

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: December 6, 2011 [X] Consent [ ] Regular  
[ ] Ordinance [ ] Public Hearing

Department: Housing & Community Development  
Submitted By: Housing & Community Development

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to Receive and File: the following documents executed in connection with the Westgate Plaza Apartments project funded under the Neighborhood Stabilization Program 2 (NSP2):

- A) Loan Agreement with Westgate Plaza Apartments, Ltd.;
- B) Amendment 001 to the Loan Agreement with Westgate Plaza Apartments, Ltd.; and
- C) Subordination and Intercreditor Agreement with Citibank, N.A. (Citibank)

**Summary:** In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. The attached Agreements and Amendment have been fully executed on behalf of the Board of County Commissioners (Board) by the Chair of the Board and by the County Administrator, or designee, in accordance with Agenda Item R2009-1122 approved by the Board on July 7, 2009. The Agreements are now being submitted to the Board to receive and file. These are Federal NSP2 funds which require no local match. (Contract Development) District 2 (TKF)

**Background and Justification:** The American Recovery and Reinvestment Act of 2009 (ARRA), signed into law by President Obama on February 17, 2009, appropriated \$1.93 Billion for NSP2. On February 11, 2010, HUD executed a Grant Agreement with Palm Beach County providing \$50 Million in NSP2 funding. The funds made available under the Grant Agreement included an allocation of \$11,946,934 for the Neighborhood Rental Redevelopment Loan Program (NRRLP). On September 11, 2010, the Department of Housing and Community Development (HCD) published Request for Proposals HCDNSP2.2010.1 making the \$11,946,934 under the NRRLP available to private developers for the redevelopment of vacant properties for affordable rental housing. A total of seven (7) proposals were received, of which five (5) were deemed responsive and forwarded to the Selection Committee. On February 7, 2011, the Selection Committee recommended that Westgate Plaza Apartments, Ltd. (WPA) be awarded \$6,100,000 and Colonial Lakes Apartments, Ltd. be awarded \$5,846,934, which was approved by the Board on March 1, 2011. On July 21, 2011, Palm Beach County (County) entered into a Loan Agreement with WPA to provide \$6,100,000 in NSP2 funds for the construction of 80 affordable rental units to be located on Westgate Avenue in unincorporated West Palm Beach. On September 22, 2011, the County executed Amendment 001 to the Loan Agreement with WPA to specify the distribution of the 80 units by bedroom size and by income level of the tenants. (Continued on Page 3)

**Attachments:**

- 1. Location Map
- 2. Loan Agreement with Westgate Plaza Apartments, Ltd. with Exhibits A to I
- 3. Amendment 001 to the Loan Agreement with Westgate Plaza Apartments, Ltd.
- 4. Subordination and Intercreditor Agreement with Citibank, N.A.

Recommended By: Edward R. Gomez 11/3/2011  
Department Director Date

Approved By: Paul Merino 11/22/11  
Assistant County Administrator Date

**II. FISCAL IMPACT ANALYSIS**

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

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	\$6,100,000				
Operating Costs					
External Revenues	(\$6,100,000)				
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>-0-</b>				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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Is Item Included In Current Budget? Yes \_\_\_\_\_ No \_\_\_\_\_  
 Budget Account No.:

Fund 1112 Dept 143 Unit 1426 Object 8201 Prog Code/Period N216-GY09: \$3,355,000  
 Fund 1112 Dept 143 Unit 1426 Object 8201 Prog Code/Period N216A-GY09: \$2,745,000

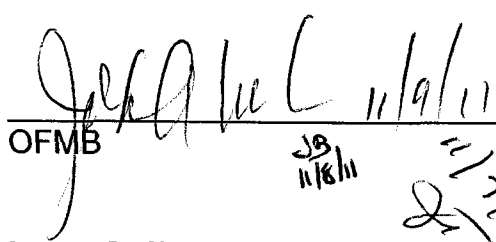
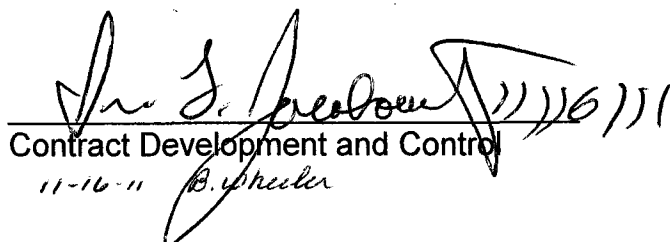
**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Approval of this agenda item will allocate \$6,100,000 in NSP2 funds to Westgate Plaza Apartments, Ltd. for the Westgate Plaza Apartments project.

C. Departmental Fiscal Review: Shairrette Major 11-3-11  
 Shairrette Major, Fiscal Manager I

**III. REVIEW COMMENTS**

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

 11/9/11  
 OFMB  
 JB 11/8/11  
 11/2/11  
 11/16/11  
 Contract Development and Control  
 11-16-11 B. Wheeler

**B. Legal Sufficiency:**

 11/17/11  
 Senior Assistant County Attorney

**C. Other Department Review:**

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

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

**Background and Justification:** (Continued from Page 1)

The closing on the County's NSP2 loan with WPA occurred on September 28, 2011, at which time a portion of the loan proceeds were expended on the acquisition of the project site by WPA. The County's NSP2 funds were secured by a promissory note and a mortgage on the acquired property.

The Housing Finance Authority of Palm Beach County has approved the issuance of \$7,500,000 in multi-family revenue bonds to be secured by a first mortgage on said property and to be endorsed to Citibank. The Subordination and Intercreditor Agreement with Citibank, as required by the County's Loan Agreement with WPA, was executed by the Chair of the Board on October 12, 2011. Closing on the first mortgage financing occurred on October 13, 2011. The Subordination and Intercreditor Agreement places the County's mortgage in second position behind Citibank.

The loan provided to WPA is for a 30-year term, with a fixed rate of two percent (2.0%) per annum, with annual cash flow dependent payments, and with all unpaid principal and interest due upon expiration of the loan term or upon cessation of the property's use for specified NSP2 purposes. WPA is required to expend 50% of the loan by December 15, 2011, and to expend 100% of the loan by November 15, 2012.

The County's loan will be used to fund project costs deemed eligible under NSP2 such as land acquisition, construction costs, consultant fees, permit fees, title and recording fees, builder's risk insurance, property taxes, legal fees, private lender fees, bond issuance costs and developer fees.

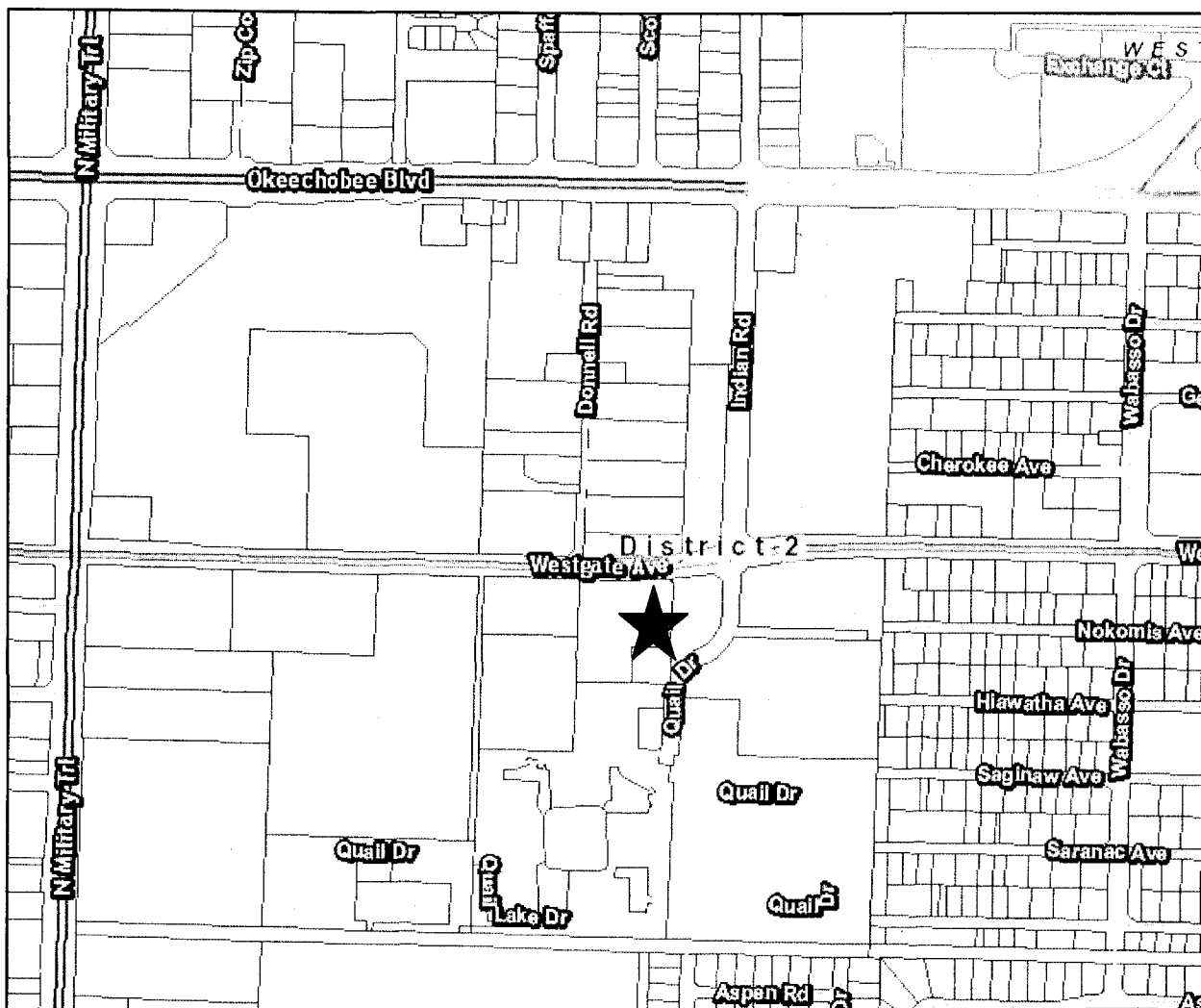
The WPA project will include 80 one (1) and two (2) bedroom apartments, of which at least 44 apartments must be leased to households whose incomes are at no more than 50% of Area Median Income (AMI). Of the aforesaid 44 apartments, at least 20 apartments must be leased to households whose incomes are at no more than 30% of AMI. No more than 36 of the 80 apartments may be leased to households whose incomes are between 50% and 120% of AMI.

LOCATION MAP



Westgate Plaza Apartments

North



## LOAN AGREEMENT

THIS AGREEMENT, dated as of this JUL 21 2011 day of \_\_\_\_\_, 2011, by and between **Palm Beach County**, a political subdivision of the State of Florida, (hereinafter referred to as the "County" and the "Lender") and **Westgate Plaza Apartments, Ltd.**, a Florida limited partnership, (the "Borrower"), whose Federal I.D. number is 27-3218177, and whose DUNS number is 01-531-1818.

### 1. RECITALS:

Whereas, on February 11, 2010, the County entered into a grant agreement with the U.S. Department of Housing and Urban Development for the receipt of \$50 million under the Neighborhood Stabilization Program 2 (NSP2) as authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), and

Whereas, the County made \$11,946,934 in NSP2 funds available for affordable rental housing under its Neighborhood Rental Redevelopment Loan Program (NRRLP), and

Whereas, the Borrower applied to the County for a loan to be funded under the NRRLP, and

Whereas, on March 1, 2011, the County approved the award of a loan in the principal amount of \$6,100,000 (the "Loan") in NSP2 funds to be made available to the Borrower under the NRRLP, and

Whereas, the Borrower wishes to use the Loan to acquire certain land located in Palm Beach County, Florida, as more particularly described in Exhibit A, attached hereto and made a part hereof, (the "Premises"), and wishes to construct an 80-unit apartment building (the "Improvements"), to be known as Westgate Plaza Apartments, on the Premises, which apartments are to be leased to households having certain income levels as more fully defined herein, and

Whereas, the Housing Finance Authority of Palm Beach County has approved the issuance of \$7,500,000 in multi-family revenue bonds to the Borrower, to be secured by a separate mortgage encumbering the Premises (the "First Mortgage"), and

Whereas, the 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.

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, the Borrower and the County agree as follows:

### 2. THE LOAN AND LOAN EXPENDITURE REQUIREMENTS:

The County shall make the Loan to the Borrower in an amount not to exceed the principal amount of \$6,100,000 upon the terms and conditions set forth herein, and at the rates and terms set forth in its Promissory Note and Mortgage attached hereto as Exhibit B and Exhibit C, respectively, and the Borrower shall take the Loan and expressly agrees to comply with and to perform all of the terms and conditions of this Agreement, the Promissory 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 Promissory Note and Mortgage, shall occur at the offices of the County Attorney or such other mutually agreed upon site no later than September 30, 2011.

The Borrower recognizes and understands that by entering into this Agreement, the County wishes to further its provision of affordable rental housing to income qualified renters in a timely manner. The Borrower also recognizes and understands that the Borrower's performance as established under this Agreement is critical to the County's effort in the provision of affordable housing and the County's compliance with NSP2 requirements, and in particular with requirements for the expenditure of NSP2 funds, and therefore, time is of the essence in regard to the Borrower's completion of the Westgate Plaza Apartments project and the expenditure of Loan funds.

In recognition of the above, the Borrower shall implement the Westgate Plaza Apartments project as provided herein such that the Borrower shall have drawn no less than fifty percent (50%) of the Loan, that is at least \$3,050,000, by December 15, 2011, and the Borrower shall ensure the completion of the Westgate Plaza Apartments project as provided herein such that the Borrower shall have drawn one-hundred percent (100%) of the Loan, by November 15, 2012.

### **3. ACQUISITION OF PREMISES AND CONDITIONS PRECEDENT TO CLOSING:**

#### **(a) Acquisition of the Premises:**

The Borrower is the beneficiary of an Assignment of Contract from Landmark Development Corporation, dated May 20, 2010, for the purchase of the Premises from Faith Cathedral Worship Center, Inc. The Borrower represents to the County that the Premises are "Vacant" (meaning land with buildings that are unoccupied as of the date of the Borrower's submission of its proposal to the County for NSP2 funding, previously developed land that has been cleared, and undeveloped land with accessible off-site infrastructure). The Borrower wishes to use certain of the Loan funds for the acquisition of the Premises. The Loan funds to be used for the acquisition of the Premises shall consist of the purchase price of the Premises as adjusted upwards or downwards by applicable closing costs and as shown on a closing statement to be prepared by the Borrower's closing agent. The County shall fund Borrower's cost for the acquisition of the Premises, provided, however, that the Borrower has submitted to the County an updated funding commitment letter from Citibank, N.A., updating their letter of January 5, 2011, for the Westgate Plaza Apartments project, the sufficiency of which shall be solely determined by the County, provided that the purchase price not exceed an amount acceptable to the County as determined in accord with regulations applicable to NSP2, and provided that the aforesaid closing costs are eligible for funding in accord with said regulations. The Borrower shall fund the portion, if any, of the purchase price that is above the amount acceptable to the County, and shall fund all closing costs not eligible under regulations applicable to NSP2.

Upon receipt of the following documentation from the Borrower, and provided the below listed conditions precedent to the County's acceptance of the Mortgage documents have been met, the County shall disburse certain of the Loan funds, for the benefit of the Borrower, to the Borrower's closing agent, for the acquisition of the Premises:

- (i) A copy of the closing statement prepared by the Borrower's closing agent no more than ten (10) days prior to the closing date.
- (ii) A letter from the Borrower, provided on the Borrower's letterhead, referencing the Westgate Plaza Apartments project funded herein, the date of this Agreement and its document number, and containing a statement requesting the payment of the amount needed for the acquisition of the Premises, as well as the name and signature of a person authorized by the Borrower to make such a request.
- (iii) Wire transfer instructions from the Borrower's closing agent, and the closing agent's IRS Employer Identification Number.

#### **(b) Conditions Precedent:**

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:

(c) 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 recording of the Mortgage a Lender's Title Insurance Policy in the amount of said Mortgage, subject only to the Permitted Exceptions listed on Exhibit D 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 thereto 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 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 within said thirty (30) day period, the County shall have the option of accepting title as it then exists or terminating this Agreement, by giving written notice thereof to Borrower, in which event the parties shall be relieved of all further obligations hereunder. Notwithstanding the foregoing, County shall not object to any exception necessary for the construction and development of the Improvements.

