McHale  
400 Australian Avenue South,  
Suite 850  
West Palm Beach, FL 33401

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used on the date of delivery of the notice.

#### ARTICLE V.

5.1 Future Advances. It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgage at its option to the Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within three (3) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or records notice of the optional future or additional advances as

against the rights of creditors or subsequent purchasers for valuable consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the principal amount of the Note, plus interest, and any disbursements made for the payment of taxes, levies or insurance on the Premises with interest on those disbursements. If, pursuant to Florida Statutes Section 697.04, Mortgagor files a notice specifying the dollar limit beyond which future advances made pursuant to this Mortgage will not be secured by this Mortgage, then Mortgagor shall, within one (1) year of day of filing such notice, notify Mortgagee and its counsel by certified mail pursuant to Section 4.1 of this Mortgage. In addition, such a filing shall constitute a default hereunder.

5.2 Lien Priority. The lien priority of this Mortgage shall not be affected by any changes in the Note including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Premises subsequent to the date of this Mortgage is recorded shall acquire such interest in the Premises with notice that Mortgagee may increase the interest rate charged pursuant to the Note or otherwise modify the Note and the Note, as modified, and the Mortgage shall remain superior to the interest of any Party in the Premises acquired subsequent to the date of this Mortgage is recorded, other than the First Mortgage and the Second Mortgage.

5.3 Security Agreement. This instrument also creates a security interest in any and all equipment and furnishings as are considered or determined to be personal property or fixtures, together with all replacements, substitutions, additions, products and proceeds thereof, in favor of the Mortgagee under the Florida Uniform Commercial Code to secure payment of principal, interest and other amounts due Mortgagee now or hereafter secured hereby, and Mortgagee shall also have all the rights and remedies of a secured part under the Florida Uniform Commercial Code shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Florida or any other jurisdiction.

5.4 Choice of Law. This Mortgage is to be construed in all respects and enforced according to the laws of the State of Florida and you shall be in Palm Beach County.

Remainder of page left intentionally blank.

5.5 Binding Effect. This Mortgage shall be binding upon and insure to the benefit of the Mortgagor and Mortgagee hereto, and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the Mortgagor has executed and sealed this Mortgage, the day and year first above written.

Witnesses: GROVES OF DELRAY, LTD.

By: Groves of Delray Joint Venture, its sole General Partner

*[Handwritten signature]*  
*[Handwritten signature]*

By: Florida Affordable Housing, Inc., its managing partner

By: *[Handwritten signature]*  
Thomas G. Hinners,  
Executive Director

STATE OF FLORIDA  
PALM BEACH COUNTY

The foregoing instrument was acknowledged before me this 1st day of December, 1993 by Thomas G. Hinners\*, who is personally known to me or who has produced his \_\_\_\_\_ as identification and who ~~did~~/did not take an oath.

*[Handwritten signature]*  
(Signature of Notary)

LARRY B. ALEXANDER  
(Typed, Printed, or Stamped Name of Notary)

My Commission Expires:

LARRY B. ALEXANDER  
Notary Public, State of Florida  
My Commission Expires August 23, 1996  
Commission No. CC 217534  
Bonds thru Troy Pain Insurance

[G:\gengovt\EBH\Grove-MS.AGR]  
[cmn: 12/1/93]

\*as Executive Director of Florida Affordable Housing, Inc., a Florida corporation, as managing general partner of and on behalf of Groves of Delray Joint Venture, a Florida general partnership, as general partner of and on behalf of Groves of Delray, Ltd., a Florida limited partnership. He is personally known to me or has produced a driver's license as identification and who did take an oath.



EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL I:

Lots 23, 24, 25, 26, 27 and 28, Block 5, FLAT 2 OF 2, SOUTHRIDGE SUBDIVISION, 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 13, page 39; said lands situate lying and being in Palm Beach County, Florida.

PARCEL II:

Lots 7 through 10, inclusive, Block 1; Lots 1 through 10, inclusive, Block 2; Lot 1 through 5, inclusive, Block 3, STRICKLAND SUBDIVISION, as per plat thereof on file in the Office of the Clerk of the Circuit Court in Plat Book 23, page 173, Public Records of Palm Beach County, Florida;

AND

The West Half (W1/2) of the East Half (E1/2) of Lot 30, of the Subdivision of Section 20, Township 46 South, Range 43 East, as recorded in Plat Book 1, page 4 Public Records of Palm Beach County, Florida.