(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 2010 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, except those matters necessary for the construction and development of the Improvements.

(d) Survey:

Borrower shall deliver to the County a current certified survey prepared by a surveyor reasonably 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 unless platted, in which case, reference shall be to Tract, or Lot and Block per Plat.

(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) Flood zone certification.

(vii) Any other notations required for the deletion of the survey exception from the Title Insurance Policy to be issued in accordance with Paragraph 3(c) above and any other requirements reasonably requested by the County.

(e) Promissory Note:

The Promissory Note, in a form acceptable to the County Attorney, shall be duly authorized, executed and delivered to the County;

(f) Mortgage:

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

- (i) The Mortgage shall not be subject to any prepayment penalty.
- (ii) The Mortgage shall become immediately due and payable upon unauthorized sale, transfer, or refinancing of the Premises.
- (iii) The Mortgage shall be non-assumable.

(g) 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 3(c) 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 therein.

(h) 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.
- (vi) Satisfactory soil test report.



(i) 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 certificates of such official to the effect that Borrower is in good standing therein.

(ii) Certified resolutions of the general partner of Borrower authorizing the execution and delivery of this Agreement, the Mortgage, Promissory Note and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement.

(j) 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.

(k) 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 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, subject to applicable bankruptcy, insolvency, and similar laws affecting rights of creditors generally, and general principles of equity.

(ii) That Borrower is a Florida 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 to the best of counsel's knowledge, the execution and delivery of the Loan Documents, the performance by the Borrower of its obligations under the Loan Documents, and the exercise by the Borrower of the rights created by the Loan Documents do not violate any Federal, Florida, or local law, rule or regulation.

(iv) That the execution and delivery of the Loan Documents, the performance by the Borrower of its obligations under the Loan Documents, and the exercise by the Borrower of the rights created by the Loan Documents do not (i) violate the Borrower's Certificate of Limited Partnership or Partnership Agreement, or (ii) to the best of counsel's knowledge, constitute a breach of or a default under any agreement or instrument to which the Borrower is a party or by which it or its assets are bound or result in the creation of a mortgage, security interest or other encumbrance upon the assets of the Borrower (except as set forth in the Loan Documents), or (iii) to the best of counsel's knowledge, violate a judgment, decree or order of any court or administrative tribunal, which judgment, decree or order is binding on the Borrower or its assets.

(v) That to counsel's knowledge, and based on a certificate to be provided by Borrower, 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 or 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 which could lead to such proceedings.

(vi) That the lien of the Mortgage is a valid lien on the Premises and the security interest described in the Mortgage is a good and valid security interest.

(vii) Such other matters as the County may reasonable require.

(l) Expenses:

Borrower shall have paid, or shall pay, all those fees and charges due and payable or ordered paid by the County as provided herein under Paragraph 5 of this Agreement entitled Expenses;

(m) Other Documents:

Borrower shall deliver to the County such other documents and information as the County may reasonably require.

(n) Representations and Warranties:

The representations and warranties of Borrower as set forth in this Agreement and the Loan Documents are true and correct, in all material respects.

**4. DISBURSEMENT OF LOAN FUNDS AFTER ACQUISITION OF PREMISES:**

Upon receipt of documentation evidencing payment by the Borrower for costs associated with the Westgate Plaza Apartments project, as more fully described below, the County shall reimburse the Borrower for such payment from the Loan funds in an amount not to exceed \$6,100,000, less any amounts disbursed by the County for the Borrower's acquisition of the Premises.

The following costs associated with the Westgate Plaza Apartments project shall be eligible for reimbursement by the County:

(a) Architectural, Engineering, and Other Consulting Fees:

The Borrower shall enter into a contract, or contracts, with an entity, or entities, that provide architectural, landscape architecture, surveying, and engineering consultant services for the design and construction supervision of the Westgate Plaza Apartments project. The Borrower shall designate the architectural consultant, who shall be a Florida Registered Architect, as the "Lead Consultant" for this project.

The Borrower may request the County for reimbursement of payments made by the Borrower in connection with services rendered under the aforesaid consultant contracts provided that:

(i) The County shall have received a copy of a contract executed after March 1, 2011, for each of the consultant contracts for which the Borrower wishes to receive reimbursement. Subsequently, the Borrower shall provide the County a copy of all consultant contract amendments.

(ii) A letter from the Borrower, on the Borrower's letterhead, shall be provided for each reimbursement request pertaining to consultant fees. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of consultant fees, as well as the name and signature of a person authorized by the Borrower to make such a request.

(iii) Evidence of payment made by the Borrower for consultant services shall accompany each reimbursement request letter provided that such evidence of payment demonstrate that payment was made after March 1, 2011.

(iv) A copy of the consultant's invoice prompting the Borrower's payment shall accompany each reimbursement request letter.

Note: the submission of Quarterly Jobs Reports (see Paragraph 6(n)(iii)) is required in connection with the County's reimbursement for architectural, landscape architecture, surveying, and engineering consultant services.

(b) Construction Costs:

The Borrower shall enter into one construction contract with a prime contractor covering all construction work associated with the Westgate Plaza Apartments project (including demolition, site preparation, construction of on-site infrastructure, site improvements and amenities such as a picnic pavilion equipped with benches, tables, and an outdoor grill, an exercise room, a clubroom, a computer learning center, and a library, and the eighty (80) unit apartment building(s) described herein). The construction contract may include the cost of general conditions, builder's profit and overhead, and bonding costs. The construction contract shall contain a schedule of values for this project providing a detailed cost breakdown. The construction contract shall include the construction contract requirements associated with the use of NSP2 funds for this project as more fully delineated herein.

The Borrower may request the County for reimbursement of payments made by the Borrower in connection with services rendered and materials delivered and installed under the aforesaid construction contract provided that:

(i) The County shall have received a copy of the construction contract (including all attachments such as plans and specifications) executed after March 1, 2011. Subsequently, the Borrower shall provide the County a copy of all executed change orders to the construction contract bearing the approval of the Lead Consultant.

(ii) The County shall have received a letter from the Borrower's Lead Consultant stating that the costs contained in the prime contractor's construction contract are reasonable.

(iii) The Borrower acknowledges that an asbestos survey was conducted to ascertain the presence of asbestos in building materials found at the structure(s) located on the Premises, that the survey revealed the presence of asbestos in approximately sixty (60) square feet of vinyl flooring, and as such, that the demolition of such structure(s) must be performed using the wet demolition method and must be performed in such a manner that would not render said flooring friable. Due to the aforesaid presence of asbestos in the vinyl flooring, the Borrower also acknowledges that the vinyl flooring and its substrate (the concrete slab) may not be ground, abraded, reduced, or recycled in the process of demolishing the structure(s) located on the Premises, and as such, that the vinyl flooring with its substrate must be segregated from the non-asbestos material debris and disposed of as Category I debris in a licensed landfill.

The County shall have received documentation from the Borrower evidencing that the Borrower's demolition contractor has provided the 10-day notice as required under NESHAP (National Emission Standards for Hazardous Air Pollutants) in connection with the demolition of the structure(s) located on the Premises. The County shall have received documentation from the Borrower evidencing that the Borrower has required its demolition contractor to use the wet demolition method and to perform the demolition in such a manner that would not render the asbestos containing vinyl flooring friable. The County shall have received documentation from the Borrower evidencing that the Borrower has prohibited its demolition contractor from grinding, abrading, reducing, or recycling the vinyl flooring and its substrate, and has required

its demolition contractor to segregate such vinyl flooring with its substrate from the non-asbestos material debris and to dispose the same as Category I debris in a licensed landfill. The County shall have also received from the Borrower a copy of the receipt for the disposal of the vinyl flooring with its substrate in a licensed landfill.

(iv) The Borrower may request reimbursement for payments made under the construction contract for materials stored on the Premises or in a bonded warehouse provided that such materials are securely stored, properly inventoried, and clearly stenciled or otherwise marked to indicate that they are the property of the Borrower, and provided that the County shall have received, reviewed, and approved documentation from the Borrower evidencing that for the life of the project:

- the Borrower's Builder's Risk Insurance policy includes a sublimit of coverage for the full replacement value of supplies that are awaiting installation, and that said policy includes the County as an additional insured, or

- the Borrower has insurance coverage in place in the form of an Installation Floater or Inland Marine coverage for the full replacement value of supplies that are awaiting installation, with an endorsement showing the County as an additional insured.

(v) A letter from the Borrower, on the Borrower's letterhead, shall be provided for each reimbursement request pertaining to construction costs. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of construction costs, as well as the name and signature of a person authorized by the Borrower to make such a request.

(vi) Evidence of payment made by the Borrower for construction costs shall accompany each reimbursement request letter provided that such evidence of payment demonstrate that payment was made after the effective date of this Agreement.

(vii) A copy of the prime contractor's request for payment prompting the Borrower's payment shall accompany each reimbursement request letter. The contractor shall be required to use American Institute of Architects form G702/703, or an equivalent form, to request payment, and the Lead Consultant shall approve the contractor's payment request on each such form.

(viii) The Borrower shall withhold a minimum of five percent (5%) retainage on each payment requested by the prime contractor, which retainage shall only be released to the prime contractor with the final payment upon the prime contractor's (and subcontractors') full compliance with the terms and conditions of the construction contract including compliance with the requirements associated with the use of NSP2 funds for this project (such as the Davis-Bacon and Related Acts).

Note: the submission of Quarterly Jobs Reports (see Paragraph 6(n)(iii)) is required in connection with the County's reimbursement for construction costs.

(c) Permitting and Other Fees Attributable to the Site:

The Borrower may request the County for reimbursement of payments made by the Borrower for building permit fees and other fees attributable to the site of the Westgate Plaza Apartments project, such as impact fees, guaranteed revenue fees, and utility connection fees, provided that:

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided for each reimbursement request pertaining to the aforesaid fees. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said fees, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said fees shall accompany each reimbursement request letter provided that such evidence of payment demonstrate that payment was made after the March 1, 2011.

(iii) A copy of the permit application (or similar document) issued by the entity levying the fee and showing the amount of the fee owed shall accompany each reimbursement request letter.

(d) Property Taxes:

The Borrower may request the County for reimbursement of payments made by the Borrower for property taxes associated with the Westgate Plaza Apartments property, provided that:

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided requesting reimbursement of property taxes associated with the Westgate Plaza Apartments property. The letter shall reference the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said taxes, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said taxes shall accompany the reimbursement request letter provided that such evidence of payment demonstrate that payment was made after the effective date of this Agreement.

(iii) A copy of the property tax statement from the Palm Beach County Tax Collector showing the amount of the property tax owed shall accompany the reimbursement request letter.

(e) Title and Recording Fees:

The Borrower may request the County for reimbursement of payments made by the Borrower for title examination costs and title insurance costs associated with the Borrower's acquisition of the Premises (but not for costs to clear any cloud on the seller's title to the land being conveyed to the Borrower for the construction of the Westgate Plaza Apartments) and title examination costs and title insurance costs associated with the Borrower's acquisition of financing for the Westgate Plaza Apartments project, as well as costs to record, in the Public Records of Palm Beach County, the deed to the Premises, these Loan Documents, and the loan documents pertaining to the Borrower's financing for the Westgate Plaza Apartments project, provided that:

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided for each reimbursement request pertaining to the aforesaid title and recording costs. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said costs, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said title and recording costs shall accompany each reimbursement request letter provided that such evidence of payment demonstrate that payment was made after the effective date of this Agreement.

(iii) A copy of the statement, invoice, closing document (or similar document) showing the amount owed in title and recording costs shall accompany each reimbursement request letter.

(f) Builder's Risk Insurance:

The Borrower may request the County for reimbursement of payments made by the Borrower for the cost of builder's risk insurance connection with the construction of the Westgate Plaza Apartments project, provided that:

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided for the reimbursement of the aforesaid builder's risk insurance costs. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said costs, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said insurance costs shall accompany the reimbursement request letter provided that such evidence of payment demonstrate that payment was made after March 1, 2011.

(iii) A copy of the builder's risk insurance policy shall accompany the reimbursement request letter, provided that the policy issue date was after March 1, 2011.

(iv) A copy of the invoice showing the premium owed shall accompany the reimbursement request letter.

(g) Legal Fees:

The Borrower may request the County for reimbursement of payments made by the Borrower for legal fees associated with the Borrower's acquisition of the Premises, and those associated with the Borrower's acquisition of financing for the Westgate Plaza Apartments project, provided that:

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided for each reimbursement request pertaining to the aforesaid legal fees. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said costs, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said legal fees shall accompany each reimbursement request letter provided that such evidence of payment demonstrate that payment was made after March 1, 2011.

(iii) A copy of the statement, invoice, closing document (or similar document) showing the amount owed in legal fees shall accompany each reimbursement request letter.

Note: the submission of Quarterly Jobs Reports (see Paragraph 6(n)(iii)) is required in connection with the County's reimbursement for legal fees.

(h) LIHTC Administrative Fee:

The Borrower may, after the Borrower has secured the Low Income Housing Tax Credit from the Florida Housing Finance Corporation for the Westgate Plaza Apartments project, request the County for reimbursement of payment made by the Borrower to the Florida Housing Finance Corporation for the LIHTC administrative fee, provided that:

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided for the reimbursement request pertaining to the aforesaid administrative fee. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said fee, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said administrative fee shall accompany the reimbursement request letter provided that such evidence of payment demonstrate that payment was made after March 1, 2011.

(iii) Evidence that the Borrower has secured the LIHTC from the Florida Housing Finance Corporation shall accompany the reimbursement request letter.

(iv) A copy of the statement, invoice, closing document (or similar document) showing the amount owed for said administrative fee shall accompany each reimbursement request letter provided that such documentation show the Borrower's obligation to pay said fee occurred after March 1, 2011.

(i) Construction Loan and Permanent Loan Fees:

The Borrower may request the County for reimbursement of payments made by the Borrower to its private lender for fees associated with its construction loan and permanent loan, and for the conversion of the construction loan to a permanent loan, provided that:

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided for each reimbursement request pertaining to the aforesaid loan fees. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said fees, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said loan fees shall accompany each reimbursement request letter provided that such evidence of payment demonstrate that payment was made after March 1, 2011.

(iii) A copy of the statement, invoice, closing document (or similar document) showing the amount owed in loan fees shall accompany each reimbursement request letter provided that such documentation show the Borrower's obligation to pay said fees occurred after March 1, 2011.

(j) Bond Issuance Costs:

The Borrower may request the County for reimbursement of payments made by the Borrower for bond issuance costs in connection with the bonds issued by the Housing Finance Authority of Palm Beach County for the Westgate Plaza Apartments project. Bond issuance costs eligible for reimbursement hereunder shall consist of fees and expenses paid by the Borrower and shall exclude all fees and expenses, if any, paid from the proceeds of the bond issuance as well as the administrative fee due from the Borrower to the Housing Finance Authority of Palm Beach County.

(i) A letter from the Borrower, on the Borrower's letterhead, shall be provided for the reimbursement request pertaining to the aforesaid bond issuance costs. The letter shall reference the Westgate Plaza Apartments project, the date of this Agreement and its document number, and shall contain a statement requesting the payment of the amount needed for reimbursement of said costs, as well as the name and signature of a person authorized by the Borrower to make such a request.

(ii) Evidence of payment made by the Borrower for said costs shall accompany the reimbursement request letter provided that such evidence of payment demonstrates that payment was made after March 1, 2011.

(iii) A copy of the bond closing statement showing the amount paid the Housing Finance Authority of Palm Beach County in bond issuance costs shall accompany the reimbursement request letter provided that such documentation show the Borrower's obligation to pay said fees occurred after March 1, 2011.

(k) **Developer Fee:**

The Borrower may request the County for payment of a developer fee associated with the completion of construction of the Westgate Plaza Apartments project, provided that:

- (i) The amount that the Borrower may request shall be no more than eight percent (8%) of the Loan, that is, no more than \$488,000.
- (ii) A letter from the Borrower, on the Borrower's letterhead, shall be provided requesting payment of the developer fee for the Westgate Plaza Apartments project, referencing the date of this Agreement and its document number, and containing a statement requesting the amount of the developer fee, as well as the name and signature of a person authorized by the Borrower to make such a request.
- (iii) A copy of the Certificate of Occupancy, for all eighty (80) apartments in the Westgate Plaza Apartments project, issued by the building department with jurisdiction over said project shall accompany the request letter.

(l) **Other Costs Not Listed Above:**

The Borrower may request the County for reimbursement of payments made by the Borrower in connection with the Westgate Plaza Apartments project where such payments are not listed above, and the County shall reimburse the Borrower for such payments from the Loan funds, provided that:

- (i) The County, in its sole discretion, shall have determined that the costs requested for reimbursement are eligible costs under NSP2.
- (ii) The Borrower shall have obligated itself to the payment after March 1, 2011.
- (iii) The Borrower's payment for any such costs shall have occurred after the effective date of this Agreement.
- (iv) The Borrower shall have provided the County with a written reimbursement request for costs deemed eligible by the County, along with evidence of payment, and other supporting documentation as established by the County and communicated to the Borrower upon the County's determination that the costs requested for reimbursement are eligible costs under NSP2.

Note: the submission of Quarterly Jobs Reports (see Paragraph 6(n)(iii)) may be required in connection with the County's reimbursement for some costs determined eligible by the County and not listed above.

5. **EXPENSES:**

Borrower shall pay reasonable and customary 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, 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.



**6. SPECIAL PROVISIONS:**

Borrower expressly agrees to the following terms and conditions:

(a) Number, Composition, and Accessibility of Apartments:

Borrower agrees that the Improvements shall include an apartment building(s) that shall contain eighty (80) apartments (dwelling units) to be used as "Permanent Rental Housing" (meaning housing which is intended to be the tenant's home for as long as the tenant chooses within the limits of a signed legal lease document). Of the eighty (80) apartments, fifty-six (56) apartments shall be one-bedroom apartments, and twenty-four (24) apartments shall be two-bedroom apartments. Furthermore pursuant to 24 CFR Part 8.22, the Borrower shall make a minimum of five percent (5%) of all apartments, that is at least four (4) apartments, accessible for persons with mobility impairments (that is apartments that are on an accessible route and that are adaptable and otherwise in compliance with standards set forth in 24 CFR Part 8.32), and the Borrower shall make an additional two percent (2%) of all apartments, that is an additional two (2) apartments, accessible for persons with hearing or vision impairments.

(b) Certificate of Occupancy:

Upon the completion of construction of the Improvements, and upon the Borrower's receipt of a Certificate of Occupancy for the Westgate Plaza Apartments from the building department with jurisdiction over this project, the Borrower shall provide the County a copy of such Certificate of Occupancy.

(c) Occupancy and Affordability of Apartments:

All eighty (80) apartments to be constructed at Westgate Plaza Apartments shall be leased to households whose incomes, adjusted by family size, are at no more than one hundred and twenty percent (120%) of Area Median Income (hereinafter "AMI") at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments. AMI shall mean the most current area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area. At least fifty-five percent (55%) of all eighty (80) apartments to be constructed at Westgate Plaza Apartments, that is at least forty-four (44) apartments, shall be leased to households whose incomes, adjusted by family size, are at no more than fifty percent (50%) of AMI at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments. In addition, of the aforesaid forty-four (44) apartments, at least twenty (20) apartments (that is at least twenty-five (25%) percent of all eighty (80) apartments) to be constructed at Westgate Plaza Apartments, shall be leased to households whose incomes, adjusted by family size, are at no more than thirty percent (30%) of AMI at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments.

Based on the above, the Parties recognize that no more than thirty-six (36) apartments to be constructed at Westgate Plaza Apartments, may be leased to households whose incomes, adjusted by family size, are more than fifty percent (50%) of AMI, but no more than one hundred and twenty percent (120%) of AMI at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments.

All eighty (80) apartments to be constructed at Westgate Plaza Apartments shall be leased at "Affordable Rental Rates", as defined herein, for a period of at least thirty (30) years from the date of the aforesaid Certificate of Occupancy. The Borrower agrees that the rental rate it charges in all initial leases with tenants, as well as all subsequent leases or lease renewals, shall be at Affordable Rental Rates.

Affordable Rental Rates means the lesser of the Fair Market Rent for existing housing for comparable units in the area as established by HUD under 24 CFR Part 888.111, or:

- a rent plus tenant paid utilities, using the current utility allowances in the Section 8 Existing Housing Allowances for Tenant-Furnished Utilities and Other Services published by HUD, that does not exceed thirty percent (30%) of the adjusted income of a tenant household whose annual income equals thirty percent (30%) of AMI (for apartments so designated);

- a rent plus tenant paid utilities, using the current utility allowances in the Section 8 Existing Housing Allowances for Tenant-Furnished Utilities and Other Services published by HUD, that does not exceed thirty percent (30%) of the adjusted income of a tenant household whose annual income equals fifty percent (50%) of AMI (for apartments so designated); or

- a rent plus tenant paid utilities, using the current utility allowances in the Section 8 Existing Housing Allowances for Tenant-Furnished Utilities and Other Services published by HUD, that does not exceed thirty percent (30%) of the adjusted income of a tenant household whose annual income equals one hundred and twenty percent (120%) of AMI (for apartments so designated).

**PROVIDED, HOWEVER, THAT THE FOREGOING IS NOT INTENDED TO LIMIT THE BORROWER'S ABILITY TO COLLECT RENTS UP TO THE FULL AMOUNT THAT THE BORROWER MAY RECEIVE UNDER THE TERMS OF THE HUD SECTION 8 PROJECT BASED VOUCHER PROGRAM SO LONG AS THE TENANT'S PORTION DOES NOT EXCEED THE AFFORDABLE RENTAL RATES. UNDER NO CIRCUMSTANCES MAY THE BORROWER RECEIVE ANY UNDUE ENRICHMENT, AS DETERMINED BY A SUBSIDY LAYERING REVIEW, AS A RESULT OF ANY SUBSIDY BEYOND THE HOUSING TAX CREDITS, TAX-EXEMPT BONDS, SECTION 8 PROGRAM SUBSIDIES AND NSP2 FUNDS.**

Exhibit E to this Agreement depicts the current Affordable Rental Rates for Westgate Plaza Apartments based on (i) the HUD published annual income limits for the West Palm Beach-Boca Raton Metropolitan Statistical Area as of May 31, 2011, (ii) the Section 8 Existing Housing Allowances for Tenant-Furnished Utilities and Other Services issued by the Palm Beach County Housing Authority and dated March 1, 2011, and (iii) the HUD published Fair Market Rents in the West Palm Beach-Boca Raton HUD Metro FMR Area (HMFA) as of October 1, 2010. The parties agree that the maximum permitted rents will change in accordance with changes in items (i), (ii) and (iii) above in the preceding sentence.

The Borrower shall, for each household that is leased an apartment at Westgate Plaza Apartments, maintain a file that at minimum contains the following:

- (i) An application for lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the apartment, the household characteristics, and the household income they have disclosed.
- (ii) Documentation evidencing the Borrower's verification of the applicant's household income and a computation sheet demonstrating the Borrower's determination of the applicant's income eligibility to occupy the apartment. Household income computation shall follow the HUD Section 8 method.
- (iii) A copy of the HUD income levels in effect at the time the initial lease is signed.
- (iv) A computation sheet demonstrating that the rent charged by the Borrower in the initial lease is at an Affordable Rental Rate, and supporting documentation such a current Fair Market Rent schedule, and a similar computation sheet and supporting documentation demonstrating that the rent charged by the Borrower in every subsequent lease, or lease renewal, is at an Affordable Rental Rate.
- (v) An original of all executed leases with the applicant/tenant identifying the apartment number and the rental rate.
- (vi) A copy of the below described background check.
- (vii) Any other documentation evidencing the Borrower's compliance with this Agreement.

(d) Occupancy by Homeless Persons/Families:

The Borrower shall provide affordable rental opportunities to households at the lower tiers of the income spectrum in order to further the goals of the Palm Beach County Ten Year Plan to End Homelessness by creating additional affordable rental opportunities for these households that are at risk of homelessness or who are transitioning from the local homeless service system to affordable independent living situations. To this end, the Borrower shall inform agencies in Palm Beach County that serve the homeless population of apartments that become vacant at Westgate Plaza Apartments to enable such agencies in turn to inform potential tenants of the availability of such units. Upon successful referral of homeless individuals from the aforesaid agencies, the Borrower shall enable such individuals to use the amenities at Westgate Plaza Apartments to improve their access to homeless services offered by the County and other agencies serving the homeless population.

(e) Background Check and Lease Requirements:

The Borrower shall conduct background checks on adult members of households prior to occupancy.

The Borrower shall utilize leases which require parents to be held legally and financially liable for the acts of their children in the apartment complex and which allow management to terminate the lease of any household where a household member is engaged in illegal or criminal activity or where a household member is engaged in anti-social behavior which denies the project's residents or area residents the quiet and peaceful enjoyment of their homes or businesses.

(f) Energy Efficiency:

The Borrower shall ensure that, to the greatest extent possible, that the construction of Westgate Plaza Apartments shall meet standards established by the United States Environmental Protection Agency, in the publication titled *A Green Home Begins with ENERGY STAR Blue* or in the Version 6.0 Standard of the Florida Green Building Coalition ([www.floridagreenbuilding.org](http://www.floridagreenbuilding.org)).

The Borrower shall incorporate the following elements into its development plan:

- (i) Energy-efficient Construction Techniques and Products:
  - Proper installation of insulation to ensure even temperatures throughout the house.
  - Installation of high performance impact windows.
  - Installation of energy-efficient HVAC systems.
  - Installation of new Energy Star qualified products including light fixtures, compact fluorescent bulbs, ventilation fans and appliances (refrigerators, dishwashers and washing machines).
- (ii) Improved Indoor Environments:
  - Properly sealed cracks and holes in the envelope of the home as well as in the duct system.
  - Installation of Carpet and Rug Institute's Green Label Certified carpets and pads.
  - Utilization of only low Volatile Organic Carbon paints and sealants.
  - Utilization of proper water sealing methods to eliminate any possibility of mold.
  - Installation of programmable thermostats.
- (iii) Increased Water Efficiency:
  - Installation of low volume, non-spray irrigation systems.
  - Incorporation of landscape practices recommended by the University of Florida's Florida-Friendly Landscaping Program ([fyn.ifas.ufl.edu/index.html](http://fyn.ifas.ufl.edu/index.html)).
  - Installation of low flow toilets, showerheads and sink faucets.

(g) Civil Rights Compliance:

The Borrower agrees that no person shall on the ground of race, color, disability, national origin, religion, age, financial status, familial status, marital status, sexual orientation, gender, or gender identity or expression, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement in violation of Federal, State and local fair housing laws. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement. In addition to the above, in the event Borrower is a beneficiary under an existing Housing Assistance Payments (HAP) contract providing for HUD Project Based Section 8 vouchers for more than 25% of the units in the Westgate Plaza Apartments project, Borrower may set aside units in the Westgate Plaza Apartments project for Elderly or Disabled families, or families receiving supportive services (collectively, as defined by HUD and the Fair Housing Act) pursuant to HUD and Fair Housing Act regulations.

(h) Section 504:

The Borrower agrees to comply with all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program.

(i) Opportunities for Small and Minority/Women-owned Business Enterprises:

In connection with the procurement of all contracts for supplies, equipment, construction, or services funded, in part or in whole, with NSP2 funds made available through this Agreement, the Borrower shall make a positive effort to utilize small business and minority/women-owned business enterprises of supplies and services, and provide these sources the maximum feasible opportunity to compete for contracts to be performed pursuant to this Agreement. To the maximum extent feasible these small business and minority/women-owned business enterprises shall be located in or owned by residents of the NSP2 Urban Redevelopment Area as identified in the Notice of Funding Availability and Request for Proposals to which the Borrower responded in connection with the funds made available through this Agreement.

The provisions of this Subparagraph do not apply to contracts for supplies, equipment, construction, or services not funded, in part or in whole, with NSP2 funds made available through this Agreement such as contracts entered into by the Borrower for the operation and maintenance of Westgate Plaza Apartments.

(j) Labor Standards:

The Borrower agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Borrower agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Borrower shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the County for review upon request.

The Borrower agrees that the prime contractor and all its subcontractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Borrower of its obligation, if any, to require payment of the higher wage. The Borrower shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

(k) Section 3

The Borrower agrees to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, as they apply to Section 3 Covered Contracts exceeding \$100,000 when funded, in part or in whole, through this Agreement and awarded for Section 3 Covered Projects. For the purposes of this Agreement, the requirements of Section 3 shall apply to the herein described construction contract with the prime contractor covering all construction work associated with the Westgate Plaza Apartments project, all subcontracts exceeding \$100,000 arising from said construction contract, all herein described consultant contracts exceeding \$100,000 for architectural, landscape architecture, surveying, engineering, and related professional services, and all subcontracts exceeding \$100,000 arising from said consultant contracts.

The Borrower shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract for every Section 3 Covered Project:

**Section 3 Clause:**

(i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170 1u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(ii) The parties to this contract agree to comply with HUD's requirements in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(iii) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(v) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(l) Bonding Requirements:

The Borrower shall require the prime contractor to deliver, with the executed construction contract, a performance bond and a separate payment bond each in the amount of one hundred percent (100%) of the construction contract price, executed by a corporate surety company of recognized standing, authorized to do business in the State of Florida, as security for the faithful performance and payment of all contractor's obligations under the construction contract. During the construction period the surety company shall hold a current certificate of authority as an acceptable surety on Federal Bonds, in accordance with U. S. Department of Treasury Circular 570, Current Revision. The Borrower shall provide the County a copy of each such bond no later than 30 days after the execution of the construction contract.

(m) NSP2 Requirements Applicable to Construction Contract and Consultant Contracts:

The Borrower shall, in connection with the award of the construction contract to be funded through this Agreement, request the County for a document containing the NSP2 requirements applicable to the construction contract, shall incorporate such document into its construction contract for the Westgate Plaza Apartments project, and shall impose such NSP2 requirements contained therein on its prime contractor and all of the prime contractor's subcontractors. The Borrower shall also, in connection with the award of each consultant contract to be funded through this Agreement, request the County for a document containing the NSP2 requirements applicable to consultant contracts, shall incorporate such document into each consultant contract for the Westgate Plaza Apartments project, and shall impose such NSP2 requirements contained therein on all affected consultants and their subconsultants.

(n) Reporting Requirements:

(i) The Borrower shall submit to the County a Monthly Narrative Report in the form provided as Exhibit F to this Agreement. The Borrower shall first submit said report on the last day of the month during which this Agreement is executed, and thereafter, on the last day of each month following the month during which this Agreement is executed. After the Borrower provides a monthly report for the month during which the Certificate of Occupancy for the Westgate Plaza Apartments is issued, the Borrowers may cease submitting this report.

(ii) The Borrower shall submit to the County a Tenant Information Report in the form provided as Exhibit G to this Agreement. The Borrower shall first submit said report on the last day of the month during which the Certificate of Occupancy for the Westgate Plaza Apartments is issued, and thereafter, on the last day of each month following the month during which said Certificate of Occupancy was issued. After the Borrower provides monthly reports on all eighty (80) apartments described herein, the Borrower may cease submitting this report.

(iii) The Borrower shall submit to the County a Quarterly Jobs Report in the form provided as Exhibit H to this Agreement, and according to the schedule indentified therein. This report is intended to collect information on the number of jobs created and jobs retained in connection with all contracts funded, in part or in whole, with NSP2 funds including but not limited to the construction contract, all construction subcontracts, all consultant contracts, and all subconsultant contracts for this project. The Borrower shall, for each contract funded, in part or in whole, with NSP2 funds, submit Quarterly Jobs Reports covering the contract period beginning with the commencement of work covered by the contract and ending with the conclusion of all work covered by the contract.

(iv) The Borrower shall submit to the County an Annual Rent Roll in the form provided as Exhibit I to this Agreement. The Borrower shall first submit the Annual Rent Roll on the first anniversary of its submission of the first Tenant Information Report identified above, and annually thereafter for the duration of the Mortgage.

7. **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 Florida 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. Borrower is duly authorized to borrow from County the principal sum of \$6,100,000 and execute all the Loan Documents pertaining thereto.

(b) **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.

(c) **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, subject to applicable bankruptcy, insolvency, and similar laws affecting rights of creditors generally, and general principles of equity.

(d) **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.