PARCEL III:

Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and Tract E, LINTON FOREST PLAT 1, 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 44, page 177; said lands situate lying and being in Palm Beach County, Florida.

PARCEL IV:

Tracts A, B, C and D, LINTON FOREST PLAT 1, 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 44, page 177; said lands situate lying and being in Palm Beach County, Florida.

R93 1447D

THE GROVES OF DELRAY PROJECT LEGAL DESCRIPTION

EXHIBIT "A"

LOTS 23, 24, 25, 26, 27, AND 28, BLOCK 5, PLAT 2 OF 2, SOUTHRIDGE SUBDIVISION, 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 13, PAGE 39; SAID LANDS SITUATE LYING AND BEING IN PALM BEACH COUNTY, FLORIDA.

(AND)

LOTS 7 THROUGH 10, INCLUSIVE, BLOCK 1; LOTS 1 THROUGH 10, INCLUSIVE, BLOCK 2; LOTS 1 THROUGH 5, INCLUSIVE, BLOCK 3, STRICKLAND SUBDIVISION, AS PER PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 23, PAGE 173, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

(AND)

THE WEST HALF (W1/2) OF THE EAST (E1/2) OF LOT 30, OF THE SUBDIVISION OF SECTION 20, TOWNSHIP 46 SOUTH, RANGE 43 EAST, AS RECORDED IN PLAT BOOK 3, PAGE 4, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

(AND)

LOTS 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 AND TRACTS A, B, C, AND E, LINTON FOREST PLAT 1, 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 44, PAGE 177; SAID LANDS SITUATE LYING AND BEING IN PALM BEACH COUNTY, FLORIDA.

LESS THAT PORTION OF TRACT A DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF TRACT D, THEN WEST ALONG THE SOUTH LINE OF TRACT D AND LOTS 1 THROUGH 6, INCLUSIVE TO THE SOUTHWEST CORNER OF LOT 6, THEN SOUTH ALONG THE SOUTHERLY EXTENSION OF THE WEST LINE OF LOT 6 TO THE NORTH LINE OF LOT 16, THEN EAST ALONG THE NORTH LINE OF LOTS 16 THROUGH 13, INCLUSIVE AND TRACT B TO THE EAST LINE OF SAID PLAT, THEN NORTH ALONG THE EAST LINE OF TRACT A TO THE POINT OF BEGINNING.

RECORDER'S MEMO: Legibility  
of Writing, Typing or Printing  
unsatisfactory in this document  
when received.

**EXHIBIT "B"**

**NONE**

R93 1447D

This instrument prepared by  
and to be returned to:  
Tammy K. Fields, Esq.  
Palm Beach County Attorney's Office  
P.O. Box 1989  
West Palm Beach, FL 33402

R95 401D

NOTICE OF FUTURE ADVANCE

Please take notice that the undersigned Board of County  
Commissions of Palm Beach County, Florida, a political subdivision  
of the State of Florida, whose principal place of business is  
located at 301 North Olive Avenue (hereinafter referred to as the  
"Mortgagee"), has advanced The GROVES OF DELRAY, LTD., a Florida  
Limited Partnership, (hereinafter referred to as the "Mortgagor"),  
the additional sum of Seventy Nine Thousand (\$79,000.00) pursuant  
to that certain Mortgage dated December 1, 1993, and recorded in  
Official Records Book 8010, at Page 412, of the Public Records of  
Palm Beach County, Florida, (the "Mortgage"). The Mortgage  
contains a future advance provision pursuant to which the aforesaid  
sum has been advanced to the Mortgagor.

IN WITNESS WHEREOF, the Mortgagee has hereunto caused this  
Notice of Future Advance to be executed and to be effective as of  
the        of MAR 21, 1995.

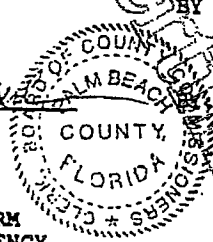
ATTEST:  
DOROTHY H. WILKEN, CLERK  
Palm Beach County, Florida,  
a political subdivision of the  
State of Florida  
BY ITS BOARD OF COUNTY COMMISSIONERS

BY: Barbara A. Rivers  
Deputy Clerk

Chair

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY: Tammy K. Fields  
County Attorney



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