(e) **Pending Litigation:**

To Borrower's knowledge there are no actions, suits or proceedings pending before any court of law or equity, or any Administrative Board, or, to the knowledge of the Borrower, threatened against or affecting it or the Premises, or, involving the validity or enforceability of the Mortgage, or of any of the Loan Documents.

(f) **Availability of Utilities:**

All utility services necessary for the construction of the Improvements and the operation thereof for their intended purpose are or will be available at the boundaries of the Premises, including water supply, storm and sanitary sewer facilities, and electric and telephone facilities, and Borrower has obtained or will obtain 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.

(g) **Condition of Premises:**

The Premises are not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, and to Borrower's knowledge there are no soil conditions which would materially interfere with the construction of the Improvements.

(h) **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 therefore 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.

(i) **No Default:**

There is no default on the part of the Borrower under this Agreement, the Promissory 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.



(j) 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.

(k) Hazardous Waste:

To Borrower's knowledge, 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 of competent jurisdiction with respect thereto, and no 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.

(l) Filing and Payment of Taxes:

The Borrower has 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 not reasonably expected.

**8. 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, bonded or insured over within sixty (60) 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. County shall continue making disbursements so long as the liens are bonded off by Borrower. If Borrower fails, after demand, to cause said lien or liens to be released, bonded or insured over 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, of 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, including in the Permitted Exceptions, the Premises or any part thereof shall not be sold, leased (except for tenant lease), conveyed, mortgaged or encumbered in any way without the prior written consent of the County which consent shall not be unreasonably withheld, or delayed 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. Notwithstanding the foregoing, Borrower may enter into utility easements or licenses or leases for tenant services, such as laundry or concessions.

(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.

(ii) Commencing on April 1, 2013, for the calendar year ending December 31, 2012, 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 to Borrower's knowledge any event which upon notice or lapse of time or both, would constitute such an Event of Default, has occurred which has not been cured or otherwise waived in writing by the Lender.

(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 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 an insurance company or companies in such amounts and with terms reasonably acceptable to the County, with loss in excess of \$200,000, if any, payable to the County, as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be reasonably satisfactory to the County; and forthwith upon the issuance of such policies Borrower will deliver to the County copies of 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. Subject to the provisions of the First Mortgage, 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. Notwithstanding anything to the contrary contained herein, if there is no Event of Default that is continuing, Borrower shall have the right to use the insurance proceeds for the reconstruction of the Premises provided the Borrower can provide evidence to the County of sufficient funds from other sources available to effectively rebuild the herein described 80-unit apartment complex in compliance with the terms of this Agreement and the herein described NSP2 funding. This section is subordinate to the First Mortgage.

(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 superior to this Mortgage, except in the ordinary course of business 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, which approval shall not be unreasonably withheld or delayed, except indebtedness owed the County and the aforementioned First Mortgage; provided however, that the First Mortgage shall not exceed the amounts contained in the recitals incorporated in this 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 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 Promissory Note, as the County may reasonably require.

(j) No Assignment:

Borrower shall not assign this Agreement or any interest therein and any such assignment is void and of no effect.

**9. RIGHT TO AUDIT AND ACCESS TO RECORDS:**

The Borrower shall maintain adequate records to justify all charges, expenses and costs incurred for acquisition of the Premises and completion of the Improvements for at least five (5) years after completion. Furthermore, the Borrower shall maintain ongoing records related to its tenants (such as their incomes, their household composition, their household characteristics, and their leases), and for at least five (5) years after the end of each tenancy, to enable the County to verify the Borrower's compliance with the occupancy, affordability, and all other requirements in this Agreement.

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.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, by the Palm Beach County Office of Inspector General pursuant to Palm Beach County Code Sections 2-412 to 2-440.

Pursuant to Palm Beach County Code Sections 2-412 to 2-440, Palm Beach County has established the Office of the Inspector General, which is authorized and empowered to review past, present and proposed County agreements, contracts, transactions, accounts and records. All parties doing business with the County and receiving County funds, including the Borrower, shall fully cooperate with the Inspector General. The Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and to audit, investigate, monitor, and inspect the activities of the Borrower, its officers, agents, employees, and lobbyists in order to ensure compliance with this Agreement and to detect waste, corruption and fraud.

**10. INSPECTIONS:**

Borrower will permit County, or its representatives to enter upon the Premises during normal business hours, 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 after expiration of any notice and cure period 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.

(b) Breach of Covenants, Warranties and Representations:

If any warranty or representation made by Borrower in this Agreement or in any other Loan Document shall at any time be false or misleading in any material respect when made, or if Borrower shall fail to keep, observe or perform any of the material terms, covenants, representations or warranties contained in this Agreement, the Promissory 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 non-monetary defaults, the County shall give written notice to Borrower, who shall have thirty (30) days to cure), or is unwilling to meet its obligations thereunder.

(c) Failure to Use Funds:

Borrower shall fail to use all funds under this Agreement for permissible costs associated with the acquisition of the Premises as set forth in Paragraph 3(a) above, and for costs eligible for reimbursement by the County as set forth in Paragraph 4 above, by November 15, 2012. In the event Borrower fails to use all funds by November 15, 2012, all remaining funds shall revert to the County and the County may reallocate for other projects or needs, unless written agreement to the contrary has been executed by the Parties.

(d) Failure to Complete Construction:

Borrower shall fail to complete construction of the Improvements and secure a Certificate of Occupancy for the Improvements by March 31, 2013, unless written agreement to the contrary has been executed by the Parties.

(e) Default Under the First Mortgage:

Borrower shall default under the First Mortgage which is not cured within applicable cure periods.

**12. REMEDIES OF LENDER:**

Upon the happening of an Event of Default, which default is not cured within any applicable cure or grace period, then the County may, at its option, upon written notice to Borrower:

(a) Cancellation of Agreement:

Cancel this Agreement.

(b) Commencement of Legal or Equitable Action:

Commence an appropriate legal or equitable action to enforce performance of this Agreement.

(c) Acceleration of Payment:

Accelerate the payment of the Promissory 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) Rights and Remedies:

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. LIMITED PARTNER:**

Wachovia Affordable Housing Community Development Corporation is the limited partner (the "Limited Partner") of the Borrower. The Limited Partner shall be provided copies of all notices sent to Borrower and shall be allowed to cure any Defaults during any applicable cure periods.

**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 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 Promissory Note, the Mortgage 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) Public Entity Crimes:

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

(d) Conflict of Interest:

The Borrower covenants that no person who presently exercises any functions or responsibilities in connection with the Project, has any personal financial interest, direct or indirect, in the target areas or any parcels therein, which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed by or subcontracted by the Borrower.

Any possible conflict of interest on the part of the Borrower or its employees shall be disclosed in writing to the County provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation of low and moderate-income residents of the project target area.

(e) The County Not Liable for Damage or Loss:

All inspections and other services rendered by or on behalf of the County pursuant to this Agreement 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 or damage against the County or against its agents or employees for failure to properly conduct inspections and other such services contemplated by this Agreement.

(f) 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 so long as disbursements are made to Borrower.

(g) 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 before, during or after the term of the Loan, except any liability due to the gross negligence or willful misconduct of County. 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) Agreement:

The American Recovery and Reinvestment Act of 2009 (ARRA), the Housing and Community Development Act of 1974, as amended, and the Federal Community Development Block Grant Regulations (24 CFR Part 570) are herein incorporated by reference and made a part hereof, and shall constitute and be referred to as the Agreement; and all of said documents taken as a whole constitute the Agreement between the parties hereto and are as fully a part of the Agreement as if they were set forth verbatim and at length herein. The Loan Documents constitute the entire understanding and agreement between the parties with respect to the subject matter hereof, supersede all prior agreements, including commitment letters, and may not be modified or amended, except in writing and signed by all parties hereto.

(p) 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 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.

(r) 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  
301 N. Olive Avenue, Suite 601  
West Palm Beach, FL 33401

TO BORROWER:

WESTGATE PLAZA APARTMENTS, LTD.  
1666 Kennedy Causeway, Suite 505  
North Bay Village, FL 33141  
Attn: Francisco Rojo, Vice-President

TO LIMITED PARTNER:

Wachovia Affordable Housing  
Community Development Corporation  
MAC D1053-170  
301 South College Street  
Charlotte, NC 28288  
Attn.: Director of Tax Credit Asset Management

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

(s) 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.

(t) Counterparts:

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

(u) Waiver of Jury Trial:

BORROWER AND COUNTY EACH 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 OR LIMITATION OF THE COUNTY'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON THE COUNTY'S BEHALF.

**15. SUBORDINATION:**

Lender hereby approves the First Mortgage provided that it does not exceed \$7,500,000 plus any protective advances made in accordance with applicable law, and further agrees to subordinate to such First Mortgage. The Chair of the Board of County Commissioners of Palm Beach County and the Clerk of the Court for Palm Beach County, are hereby authorized to execute subordination agreements 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. Nothing contained herein shall, however, relieve the Borrower from its obligation to make payments under the Promissory Note in accordance with its terms.

**16. NONRECOURSE:**

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE BORROWER UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE LENDER SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE BORROWER HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE LOAN.

**17. 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 Agreement is executed by the Board of County Commissioners.

**18. TRANSFER:**

Notwithstanding the foregoing or anything to the contrary contained herein or in the Loan Documents, the following shall be permitted without consent of County and shall not constitute an Event of Default: (i) the transfer of partnership interests in the Borrower in accordance with the terms of the Borrower's agreement of limited partnership, as such agreement of limited partnership may be amended from time to time (the "Partnership Agreement"), (ii) the transfer of ownership interests in investor Limited Partner,

(iii) the removal of the general partner of the Borrower and replacement thereof in accordance with the Partnership Agreement and/or (iv) an amendment of the Partnership Agreement (A) memorializing the transfers or removal described above or (B) which does not materially and adversely affect the ability of the Borrower to perform the Borrower's obligations under this Agreement or the other Loan Documents.

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:

Witnesses:

**WESTGATE PLAZA APARTMENTS, LTD.,**  
a Florida Limited Partnership

Name: ALEX BARROSO

By: ~~WESTGATE PLAZA APARTMENTS GP, LLC,~~  
~~a Florida Limited Liability Company,~~  
its General Partner

Signature: [Handwritten Signature]

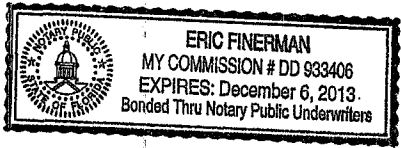
By: [Handwritten Signature]  
Francisco Rojo,  
Vice-President

Name: Justin Gilbert

Signature: [Handwritten Signature]

STATE OF FLORIDA  
COUNTY OF ~~PALM BEACH~~ MIAMI-DADE

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of July, 2011, by Francisco Rojo, who is personally known to me, or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.



Signature: [Handwritten Signature]

(NOTARY SEAL ABOVE)

Notary Name: Eric Finerman  
Notary Public - State of Florida

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

**FOR ITS BOARD OF COUNTY COMMISSIONERS**

By: [Handwritten Signature]  
Shannon R. LaRocque-Baas, P.E.  
Assistant County Administrator

Approved as to Form and  
Legal Sufficiency

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

By: [Handwritten Signature]  
Tammy K. Fields  
Senior Assistant County Attorney

By: [Handwritten Signature]  
Journey Beard, Director of Contract  
Development and Quality Control



## EXHIBIT A

### LEGAL DESCRIPTION

BEGINNING AT THE NORTHWEST CORNER OF "QUAIL WOODS" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 75 AT PAGES 49 THROUGH 54 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 01°31'58" EAST ALONG THE WEST LINE OF EAST ONE HALF (E 1/2) OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25, A DISTANCE OF 376.60 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WESTGATE AVENUE AS RECORDED IN ROAD PLAT BOOK 2 AT PAGE 205 AND OFFICIAL RECORDS BOOK 387 AT PAGE 615 AND OFFICIAL RECORDS BOOK 543 AT PAGE 200 AND OFFICIAL RECORDS BOOK 746 AT PAGE 319 OF SAID PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE SOUTH 89°07'02" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 127.17 FEET TO A TANGENT INTERSECTION WITH A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 1186.28 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07°22'43" AN ARC DISTANCE OF 152.77 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE TO THE NORTH HAVING A RADIAL BEARING OF NORTH 04°34'04" WEST AND A RADIUS OF 2140.00 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 00°07'57" AN ARC DISTANCE OF 4.95 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHEASTERLY ALONG THE WESTERLY RIGHT-OF-WAY LINE OF QUAIL DRIVE, AS RECORDED IN OFFICIAL RECORD BOOK 9291, PAGE 1110 OF SAID PUBLIC RECORDS AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 96°14'44" AN ARC DISTANCE OF 42.00 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 25.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25; THENCE SOUTH 01°32'43" WEST, A DISTANCE OF 228;70 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF THE NORTH 283.3 OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25; THENCE N89°07'02"W ALONG SAID NORTH LINE A DISTANCE OF 15.00 FEET; THENCE S01°32'43"W ALONG A LINE LYING 40.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25, A DISTANCE OF 133.70 TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID QUAIL WOODS; THENCE NORTH 88°59'26" WEST ALONG SAID NORTH LINE, A DISTANCE OF 311.96 FEET TO THE POINT OF BEGINNING.

SAID LANDS IN PALM BEACH COUNTY, FLORIDA.

CONTAINING 116,294 SQUARE FEET (2.67 ACRES) MORE OR LESS.

**EXHIBIT B**

**PROMISSORY NOTE**

\$6,100,000.00

West Palm Beach, Florida  
\_\_\_\_\_, 2011

FOR VALUE RECEIVED the undersigned Westgate Plaza Apartments, Ltd., a Florida limited partnership ("Maker" aka "Developer"), promises to pay to the order of PALM BEACH COUNTY, a political subdivision of the State of Florida, together with any other holder hereof ("Holder"), at 301 North Olive Avenue, West Palm Beach, Florida 33401, or such other place as Holder may from time to time designate in writing, the principal sum of Six Million One Hundred Thousand Dollars (\$6,100,000.00) (the "Loan") plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) The entire Loan is non-amortizing and this Note shall bear interest at the stated rate of two percent (2%) per annum (compounded annually) computed only on the outstanding principal balance from time to time remaining unpaid from the date of each disbursement. The outstanding principal balance shall be due in full on the Maturity Date (as defined below).
- 2) Repayment hereunder shall occur as follows:
  - (a) From the date hereof until December 31, 2012, no payments will be required and interest will accrue and be payable at the Maturity Date, as defined below.
  - (b) From and after December 31, 2012, annual payment of interest shall be made out of available Net Cash Flow (as defined below) of the Project (as defined below) which shall be determined annually on a calendar year basis, commencing with the year 2012, and certified by an independent Certified Public Accountant reasonably acceptable to the County, prior to the annual payment due date. The first annual interest payment due date hereunder shall be on May 31, 2013, with respect to all interest payments due under subparagraph (4) below for the preceding calendar year. Subsequent annual interest payments shall be due on the 31st day of May for each preceding calendar year thereafter through May 31, 2043, (Maturity Date), at which time all outstanding principal indebtedness together with all accrued and unpaid interest thereon shall be due and payable, unless acceleration is made by Holder pursuant to the provisions hereof.
- 3) Maker agrees to provide annually to Holder a certification of Project income and expenses, and certified by an independent Certified Public Accountant acceptable to the County in its reasonable discretion, which shall be used by Holder to determine cash flow and the payments due hereunder. Said certification shall be provided prior to each annual due date commencing for the year 2012.
- 4) Commencing May 31, 2013, payments from Net Cash Flow as determined by Holder shall be applied to pay the following items in order of priority:
  - (a) Interest payment on the principal balance hereof equal to two percent (2%) per annum; and
  - (b) Any such interest hereunder deferred from previous years commencing with the year 2011.

Net Cash Flow means the Project cash flow from rental income and other income generated by the Project, less (i) all sums due or currently required to be paid under the documents executed in connection with the senior loans, including, without limitation, debt service payment on senior loans, (ii) debt service on subordinate loans that are payable from other than cash flow, and (iii) Project Expenses (as defined below). The following items shall be excluded from Project cash flow in determining Net Cash Flow, and shall not be considered as available for payment of the Holder's Loan: (i) refinancing and insurance proceeds, (ii) tax credit equity capital contributions, (iii) proceeds from the senior and NSP2 loans, and (iv) any other funding sources used to fund construction or rehabilitation of the Project. Project Expenses means any usual and customary operating, development and financial costs associated with the project, including, without limitation, any compliance monitoring fee, any financial monitoring fee, any Developer Fee (including any Deferred Developer Fee) (as defined below), any deferred construction contractor fees and expenses, any replacement reserves, completion/repair reserves, or other reserves or escrows required by any senior lienholder, any servicing fees and any debt service reserves required by any senior lienholder, guaranty fees which are payable while any guarantees are in place, fees payable pursuant to the terms of the Borrower's partnership agreement, and repayment of any advances made by the general partner(s) and/or limited partner prior to or after construction completion. The term Project Expenses shall also include the management company's fee for providing professional customary management services for the project on a day to day basis, including marketing, maintenance, leasing, compliance duties, management of budget, daily operations, and administrative expenses such as office supplies, postage/express mail, office equipment lease and repair (fax, copier, computers), telephone, internet, license, fees and permits, legal expenses, accounting and audit expenses, resident services, miscellaneous expenses such as travel and meals.

Developer Fee means the overhead and fee paid to the Developer with respect to the Project, which shall equal eighteen percent (18%) of Project Costs. Project Costs for purpose of determining Developer Fee per this Promissory Note are herein defined as all costs incurred in the acquisition, financing, construction and completion of the Project, as reflected in the cost certification completed by the Project accountant, and shall include all items in the following sentence, and exclusive of Developer Fee and land cost. Project Costs shall include but not be limited to: (a) the cost of acquiring real property and any buildings thereon, excluding the purchase price of the real property, including payment for options, deposits, or contracts to purchase properties, (b) the cost of site preparation, demolition, and development, (c) any expenses relating to the issuance of tax-exempt bonds or taxable bonds, if any, related to the Project, (d) fees in connection with the planning, execution, and financing of the Project, such as those of architects, engineers, attorneys, accountants, lenders, the Housing Finance Authority of Palm Beach County and the Florida Housing Finance Corporation, (e) the cost of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction, rehabilitation, or reconstruction of the Project, (f) the cost of the construction, rehabilitation, and equipping of the Project, (g) the cost of land improvements, such as landscaping and offsite improvements related to the Project, whether such costs are paid in cash, property, or services, (h) expenses in connection with initial occupancy of the Project, (i) allowances for contingency reserves and reserves for any anticipated operating deficits during the first

two (2) years after completion of the Project, (j) the cost of such other items, including relocation costs, indemnity and surety bonds, premiums on insurance, and fees and expenses of trustees, depositories, and paying agents for the tax-exempt bonds, for the construction or rehabilitation (as applicable) of the Project. Deferred Developer Fee means the portion of the Developer Fee that has not been paid to the Developer as of the later of (i) construction completion of the Project, (ii) receipt of all equity installments by the investor limited partner of the Maker and (iii) conversion to permanent financing of the first mortgage loan of the Project.

Notwithstanding anything to the contrary contained in this Section 4, or elsewhere in this Note, in no event shall payments made by Maker to Holder under the terms of this Note exceed thirty percent (30%) of then available Net Cash Flow, it being understood that the indebtedness evidenced by this Note is payable only from thirty percent (30%) of Net Cash Flow.

- 5) Any payments of current or deferred interest due annually hereunder shall be deferred until the next annual due date to the extent that Net Cash Flow is insufficient to make said payments pursuant to the payment priority schedule in subparagraph (4) above and as determined by Maker.
- 6) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, then to accrued, deferred and unpaid interest and the balance, if any, to the principal balance.
- 7) After maturity or acceleration, this Note shall bear interest at the Default Interest Rate which shall be the maximum interest rate allowed by applicable law, until paid in full.
- 8) All terms hereunder shall be as construed and defined in Chapter 91-28, Florida Administrative Code.

PALM BEACH COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA IS EXEMPT FROM PAYMENT OF EXCISE TAX ON DOCUMENTS. STAMPS HAVE BEEN AFFIXED TO THE MORTGAGE AND CANCELED AS REQUIRED BY LAW.

This Note is executed pursuant to the terms and conditions of that certain Loan Agreement dated \_\_\_\_\_, between Maker, as Borrower, and Holder, as Lender, is secured by a Mortgage and Security Agreement (the "Mortgage") encumbering certain real property located in Palm Beach County, Florida (the "Premises"), all of even date herewith. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents". Project is the eighty (80) apartment project, known as Westgate Plaza Apartments, which is more fully described in the Loan Documents.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced by the promissory note which is secured by the Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing by the Borrower in favor of the Housing Finance Authority of Palm Beach County, in the original maximum principal amount of \$7,500,000, executed by Borrower and payable to the Housing Finance Authority of Palm Beach County and endorsed to Citibank, N.A. ("Senior Lender") to the extent and in the manner provided in that certain Subordination and Intercreditor Agreement (the "Subordination Agreement"), to be entered into between Citibank, N.A., and the Holder of this Note.

The rights and remedies of the Holder and each subsequent holder of this Note shall be deemed, by virtue of such subsequent holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Holder aka "Junior Lender" under the Subordination Agreement.

This Note has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Nothing herein contained, nor any transaction related thereto, shall be construed or so operate as to require the Maker to pay interest at a greater rate than is now lawful in such case to contract for, or to make any payment, or to do any act contrary to ethical law. Should any interest or other charges paid by the Maker, or parties liable for the payment of this Note, in connection with the Loan Documents result in the computation

or earning of interest in excess of the maximum rate of interest that is legally permitted under applicable law, any and all such excess shall be and the same is hereby waived by the Holder, and any and all such excess shall be automatically credited against and in reduction of the balance due under this indebtedness, and a portion of said excess which exceeds the balance due under this indebtedness shall be paid by the Holder to the Maker.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due any payment of interest or other amount due hereunder; or upon the occurrence of an Event of Default pursuant to any other Loan Documents now or hereafter evidencing, securing or guarantying payment of this Note. Notwithstanding the foregoing, Holder shall not exercise any remedies hereunder prior to the expiration of any notice and cure period in the Loan Agreement.

Any payment hereunder not paid when due (at maturity, upon acceleration or otherwise) shall bear interest at the highest rate allowed by applicable law from the due date until paid.

Provided Holder has not accelerated this Note, Maker shall pay holder a late charge of five percent (5%) of any required payment which is not received by Holder within five (5) days following the date said payment is due pursuant to the Note. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

Time is of the essence hereunder. In the event that this Note is collected by law or through attorneys at law, or under advice there from, Maker agrees, to pay all costs of collection including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due hereunder, and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder, including specifically any failure to exercise or forbearance in the exercise of any remedy, shall be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a case of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

The term "other person liable for payment hereof" shall include any endorser, guarantor, surety or other person now or hereafter primarily or secondarily liable for the payment of this Note, whether by signing this or another loan document.

Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, notice of dishonor, protest, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT, SUBJECT TO APPLICABLE NOTICE AND CURE PROVISIONS, BY THE MAKER UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE HOLDER SHALL BE TO FORECLOSE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE MAKER HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR FOR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE PROPERTY GIVEN AS SECURITY FOR THE LOAN.

MAKER AND HOLDER WAIVE THEIR RIGHTS TO A TRIAL BY JURY IF ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS NOTE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER'S EXTENDING CREDIT TO MAKER AND NO WAIVER OR LIMITATION OF HOLDER'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

IN WITNESS WHEREOF, Maker has executed this Note on the day and year first above written.

**WESTGATE PLAZA APARTMENTS, LTD.,**  
a Florida Limited Partnership

By: WESTGATE PLAZA APARTMENTS GP, LLC,  
a Florida Limited Liability Company,  
its General Partner

By: \_\_\_\_\_  
Francisco Rojo, Vice-President

## EXHIBIT C

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

### MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), executed this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by **Westgate Plaza Apartments, 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 Six Million One Hundred Thousand Dollars (\$6,100,000.00) (the "Loan") 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 \_\_\_\_\_, 2011, 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 and subject to the Permitted Exceptions identified in the Loan Agreement, 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, subject to applicable notice and cure provisions, 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 2010, 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 the Housing Finance Authority of Palm Beach County in an original principal amount of \$7,500,000 ("First Mortgage"), and

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 \$6,100,000 and has a maturity date of May 31, 2043, 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:

## ARTICLE 1

### 1.1 Payments of Indebtedness:

The Mortgagor shall pay when due the principal and interest 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 but in any event prior to delinquency, 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. This requirement does not in any way preclude Mortgagor from contesting real or personal property taxes when appropriate. The Mortgagor will, upon written request of the Mortgagee, deliver to the Mortgagee copies of 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 or cause to be bonded off or insured over, 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 reasonably 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 reasonable 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 reasonably acceptable to the Mortgagee, with loss, if any, payable to the Mortgagee as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be satisfactory to the Mortgagee; and forthwith upon the issuance of such policies they will deliver to the Mortgagee copies of 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. Subject to the rights of the Mortgagee pursuant to the First Mortgage, the Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property jointly with the Mortgagor, but only if and to the extent Mortgagor fails to diligently pursue and prosecute the same. 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. Notwithstanding anything to the contrary contained herein, if there is no Event of Default that is continuing, Mortgagor shall have the right to use the insurance proceeds for the reconstruction of the Mortgaged Property provided the Mortgagor can provide evidence to the Mortgagee of sufficient funds from other sources available to effectively rebuild the Project to a multi-family housing complex in compliance with the terms of the Loan Agreement and the NSP2 funding described therein.

The provisions of this Section 1.3 are subject to the rights under the First Mortgage, to which the rights of the Mortgagee are subordinate.

### 1.4 Care of Premises:

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair subject to ordinary wear and tear, will not commit or suffer any intentional 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, which damage exceeds Two Hundred Thousand Dollars (\$200,000.00), the Mortgagor 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 in all material respects.

(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 substantial 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 reasonably satisfactory to the Mortgagee. The Mortgagee recognizes that this mortgage will be subordinate to the First Mortgage, and to the extent this provision conflicts with the similar terms and conditions of the First Mortgage, the First Mortgage shall supersede and shall be controlling. Nothing contained herein shall, however, relieve the Mortgagor from its obligation to make payments under the Promissory Note in accordance with its terms.

#### 1.5 Further Assurances; Modifications:

At any time, and from time to time, upon written 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 reasonable 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, upon prior notice to Mortgagor, 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 2.6(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 Estoppels Affidavits:

The Mortgagee, upon ten days' prior written notice, shall furnish the Mortgagor 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 or 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 Mortgagee; then the Mortgagee, subject to applicable notice and cure provisions, 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, with 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. Mortgagor shall retain its right to file tax appeals provided Mortgagor redeems tax certificates issued in connection therewith. 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 Mortgagor.

#### 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), unless Mortgagor and Mortgagee otherwise agree in writing, condemnation awards shall be applied to restoration or repair of the Premises, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby materially impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be materially impaired, the condemnation award shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Mortgagor. In the event of a condemnation, if an Event of Default shall exist and is continuing hereunder, 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, either 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 are hereby assigned by the Mortgagor to the Mortgagee. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds from a condemnation as the Mortgagee may require. The provisions of this Section 1.10 are subject to the rights under the First Mortgage, to which the rights of the Mortgagee are subordinate. Notwithstanding the foregoing, any condemnation for less than twenty percent (20%) of value of the Premises or any condemnation that will not render the Premises unusable shall not be affected by this section.

#### 1.11 Environmental Representations:

(a) Subject to any matters disclosed in the Phase I environmental report, the Mortgagor covenants with the Mortgagee that to the best of Mortgagor's knowledge the Premises have not been used and will not be used in whole or in part for the storage of hazardous waste other than typical cleaning and maintenance supplies kept in accordance with all laws and regulations.

- (b) To the best of Mortgagor's knowledge, 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 Mortgaged 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 2

### 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, but only in the case of an uncured Event of Default as defined in Section 2.2 below; 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 except as permitted under the Loan Agreement (whether voluntarily or by operation of law) without the Mortgagee's prior written consent, which consent shall not be unreasonably withheld, or delayed, 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, easements or licenses necessary for the development and use of the Improvements on the Premises, which shall include tenant services or benefits; or
- (b) any new or additional liabilities secured by the Premises without the prior written consent of Mortgagee, except for any liabilities incurred by Mortgagor in the ordinary course of its business and in connection with operations of the Mortgaged Property.

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 Events of Default:

An Event of Default ("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 thirty (30) days following written notice by the Mortgagee or such additional time as may be required, provided a cure is timely commenced and diligently prosecuted; 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 in any material manner when made, and such breach is not cured within thirty (30) days following notice from Mortgagee; or
- (d) Any lien for labor or material or otherwise shall be filed against the Premises, and such lien is not canceled, removed, bonded over, insured against or transferred within sixty (60) days after notice of such lien; 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 make 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 sixty (60) days of Filing; or
- (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 and such act is not remedied within any applicable cure or grace period; or
- (k) A breach by Mortgagor of any covenant, representation, or warranty set forth in the Loan Agreement and the expiration of any applicable grace period, 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) One Hundred Percent (100%) of the dwelling units on the Mortgaged Property shall cease to be leased at Affordable Rental Rates (as defined in the Loan Agreement) to households whose incomes, adjusted by family size, are at no more than one hundred and twenty percent (120%) of Area Median Income (hereinafter "AMI") pursuant to U. S. Department of Housing and Urban Development guidelines for a period of thirty (30) years from the date of issuance of the certificate of occupancy for said dwelling units by the building department with jurisdiction over the Mortgaged Property, of which at least forty-four (44) dwelling units must be leased to households whose incomes, adjusted by family size, are at no more than fifty percent (50%) of AMI, and, of such forty-four (44) dwelling units, at least twenty (20) dwelling units must be leased to households whose incomes, adjusted by family size, are at no more than thirty percent (30%) of AMI, or

(m) The Mortgagor shall default on the First Mortgage and such default remains uncured after expiration of any applicable cure or grace period; or

(n) If the Mortgagee shall reasonably believe that any one or more of the defaults enumerated in paragraphs (a) through (m) may occur, then the Mortgagee shall notify the Mortgagor of the specific facts which create the reasonable basis for its belief and shall request the Mortgagor to provide satisfactory evidence to the Mortgagee that such default is not likely to occur or that Mortgagor has taken appropriate steps to cure the default if it should occur.

### 2.3 Special Conditions:

(a) Upon sale, transfer (except those permitted in the Loan Documents), 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) All accrued but unpaid interest on this Note;
- (4) This Mortgage debt in full, including fees.

(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 and not cured within applicable cure periods, 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 material Default shall have occurred and be continuing beyond expiration of any applicable cure or grace period, 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 2.5, 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 2.5(a) shall exist if any subsequent default shall occur and be continuing.

(d) The provisions of this Section 2.5 are subject to the rights under the First Mortgage, to which the rights of the Mortgagee are subordinate.

2.6 Appointment of a Receiver and Foreclosure:

(a) If a Default shall have occurred hereunder and not cured within applicable cure periods, 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 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 hereof, 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) If a Default shall have occurred hereunder and is not cured within applicable cure periods, 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.

(e) The provisions of this Section 2.6 are subject to the rights under the First Mortgage, to which the rights of the Mortgagee are subordinate.

#### 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:

If any documentary 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, or shall have a right to repay the Loan in full. The Mortgagor's liability under this paragraph will survive the repayment of indebtedness under the Note.



### ARTICLE 3

#### 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 consent 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 4

#### 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:

TO MORTGAGOR:

WESTGATE PLAZA APARTMENTS, LTD.  
1666 Kennedy Causeway, Suite 505  
North Bay Village, FL 33141  
Attn: Francisco Rojo, Vice-President

TO MORTGAGEE:

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

TO LIMITED PARTNER:

Wachovia Affordable Housing  
Community Development Corporation  
MAC D1053-170  
301 South College Street  
Charlotte, NC 28288  
Attn.: Director of Tax Credit Asset Management

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 upon receipt or refusal of receipt.

## ARTICLE 5

### 5.1 Future Advances:

It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgagee 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 Subordination:

Mortgagee has approved a First Mortgage provided that it does not exceed \$7,500,000 plus any protective advances made in accordance with applicable law, and further has agreed to subordinate to such First Mortgage. The Chair of the Board of County Commissioners of Palm Beach County and the Clerk of the Court for Palm Beach County, are hereby authorized to execute subordination agreements 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. Nothing contained herein shall, however, relieve the Mortgagor from its obligation to make payments under the Promissory Note in accordance with its terms.

### 5.3 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.

5.4 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.

5.5 Nonrecourse:

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT, SUBJECT TO APPLICABLE NOTICE AND CURE PROVISIONS, BY THE MORTGAGOR UNDER THE LOAN REFERENCED HEREIN, THE SOLE REMEDY OF THE MORTGAGEE SHALL BE TO FORECLOSE AGAINST THE MORTGAGED PROPERTY GIVEN AS SECURITY FOR THIS LOAN, AND IN NO EVENT SHALL THE MORTGAGOR HAVE ANY LIABILITY FOR THE PAYMENT OF THE LOAN OR FOR ANY OTHER OBLIGATIONS REFERENCED HEREIN, OR FOR THE PAYMENT OF ANY DEFICIENCY FOLLOWING THE FORECLOSURE AGAINST THE MORTGAGED PROPERTY GIVEN AS SECURITY FOR THE LOAN.

5.6 Transfer:

Notwithstanding the foregoing or anything to the contrary contained herein or in the Loan Documents, the following shall be permitted without consent of Mortgagee and shall not constitute an Event of Default: (i) the transfer of partnership interests in the Mortgagor in accordance with the terms of the Mortgagor's agreement of limited partnership, as such agreement of limited partnership may be amended from time to time (the "Partnership Agreement"), (ii) the transfer of ownership interests in investor Limited Partner, (iii) the removal of the general partner of the Mortgagor and replacement thereof in accordance with the Partnership Agreement and/or (iv) an amendment of the Partnership Agreement (A) memorializing the transfers or removal described above or (B) which does not materially and adversely affect the ability of the Mortgagor to perform the Mortgagor's obligations under this Mortgage or the other Loan Documents.

5.7 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.

5.8 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.

Signed, sealed and delivered  
in the presence of:

Witnesses:

**WESTGATE PLAZA APARTMENTS, LTD.,**  
a Florida Limited Partnership

Name: \_\_\_\_\_

By: WESTGATE PLAZA APARTMENTS GP, LLC,  
a Florida Limited Liability Company,  
its General Partner

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

By: \_\_\_\_\_  
Francisco Rojo, Vice-President

Name: \_\_\_\_\_

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

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_\_ day of, \_\_\_\_\_, 2011, by Francisco Rojo, Vice-President of WESTGATE PLAZA APARTMENTS GP, LLC, general partner of WESTGATE PLAZA APARTMENTS, LTD., who is personally known to me, or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

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

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

(NOTARY SEAL ABOVE)

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## EXHIBIT A

### LEGAL DESCRIPTION

BEGINNING AT THE NORTHWEST CORNER OF "QUAIL WOODS" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 75 AT PAGES 49 THROUGH 54 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 0131'58" EAST ALONG THE WEST LINE OF EAST ONE HALF (E 1/2) OF THE NORTHWEST ONE-QUARTER(NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25, A DISTANCE OF 376.60 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF WESTGATE AVENUE AS RECORDED IN ROAD PLAT BOOK 2 AT PAGE 205 AND OFFICIAL RECORDS BOOK 387 AT PAGE 615 AND OFFICIAL RECORDS BOOK 543 AT PAGE 200 AND OFFICIAL RECORDS BOOK 746 AT PAGE 319 OF SAID PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE SOUTH 8907'02" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 127.17 FEET TO A TANGENT INTERSECTION WITH A CURVE CONCAVE TO THE NORTH HAVING A RADIUS OF 1186.28 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0722'43" AN ARC DISTANCE OF 152.77 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE TO THE NORTH HAVING A RADIAL BEARING OF NORTH 0434'04" WEST AND A RADIUS OF 2140.00 FEET; THENCE EASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 0007'57" AN ARC DISTANCE OF 4.95 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHEASTERLY ALONG THE WESTERLY RIGHT-OF-WAY LINE OF QUAIL DRIVE, AS RECORDED IN OFFICIAL RECORD BOOK 9291, PAGE 1110 OF SAID PUBLIC RECORDS AND ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9614'44" AN ARC DISTANCE OF 42.00 FEET TO A POINT OF INTERSECTION WITH A LINE LYING 25.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25; THENCE SOUTH 0132'43" WEST, A DISTANCE OF 228;70 FEET TO A POINT OF INTERSECTION WITH THE SOUTH LINE OF THE NORTH 283.3 OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25; THENCE N8907'02"W ALONG SAID NORTH LINE A DISTANCE OF 15.00 FEET; THENCE S0132'43"W ALONG A LINE LYING 40.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHWEST ONE-QUARTER (NW 1/4) OF THE SOUTHEAST ONE-QUARTER (SE 1/4) OF THE NORTHEAST ONE-QUARTER (NE 1/4) OF SAID SECTION 25, A DISTANCE OF 133.70 TO A POINT OF INTERSECTION WITH THE NORTH LINE OF SAID QUAIL WOODS; THENCE NORTH 8859'26" WEST ALONG SAID NORTH LINE, A DISTANCE OF 311.96 FEET TO THE POINT OF BEGINNING.

SAID LANDS IN PALM BEACH COUNTY, FLORIDA.

CONTAINING 116,294 SQUARE FEET (2.67 ACRES) MORE OR LESS.

## EXHIBIT D

### PERMITTED EXCEPTIONS

1. First Mortgage in favor of Housing Finance Authority of Palm Beach County in an original principal amount of \$7,500,000.
2. Taxes and assessments for the year 2011 and subsequent years, which are not yet due and payable.
3. Terms, conditions and stipulations as set forth in Official Record Book 2356, Page 1288.
4. Temporary Construction Easement granted to Palm Beach County recorded in Official Record Book 9924, Page 900.
5. Terms and conditions of Access Easement by and between Westgate Associates, LLC, a Florida limited liability company and Faith Cathedral Worship Center, Inc., a Florida corporation, recorded in Official Record Book 18288, Page 1983.
6. Master Declaration of Restrictive Covenants for Westgate Community Redevelopment Area Overlay (WCRAO) Density Bonus Program in accordance with the Palm Beach County Unified Land Development Code (Rental Development) to be recorded in the Public Records of Palm Beach County, Florida.

**EXHIBIT E**

**PALM BEACH COUNTY**

**HOUSING AND COMMUNITY DEVELOPMENT**

**AFFORDABLE RENTAL RATES**  
**WESTGATE PLAZA APARTMENTS**

Borrower may receive rents permissible under the terms of the HUD Section 8 project based voucher program, provided that the tenant's portion does not exceed the Affordable Rental Rates which shall be the lesser of the below Monthly Tenant Rent (shown in Column F) or the FMR Monthly Rent (shown in Column G).

**TABLE 1: FOR HOUSEHOLDS WHOSE INCOMES, ADJUSTED BY FAMILY SIZE, ARE AT NO MORE THAN THIRTY PERCENT (30%) OF AREA MEDIAN INCOME**

COLUMN A Persons Per Household	COLUMN B Annual Income <sup>(a)</sup>	COLUMN C Monthly Income	COLUMN D 30% of Monthly Income	COLUMN E Monthly Tenant Paid Utilities <sup>(b)</sup>	COLUMN F Monthly Tenant Rent	COLUMN G FMR Monthly Rent <sup>(c)</sup>
<b>ONE BEDROOM UNITS</b>						
1	\$16,000	\$1,333.33	\$400.00	\$60.71	\$339.29	\$1,106
2	\$18,300	\$1,525.00	\$457.00	\$60.71	\$396.29	\$1,106
3	\$20,600	\$1,716.67	\$515.00	\$60.71	\$454.29	\$1,106
<b>TWO BEDROOM UNITS</b>						
1	\$16,000	\$1,333.33	\$400.00	\$69.85	\$330.15	\$1,306
2	\$18,300	\$1,525.00	\$457.00	\$69.85	\$387.15	\$1,306
3	\$20,600	\$1,716.67	\$515.00	\$69.85	\$445.15	\$1,306
4	\$22,850	\$1,904.17	\$571.25	\$69.85	\$501.40	\$1,306
5	\$24,700	\$2,058.33	\$617.50	\$69.85	\$547.65	\$1,306

**TABLE 2: FOR HOUSEHOLDS WHOSE INCOMES, ADJUSTED BY FAMILY SIZE, ARE ABOVE THIRTY PERCENT (30%), BUT NO MORE THAN FIFTY PERCENT (50%) OF AREA MEDIAN INCOME**

COLUMN A Persons Per Household	COLUMN B Annual Income <sup>(a)</sup>	COLUMN C Monthly Income	COLUMN D 30% of Monthly Income	COLUMN E Monthly Tenant Paid Utilities <sup>(b)</sup>	COLUMN F Monthly Tenant Rent	COLUMN G FMR Monthly Rent <sup>(c)</sup>
<b>ONE BEDROOM UNITS</b>						
1	\$26,650	\$2,220.83	\$666.25	\$60.71	\$605.54	\$1,106
2	\$30,450	\$2,537.50	\$761.25	\$60.71	\$700.54	\$1,106
3	\$34,250	\$2,854.17	\$856.25	\$60.71	\$795.54	\$1,106
<b>TWO BEDROOM UNITS</b>						
1	\$26,650	\$2,220.83	\$666.25	\$69.85	\$596.40	\$1,306
2	\$30,450	\$2,537.50	\$761.25	\$69.85	\$691.40	\$1,306
3	\$34,250	\$2,854.17	\$856.25	\$69.85	\$786.40	\$1,306
4	\$38,050	\$3,170.83	\$951.25	\$69.85	\$881.40	\$1,306
5	\$41,100	\$3,425.00	\$1,027.50	\$69.85	\$957.65	\$1,306

**TABLE 3: FOR HOUSEHOLDS WHOSE INCOMES, ADJUSTED BY FAMILY SIZE, ARE ABOVE FIFTY PERCENT (50%), BUT NO MORE THAN ONE HUNDRED AND TWENTY PERCENT (120%) OF AREA MEDIAN INCOME**

COLUMN A Persons Per Household	COLUMN B Annual Income <sup>(a)</sup>	COLUMN C Monthly Income	COLUMN D 30% of Monthly Income	COLUMN E Monthly Tenant Paid Utilities <sup>(b)</sup>	COLUMN F Monthly Tenant Rent	COLUMN G FMR Monthly Rent <sup>(c)</sup>
<b>ONE BEDROOM UNITS</b>						
1	\$63,960	\$5,330.00	\$1,599.00	\$60.71	\$1,538.29	\$1,106
2	\$73,080	\$6,090.00	\$1,827.00	\$60.71	\$1,766.29	\$1,106
3	\$82,200	\$6,850.00	\$2,055.00	\$60.71	\$1,994.29	\$1,106
<b>TWO BEDROOM UNITS</b>						
1	\$63,960	\$5,330.00	\$1,599.00	\$69.85	\$1,529.15	\$1,306
2	\$73,080	\$6,090.00	\$1,827.00	\$69.85	\$1,757.15	\$1,306
3	\$82,200	\$6,850.00	\$2,055.00	\$69.85	\$1,985.15	\$1,306
4	\$91,320	\$7,610.00	\$2,283.00	\$69.85	\$2,213.15	\$1,306
5	\$98,640	\$8,220.00	\$2,466.00	\$69.85	\$2,396.15	\$1,306

(a) Based on annual income limits for the West Palm Beach-Boca Raton Metropolitan Statistical Area as of May 31, 2011, as published by HUD.

(b) Based on the Section 8 Existing Housing Allowances for Tenant-Furnished Utilities and Other Services as issued by the Palm Beach County Housing Authority on March 1, 2011. (Includes: Heating: electric, Cooking: electric, Other Electric, Air Conditioning, Water Heating: electric, and Service Charge: electric).

(c) Based on West Palm Beach-Boca Raton HUD Metro FMR Area (HMFA) as of October 1, 2010, as published by HUD.

**NOTE:** The number of persons per household shown in Column A may vary by unit provided that the maximum household size per unit shall be as permitted by the Section 8 Program, applicable housing and building codes, and applicable fair housing laws.

EXHIBIT F

PALM BEACH COUNTY

HOUSING AND COMMUNITY DEVELOPMENT

MONTHLY NARRATIVE REPORT

<b>Report For:</b>	Month: _____ Year: 20__
<b>Project Name:</b>	Westgate Plaza Apartments
<b>Report Prepared By:</b>	
	Name _____ Signature _____ Date _____

**FINANCING ACTIVITIES**

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

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

**DESIGN AND LAND PLANNING ACTIVITIES**

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

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

**CONSTRUCTION ACTIVITIES**

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

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

**MARKETING AND LEASEUP ACTIVITIES**

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

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



**EXHIBIT G**

**PALM BEACH COUNTY**

**HOUSING AND COMMUNITY DEVELOPMENT**

**TENANT INFORMATION REPORT**

<b>Project Name:</b>	Westgate Plaza Apartments		
<b>Report Period:</b>	From _____, 20__ to _____, 20__		
<b>Prepared By:</b>	_____		
<b>Report Date:</b>	_____, 20__	Page ___ of ___ Pages	

Fill in the required information for each apartment or place a check mark where applicable.

<b>Building Address:</b>				
	Apartment No. ___	Apartment No. ___	Apartment No. ___	Apartment No. ___
Tenant Name:				
Lease start date:				
No. of bedrooms:				
Household Income at 30% of AMI or less	[ ]	[ ]	[ ]	[ ]
Household Income at or below 50% of AMI but greater than 30% of AMI	[ ]	[ ]	[ ]	[ ]
Household Income at or below 80% of AMI but greater than 50% of AMI	[ ]	[ ]	[ ]	[ ]
Household Income at or below 120% of AMI but greater than 80% of AMI	[ ]	[ ]	[ ]	[ ]
Female Head of Household	[ ]	[ ]	[ ]	[ ]
Disabled Head of Household	[ ]	[ ]	[ ]	[ ]
Hispanic Ethnicity	[ ]	[ ]	[ ]	[ ]
White	[ ]	[ ]	[ ]	[ ]
African American	[ ]	[ ]	[ ]	[ ]
Asian	[ ]	[ ]	[ ]	[ ]
American Indian or Alaskan Native	[ ]	[ ]	[ ]	[ ]
Native Hawaiian Pacific Islander	[ ]	[ ]	[ ]	[ ]
American Indian or Alaskan Native and White	[ ]	[ ]	[ ]	[ ]
Asian and White	[ ]	[ ]	[ ]	[ ]
African American and White	[ ]	[ ]	[ ]	[ ]
American Indian/Alaskan Native and African American	[ ]	[ ]	[ ]	[ ]
Other Multi-racial	[ ]	[ ]	[ ]	[ ]

**EXHIBIT H**

**PALM BEACH COUNTY**

**HOUSING AND COMMUNITY DEVELOPMENT**

**QUARTERLY JOBS REPORT**

<b>Project Name:</b>	Westgate Plaza Apartments	<b>Prepared By:</b>		<b>Page</b> _____
<b>Report Period:</b>	<input type="checkbox"/> October 1, 20___, to December 31, 20___, due by 5:00 p.m. on the following 5 <sup>th</sup> of January. <input type="checkbox"/> January 1, 20___, to March 31, 20___, due by 5:00 p.m. on the following 5 <sup>th</sup> of April. <input type="checkbox"/> April 1, 20___, to June 30, 20___, due by 5:00 p.m. on the following 5 <sup>th</sup> of July. <input type="checkbox"/> July 1, 20___, to September 31, 20___, due by 5:00 p.m. on the following 5 <sup>th</sup> of October.			

This quarterly report is intended to collect information on the number of jobs created and jobs retained in connection with all contracts funded, in part or in whole, with NSP2 funds including but not limited to the construction contract, all construction subcontracts, all consultant contracts, and all subconsultant contracts for this project. This covers all employees including but not limited to supervisory, professional, construction, and office employees who performed work in connection with this project.

**Definitions:**

Job type: this may be a job title (for example: foreman, engineer), a broader labor category (for example: equipment operator), or the prime employer's description of a job based on existing practices as long as the term used is widely understood and describes the general nature of the work.

Job created: this is a new position that is created and filled, or an existing unfilled position that is filled, in connection with this project.

Job retained: this is an existing position employed in connection with this project.

*Note: each job reported in connection with this project must either be reported as job created or a job retained, it cannot be reported as both.*

(Use additional sheets if needed).

NAME OF EMPLOYER: _____		For County use only.
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE
<b>Employee Name:</b> _____ <b>Job Type:</b> _____ <input type="checkbox"/> Job created <input type="checkbox"/> Job retained	Number of hours worked by this employee on this project during this quarter: _____ hours. Number of hours in a full time schedule for this quarter: _____ hours.	_____ / _____ = _____ FTE

**EXHIBIT I**

**PALM BEACH COUNTY**

**HOUSING AND COMMUNITY DEVELOPMENT**

**ANNUAL RENT ROLL**

<b>Project Name:</b>	Westgate Plaza Apartments		
<b>Report Period:</b>	From _____, 20__ to _____, 20__		
<b>Prepared By:</b>	_____		
<b>Report Date:</b>	_____, 20__	<b>Page ___ of ___ Pages</b>	

Fill in the required information for each apartment or place a check mark where applicable.

<b>Building Address:</b>				
	Apartment No. ___	Apartment No. ___	Apartment No. ___	Apartment No. ___
Tenant Name:				
Lease start date:	/ /	/ /	/ /	/ /
Contract Rent:	\$	\$	\$	\$
Tenant Rent:	\$	\$	\$	\$
No. of bedrooms:				
No. of occupants:				
Date last income certified:	/ /	/ /	/ /	/ /
Annual income:	\$	\$	\$	\$
Household Income at 30% of AMI or less	[ ]	[ ]	[ ]	[ ]
Household Income at or below 50% of AMI but greater than 30% of AMI	[ ]	[ ]	[ ]	[ ]
Household Income at or below 80% of AMI but greater than 50% of AMI	[ ]	[ ]	[ ]	[ ]
Household Income at or below 120% of AMI but greater than 80% of AMI	[ ]	[ ]	[ ]	[ ]
	Apartment No. ___	Apartment No. ___	Apartment No. ___	Apartment No. ___
Tenant Name:				
Lease start date:	/ /	/ /	/ /	/ /
Contract Rent:	\$	\$	\$	\$
Tenant Rent:	\$	\$	\$	\$
No. of bedrooms:				
No. of occupants:				
Date last income certified:	/ /	/ /	/ /	/ /
Annual income:	\$	\$	\$	\$
Household Income at 30% of AMI or less	[ ]	[ ]	[ ]	[ ]
Household Income at or below 50% of AMI but greater than 30% of AMI	[ ]	[ ]	[ ]	[ ]
Household Income at or below 80% of AMI but greater than 50% of AMI	[ ]	[ ]	[ ]	[ ]
Household Income at or below 120% of AMI but greater than 80% of AMI	[ ]	[ ]	[ ]	[ ]

**AMENDMENT 001 TO THE LOAN AGREEMENT  
WITH  
WESTGATE PLAZA APARTMENTS, LTD.**

SEP 22 2011

Amendment 001 entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **Palm Beach County** (hereinafter "County") and **Westgate Plaza Apartments, Ltd.**, (hereinafter "Borrower").

**WITNESSETH:**

WHEREAS, the County entered into a Loan Agreement with Borrower on July 21, 2011, to provide a loan in the principal amount of \$6,100,000 of Neighborhood Stabilization Program 2 (NSP2) funds for the construction of an 80-unit apartment building to be known as Westgate Plaza Apartments; and

WHEREAS, the parties wish to modify the Loan Agreement to specify the distribution of the apartments to be constructed by bedroom size and by household income of the apartment occupants, and

WHEREAS, both parties mutually agree that the original Loan Agreement entered into on July 21, 2011, is hereby amended as follows:

**SPECIAL PROVISIONS - Paragraph 6, Sub-Paragraph (c):**

Delete the first two (2) paragraphs of Paragraph 6, Sub-Paragraph (c), and replace them with the following:

"All eighty (80) apartments to be constructed at Westgate Plaza Apartments shall be leased to households whose incomes, adjusted by family size, are at no more than one hundred and twenty percent (120%) of Area Median Income (hereinafter "AMI") at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments. AMI shall mean the most current area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

At least fifty-five percent (55%) of all eighty (80) apartments to be constructed at Westgate Plaza Apartments, that is at least forty-four (44) apartments, shall be leased to households whose incomes, adjusted by family size, are at no more than fifty percent (50%) of AMI at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments. Of the aforesaid forty-four (44) apartments, thirty (30) apartments shall be one-bedroom apartments, and fourteen (14) apartments shall be two-bedroom apartments.

Furthermore, of the aforesaid forty-four (44) apartments, at least twenty (20) apartments (that is at least twenty-five (25%) percent of all eighty (80) apartments) to be constructed at Westgate Plaza Apartments, shall be leased to households whose incomes, adjusted by family size, are at no more than thirty percent (30%) of AMI at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments. Of the aforesaid twenty (20) apartments, fourteen (14) apartments shall be one-bedroom apartments, and six (6) apartments shall be two-bedroom apartments.

Based on the above, the Parties recognize that no more than thirty-six (36) apartments to be constructed at Westgate Plaza Apartments, may be leased to households whose incomes, adjusted by family size, are more than fifty percent (50%) of AMI, but no more than one hundred and twenty percent (120%) of AMI at the time these apartments are first occupied, and thereafter, at any time new tenants occupy these apartments. Of the aforesaid thirty-six (36) apartments, no more than twenty-six (26) apartments shall be one-bedroom apartments, and no more than ten (10) apartments shall be two-bedroom apartments."

**AMENDMENT 001 TO THE LOAN AGREEMENT WITH WESTGATE PLAZA APARTMENTS, LTD. - Continued**

NOW THEREFORE, 1) all items in the previous Loan Agreement in conflict with this Amendment shall be and are hereby changed to conform to this Amendment, and 2) all provisions not in conflict with this aforementioned Amendment are still in effect and shall be performed at the same level as specified in the Loan Agreement.

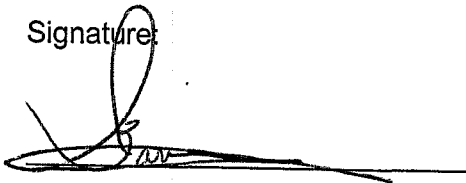
IN WITNESS WHEREOF, Borrower and the County have caused this Amendment to be executed on the date first above written.

Signed, sealed and delivered  
in the presence of:  
Witnesses:

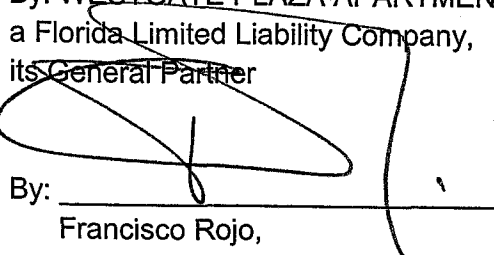
**WESTGATE PLAZA APARTMENTS, LTD.,**  
a Florida Limited Partnership

Name: ALEX BARROSO

Signature:

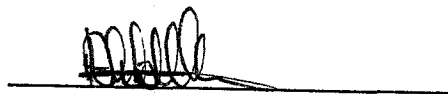


By: WESTGATE PLAZA APARTMENTS GP, LLC,  
a Florida Limited Liability Company,  
its General Partner

By:   
Francisco Rojo,  
Vice-President

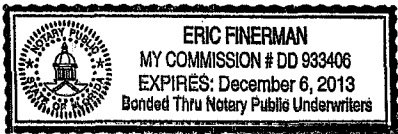
Name: AVOR NISBETH

Signature:

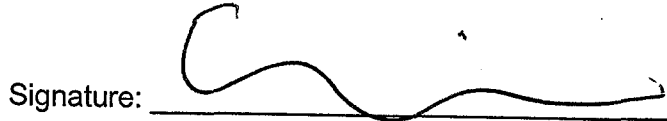


**STATE OF FLORIDA  
COUNTY OF MIAMI-DADE**

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of SEPTEMBER, 2011, by Francisco Rojo, who is personally known to me, or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

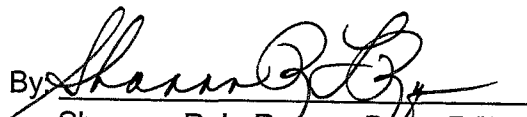


(NOTARY SEAL ABOVE)

Signature: 

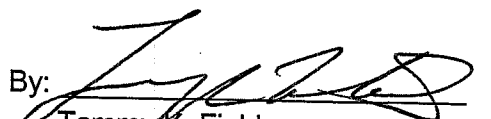
Notary Name: Eric Finerman  
Notary Public - State of Florida

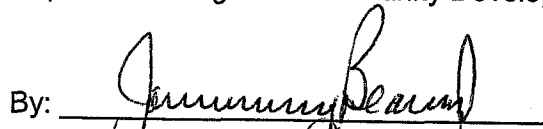
**PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of Florida  
FOR ITS BOARD OF COUNTY COMMISSIONERS**

By:   
Shannon R. LaRocque-Beas, P.E.  
Assistant County Administrator

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

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Citibank, N.A.  
Transactions Management Group/Post Closing  
390 Greenwich Street, 2<sup>nd</sup> Floor  
New York, New York 10013  
Attn: Joanne Marcino

Citi # 10-7041023

**SUBORDINATION AND INTERCREDITOR AGREEMENT**

**THIS SUBORDINATION AND INTERCREDITOR AGREEMENT** (this "Agreement") dated as of October 12, 2011, is made by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("Junior Lender") and **CITIBANK, N.A.** ("Senior Lender").

**RECITALS:**

A. Westgate Plaza Apartments, Ltd., a Florida limited partnership ("**Borrower**") has applied to the Housing Finance Authority of Palm Beach County ("**Governmental Lender**"), for a loan in the maximum principal amount of \$7,500,000 (the "**Senior Loan**"), for the construction, development, equipping and/or operation of an 80-unit multifamily residential project to be located in the City of West Palm Beach, Palm Beach County, Florida, known or to be known as the Westgate Plaza Apartments.

B. The Senior Loan is evidenced by that certain Amended and Restated Multifamily Note dated as of the date hereof in the maximum principal amount of the Senior Loan, made by Borrower payable to the order of Governmental Lender (as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended, restated and/or supplemented, the "**Senior Note**"), and that certain Borrower Loan Agreement dated as of October 1, 2011 between Borrower and Governmental Lender (the "**Senior Loan Agreement**").

C. The Senior Loan is secured by, among other things, that certain Amended and Restated Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of October 1, 2011 executed by Borrower for the benefit of Governmental Lender (as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented, the "**Senior Security Instrument**"; and together with the Note, the Senior Loan Agreement and all other documents executed in connection with the Senior Loan, including this Agreement, the "**Senior Loan Documents**"), which Security Instrument encumbers the Mortgaged Property.

D. Borrower has requested that Governmental Lender enter into that certain Funding Loan Agreement, dated as of October 1, 2011, between Governmental Lender and Senior

Lender, pursuant to which Senior Lender will make a loan to Governmental Lender (the "**Funding Loan**"), the proceeds of which will be used to make the Senior Loan pursuant to the Senior Loan Agreement to Borrower.

E. The Senior Note, the Senior Security Instrument and the Senior Loan Agreement will each be assigned by Governmental Lender to Senior Lender to secure the Funding Loan.

F. Citibank, N.A. (together with its successors and assigns, "**Servicer**"), will act as the initial servicer of the Senior Loan.

G. Junior Lender has made a loan (the "**Junior Loan**") to Borrower in the original principal amount of \$6,100,000 which Junior Loan is evidenced by a certain Promissory Note dated as of July 21, 2011 made by Borrower to Junior Lender (the "**Junior Note**") and secured by, the Junior Security Instrument (as hereinafter defined) encumbering the Property, and will be advanced to Borrower pursuant to that certain Loan Agreement (the "**Junior Loan Agreement**") dated as of July 21, 2011 and amended as of September 22, 2011 between Borrower and Junior Lender.

H. As a condition to the making of the Senior Loan, Senior Lender requires that Junior Lender execute and deliver this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the making of the Senior Loan and to induce Senior Lender to consent to the Junior Loan and the Junior Security Instrument, Junior Lender hereby agrees as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings ascribed thereto in the Senior Security Instrument. As used in this Agreement, the terms set forth below shall have the respective meanings indicated:

*"Bankruptcy Proceeding"* means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

*"Casualty"* means the occurrence of damage to or loss of any of the Property by fire or other casualty.

*"Condemnation"* means any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Property, whether direct or indirect.

*"Enforcement Action"* means the acceleration of all or any part of the Junior Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Property, the commencement of any suit or other legal, administrative, or arbitration proceeding

based upon the Junior Note or any other of the Junior Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Junior Indebtedness or obligated under any of the Junior Loan Documents, or the Property.

*"Enforcement Action Notice"* means a written notice from Junior Lender to Senior Lender, given following a Junior Loan Default and the expiration of any notice or cure periods provided for such Junior Loan Default in the Junior Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by Junior Lender.

*"Junior Indebtedness"* means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Junior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

*"Junior Loan Documents"* means, collectively, the Junior Note, the Junior Security Instrument, the Junior Loan Agreement and all other documents evidencing, securing or delivered in connection with the Junior Loan, together with such modifications, amendments and supplements thereto.

*"Junior Security Instrument"* means that certain Mortgage and Security Agreement dated as of September 28, 2011, made by Borrower for the benefit of Junior Lender, and recorded in the Public Records of Palm Beach County on September 29, 2011 in Official Records Book 24770, Page 0321 as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented upon receipt of the consent of Senior Lender.

*"Junior Loan Default"* means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an "Event of Default" as defined in the Junior Security Instrument.

*"Loss Proceeds"* means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

*"Property"* means (i) the land and improvements known or to be known as the Westgate Plaza Apartments, located in West Palm Beach, Palm Beach County, Florida, which Property is more particularly described on Exhibit A attached hereto, and (ii) all furniture, fixtures and equipment located at such apartments and other property, accounts, deposits and rights and interests of Borrower encumbered by the Senior Security Instrument and/or the other Senior Loan Documents.

*"Senior Indebtedness"* means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Senior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

*"Senior Loan Agreement"* means, collectively, that certain Borrower Loan Agreement dated as of October 1, 2011 by and between Borrower and Governmental Lender and that certain Construction Funding Agreement dated as of October 1, 2011 by and between Borrower and Senior Lender, each relating to the Senior Loan.



*“Senior Loan Documents”* means, collectively, the Senior Security Instrument, the Senior Note, the Senior Loan Agreement and all of the other documents, instruments and agreements now or hereafter evidencing, securing or otherwise executed in connection with the Senior Loan, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented in accordance with the provisions of this Agreement.

*“Senior Loan Default”* means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Security Instrument.

**2. Junior Loan and Junior Loan Documents are Subordinate; Acts by Senior Lender do not Affect Subordination.**

(a) Junior Lender hereby covenants and agrees on behalf of itself and its successors and permitted assigns that the Junior Indebtedness is and shall at all times continue to be, subordinate, subject and inferior (in payment and priority) to the prior payment in full of the Senior Indebtedness, and that the liens, rights, payment interests, priority interests and security interests granted to Junior Lender in connection with the Junior Loan and under the Junior Loan Documents are, and are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof.

(b) Except as expressly set forth herein, repayment of the Junior Indebtedness, is and shall be postponed and subordinated to repayment in full of the Senior Loan. Prior to a Senior Loan Default (regardless of whether such Default occurs prior to or during the pendency of a Bankruptcy Proceeding), Junior Lender shall be entitled to receive and retain payments made pursuant to and in accordance with the terms of the Junior Loan Documents; provided, however, that no such payment is made more than ten (10) days in advance of the due date thereof. Junior Lender agrees that from and after such time as it has received from either Senior Lender or Borrower written notice that a Senior Loan Default then exists (which has not been expressly waived in writing by Senior Lender) or otherwise has actual knowledge of such a Senior Loan Default, Junior Lender shall not receive or accept any payments under the Junior Loan. If (i) Junior Lender receives any payment, property, or asset of any kind or in any form on account of the Junior Indebtedness (including, without limitation, any proceeds from any Enforcement Action) after a Senior Loan Default of which Junior Lender has actual knowledge or has been given notice, or (ii) Junior Lender receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Senior Lender. Junior Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Senior Lender. Senior Lender shall apply any payment, asset, or property so received from Junior Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender shall determine in its sole and absolute discretion.

(c) Without limiting the complete subordination of the Junior Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness shall first be paid in full in cash before Junior Lender shall be entitled to receive any payment or other distribution on account of or in respect of the Junior Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Junior Lender would be entitled but for this Agreement (whether in cash, property, or other assets) shall be made to Senior Lender.

(d) The subordination of the Junior Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

(e) The subordination of the Junior Loan Documents and of the Junior Indebtedness shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Security Instrument and other Senior Loan Documents and of the Junior Security Instrument and other Junior Loan Documents, and (ii) the availability of any collateral to Senior Lender, including the availability of any collateral other than the Property.

(f) By reason of, and without in any way limiting, the full subordination of the Junior Indebtedness and the Junior Loan Documents provided for in this Agreement, all rights and claims of Junior Lender under the Junior Security Instrument or under the Junior Loan Documents in or to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of Senior Lender under the Senior Loan Documents in and to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto.

(g) If Junior Lender, by indemnification, subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Junior Indebtedness and the Junior Loan Documents are subordinate pursuant to this Agreement.

(h) In confirmation, and not as a condition, of the subordination of the Junior Indebtedness and the Junior Loan Documents provided for in this Agreement, Junior Lender shall place on or attach to the Junior Note a notice to the following effect, and shall provide Senior Lender with a copy of the Junior Note showing such notice:

"The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of all amounts then due and payable (including, but not limited to, all amounts due and payable by virtue of any default or acceleration or upon maturity) with respect to the indebtedness evidenced by the Note (as defined by that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing by the Borrower in favor of the Housing Finance Authority of Palm Beach County), in the original maximum principal amount of \$7,500,000, executed by Borrower and payable to the Housing Finance Authority of Palm Beach County and endorsed to Citibank, N.A. ("Senior Lender") to the extent and in the manner provided in that certain Subordination and Intercreditor Agreement to be entered into between Citibank, N.A. and the holder of this Note (the "Subordination Agreement"). The rights and remedies of the payee and each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of this Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the "Junior Lender" under the Subordination Agreement."

(i) Junior Lender hereby acknowledges and agrees that Senior Lender may, without the consent or approval of Junior Lender, agree with Borrower to extend, consolidate, modify, increase or amend any or all the Senior Loan Documents and otherwise act or fail to act with respect to any matter set forth in any Senior Loan Document (including, without limitation, the exercise of any rights or remedies, waiver, forbearance or delay in enforcing any rights or remedies, the declaration of acceleration, the declaration of defaults or events of default, the release, in whole or in part, of any collateral or other property, and any consent, approval or waiver), and all such extensions, consolidations, modifications, amendments acts and omissions shall not release, impair or otherwise affect Junior Lender's obligations and agreements hereunder.

### 3. Junior Lender Agreements.

(a) Without the prior written consent of Senior Lender in each instance, Junior Lender shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Junior Loan Documents, or (ii) pledge, assign, transfer, convey, or sell any interest in the Junior Indebtedness or any of the Junior Loan Documents; or (iii) accept any payment on account of the Junior Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than ten (10) days prior to the due date thereof; or (iv) take any action which has the effect of increasing the Junior Indebtedness; or (v) appear in, defend or bring any action in connection with the Property; or (vi) take any action concerning environmental matters affecting the Property. Regardless of any contrary provision in the Junior Loan Documents, Junior Lender shall not collect payments for the purpose of escrowing for any cost or expense related to the Property or for any portion of the Junior Indebtedness.

(b) Junior Lender hereby agrees that Senior Lender may, at its option (but without any obligation to do so), at any time (including during the pendency of a

Bankruptcy Proceeding), purchase the Junior Loan at par (and without liability for any prepayment premiums or liquidated damages set forth in the Junior Loan Documents). Such transfer and assignment of the Junior Loan shall be without representation or recourse, except that Junior Lender shall represent that it is the sole holder of the Junior Loan, that it has authority to assign and convey the Junior Loan Documents, that, to the best of its knowledge, there are no defaults or breaches under the Junior Loan Documents, and as to the total amount then outstanding under the Junior Loan. Additionally, Senior Lender shall have the right, but shall not have any obligation, to cure any Junior Loan Default until ninety (90) days following Senior Lender's receipt of an Enforcement Action Notice given by Junior Lender as a consequence of the Junior Loan Default. Senior Lender shall not be subrogated to the rights of Junior Lender under the Junior Loan Documents by reason of Senior Lender having cured any Junior Loan Default. However, Junior Lender acknowledges that all amounts advanced or expended by Senior Lender to cure a Junior Loan Default shall be added to and become a part of the Senior Indebtedness pursuant to the terms of the Senior Security Instrument.

(c) In the event and to the extent that each of Senior Lender and Junior Lender have under their respective loan documents certain approval or consent rights over the same subject matters (regardless of whether the obligations or rights are identical or substantially identical), Junior Lender agrees that Senior Lender shall exercise such approval rights on behalf of both Senior Lender and Junior Lender, and Junior Lender shall have no right to object to any such action or approval taken by Senior Lender and shall consent thereto and be bound thereby. Without limiting the generality of the foregoing, Senior Lender shall have all approval, consent and oversight rights in connection with any insurance claims relating to the Property, any decisions regarding the use of insurance proceeds after a casualty loss or condemnation awards, the hiring or firing of property managers, or otherwise related in any way to the Property, and Junior Lender shall have no right to object to any such action or approval taken by Senior Lender and shall consent thereto and be bound thereby.

(d) Junior Lender agrees that in any action commenced to enforce the obligation of Borrower to pay any portion of the Junior Indebtedness, the judgment shall not be enforceable personally against Borrower or Borrower's assets, and the recourse of Junior Lender for the collection of the Junior Indebtedness shall be limited to actions against the Property and the rents, profits, issues, products, and income from the Property.

(e) Junior Lender shall not commence or join with any other creditor in commencing any Bankruptcy Proceeding involving Borrower, and Junior Lender shall not initiate and shall not be a party to any action, motion or request, in a Bankruptcy Proceeding involving any other person or entity, which seeks the consolidation of some or all of the assets of Borrower into such Bankruptcy Proceeding. In the event of any Bankruptcy Proceeding relating to Borrower or the Property or, in the event of any Bankruptcy Proceeding relating to any other person or entity into which (notwithstanding the covenant in the first sentence of this clause) the assets or interests of Borrower are consolidated, then in either event, the Senior Loan shall first be paid in full before Junior Lender shall be entitled to receive and retain any payment or distribution in respect to the

Junior Loan. Junior Lender agrees that (i) Senior Lender shall receive all payments and distributions of every kind or character in respect of the Junior Loan to which Junior Lender would otherwise be entitled, but for the subordination provisions of this Agreement (including without limitation, any payments or distributions during the pendency of a Bankruptcy Proceeding involving Borrower or the Property), and (ii) the subordination of the Junior Loan and the Junior Loan Documents shall not be affected in any way by Senior Lender electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim. In addition, Junior Lender hereby covenants and agrees that, in connection with a Bankruptcy Proceeding involving Borrower, neither Junior Lender nor any of its affiliates shall (i) make or participate in a loan facility to or for the benefit of Borrower on a basis that is senior to or pari passu with the liens and interests held by Senior Lender pursuant to the Senior Loan Documents, (ii) not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior has also voted affirmatively in favor of such plan, and (iii) not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings. Junior Lender shall execute and deliver to Senior Lender powers of attorney, assignments or other instruments as may be requested by Senior Lender in order to enable it to exercise the above-described authority or powers with respect to any or all of the Junior Loan Documents, and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to any of the Junior Loan Documents to Junior Lender.

(f) Junior Lender covenants and agrees that the effectiveness of this Agreement and the rights of Senior Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Loan, by any delay, forbearance, failure, neglect or refusal of Senior Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Loan Documents or any other security which may have been given or may hereafter be given for the Senior Loan, by any waiver or failure to exercise any right or remedy under the Senior Loan Documents, or by any other act or failure to act by Senior Lender. Junior Lender acknowledges that Senior Lender, at its sole option, may release all or any portion of the Property from the lien of the Senior Security Instrument, and may release or waive any guaranty, surety or indemnity providing additional collateral to Senior Lender, and Junior Lender hereby waives any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Property by Senior Lender, to require the separate sales of any portion of the Property or to require Senior Lender to exhaust its remedies against any portion of the Property or any other collateral before proceeding against any other portion of the Property or other collateral (including guarantees) for the Senior Loan. Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Junior Lender. At any time or from time to time and any number of times, without notice to Junior Lender and without affecting the liability of Junior Lender, (a) the time for payment of the Senior Indebtedness may be extended or the Senior Indebtedness may be renewed in whole or in part; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Senior Loan Documents, whether presently

existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Indebtedness may be accelerated as provided in the Senior Loan Documents; (d) any Senior Loan Document may be modified or amended by Senior Lender and Borrower in any respect, including, but not limited to, an increase in the principal amount; and (e) any security for the Senior Indebtedness may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Senior Indebtedness. If, after the occurrence of a Senior Loan Default, Senior Lender acquires title to any of the Property pursuant to a mortgage foreclosure conducted in accordance with applicable law, the lien, operation, and effect of the Junior Security Instrument and other Junior Loan Documents automatically shall terminate with respect to such Property upon Senior Lender's acquisition of title.

(g) Junior Lender acknowledges that it entered into the transactions contemplated by the Junior Loan Documents and made the Junior Loan to Borrower without reliance upon any information or advice from Senior Lender. Junior Lender made its own underwriting analysis in connection with the Junior Loan, its own credit review of Borrower, and investigated all matters pertinent, in Junior Lender's judgment, to its determination to make the Junior Loan to Borrower. Junior Lender acknowledges that it is a sophisticated, experienced commercial lender, and was represented by competent counsel in connection with this Agreement.

(h) Junior Lender hereby represents and warrants that: (i) Junior Lender is now the owner and holder of the Junior Loan Documents; (ii) the Junior Loan Documents are now in full force and effect; (iii) the Junior Loan Documents have not been modified or amended; (iv) no default or event which, with the passing of time or giving of notice would constitute a default, under the Junior Loan Documents has occurred; (v) the current principal balance of the Junior Indebtedness is \$1,032,140.20; (vi) no scheduled monthly payments under the Junior Note have been or will be prepaid except with the prior written consent of Senior Lender; (vii) none of the rights of Junior Lender under any of the Junior Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise; and (viii) there are no other Junior Loan Documents other than those listed on Exhibit B hereto. Borrower further represents and warrants that it has provided to Senior Lender a true, complete, and correct copy of all the Junior Loan Documents.

Junior Lender hereby agrees that notwithstanding anything to the contrary in the Junior Loan Documents, for so long as the Senior Loan is outstanding, (i) the maturity date of the Junior Note shall occur no earlier than one (1) month after the maturity date of the Senior Note, and (ii) Borrower shall not be obligated to pay more than seventy-five percent (75%) of Net Cash Flow (as defined in the Junior Note) in payments under the Junior Note.

**4. Standstill Agreement; Right to Cure Senior Loan Default.**

(a) Until such time as any of the Senior Indebtedness has been repaid in full and the Senior Security Instrument has been released and discharged, Junior Lender shall

not without the prior written consent of Senior Lender, which may be withheld in Senior Lender's sole and absolute discretion, (i) accelerate the Junior Loan, (ii) exercise any of Junior Lender's remedies under the Junior Security Instrument or any of the other Junior Loan Documents (including, without limitation, the commencement of any judicial or non-judicial action of proceeding (a) to enforce any obligation of Borrower under any of the Junior Loan Documents, (b) to collect any monies payable to Borrower, (c) to have a receiver appointed to collect any monies payable to Borrower; or (d) to foreclose the lien(s) created by the Junior Security Instrument) or (iii) file or join in the filing of any involuntary Bankruptcy Proceeding against Borrower or any person or entity which owns a direct or indirect interest in Borrower; provided, however, that such limitation on the remedies of Junior Lender shall not derogate or otherwise limit Junior Lender's rights, following an event of default under the Junior Loan Documents to (a) compute interest on all amounts due and payable under the Junior Loan at the default rate described in the Junior Loan Documents, (b) compute prepayment premiums and late charges, and (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Junior Loan.

(b) Senior Lender shall, simultaneously with the sending of any notice of a Senior Loan Default to Borrower, send to Junior Lender a copy of said notice under the Senior Loan Documents; provided, however, failure to do so shall not affect the validity of such notice or any obligation of Borrower to Senior Lender and shall not affect the relative priorities between the Senior Loan and the Junior Loan as set forth herein. Borrower covenants and agrees to forward to Junior Lender, within three (3) business days of Borrower's receipt thereof, a copy of any notice of a Senior Loan Default Borrower receives from Senior Lender. In addition, as required pursuant to the provisions of the Declaration of Restrictive Covenant for Affordable Housing in accordance with the Palm Beach County Unified Land Development Code dated September 9, 2011, made by Borrower and recorded or intended to be recorded in the official records of Palm Beach County, Senior Lender agrees that at or prior to the commencement of any formal foreclosure proceedings, the Senior Lender shall provide Palm Beach County with a notice of the pending foreclosure in order to provide Palm Beach County the right to cure the Senior Loan Default within sixty (60) days of receipt of such notice. The foregoing sent to the following addresses:

Palm Beach County Planning, Zoning, and Building Department  
2300 N. Jog Road  
West Palm Beach, Florida, 33411-2741  
Attn: Executive Director

Palm Beach County Planning, Zoning, and Building Department  
2300 N. Jog Road  
West Palm Beach, Florida, 33411-2741  
Attn: Director of Planning,

(c) Without limiting the rights of Palm Beach County as provided in Section 4(b) above, Junior Lender shall have the right, but shall have no obligation, to cure any

Senior Loan Default; provided, if Junior Lender shall elect to cure any such Default, it shall so notify Senior Lender and shall commence and complete such curing within any applicable notice or grace period, if any, as Borrower is permitted by the terms of the Senior Loan Documents to cure such Senior Loan Default. Junior Lender shall not be subrogated to the rights of Senior Lender under the Senior Loan Documents by reason of Junior Lender having cured any Senior Loan Default. However, Senior Lender acknowledges that, to the extent so provided in the Junior Loan Documents, amounts advanced or expended by Junior Lender to cure a Senior Loan Default may be added to and become a part of the Junior Indebtedness.

(d) Junior Lender agrees that, notwithstanding any contrary provision contained in the Junior Loan Documents, a Senior Loan Default shall not constitute a default under the Junior Loan Documents if no other default occurred under the Junior Loan Documents.

(e) Junior Lender acknowledges that any conveyance or other transfer of title to the Property pursuant to a foreclosure of the Junior Security Instrument (including a conveyance or other transfer of title pursuant to the exercise of a power of sale contained in the Junior Security Instrument), or any deed or assignment in lieu of foreclosure or similar arrangement, shall be subject to the transfer provisions of the Senior Loan Documents; and the person (including Junior Lender) who acquires title to the Property pursuant to the foreclosure proceeding (or pursuant to the exercise of a power of sale contained in the Junior Security Instrument) shall not be deemed to be automatically approved by Senior Lender.

5. **Insurance.** Junior Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Junior Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Property.

6. **Default.** Junior Lender and Borrower acknowledge and agree that a default by either such party under this Agreement shall, at the sole option of Senior Lender, constitute a default under the Senior Loan Documents. Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

7. **Enforcement Costs.** Borrower agrees to reimburse Senior Lender for any and all costs and expenses (including reasonable attorneys' fees) incurred by Senior Lender in connection with enforcing its rights against Junior Lender under this Agreement.



8. **Notices.** Any notice which any party hereto may be required or may desire to give hereunder shall be deemed to have been given and shall be effective only if it is in writing and (i) delivered personally, (ii) mailed, postage prepaid, by United State registered or certified mail, return receipts requested, (iii) delivered by overnight express courier or (iv) sent by telecopier, in each instance addressed as follows:

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

If to Senior Lender: 390 Greenwich Street, 2nd Floor  
New York, New York 10013  
Attention: Desk Head, Transaction Management Group  
Loan # 10-7041023  
Facsimile: (212) 723-8642

AND

325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Loan # 10-7041023  
Facsimile: (805) 557-0924

AND

Citibank, N.A.  
390 Greenwich Street, 2nd Floor  
New York, NY 10013  
Attention: May Ka Hang Tong  
Loan # 10-7041023  
Facsimile: (212) 723-8209

AND

Citibank, N.A.  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Loan # 10-7041023  
Facsimile: (212) 723-8939

or at such other addresses or to the attention of such other persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed

sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender for failure to be called for.

9. **WAIVER OF TRIAL BY JURY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

10. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Junior Loan Documents, other than by reason of payments which Junior Lender is obligated to remit to Senior Lender pursuant to the terms hereof; (iii) the acquisition by Senior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Security Instrument; or (iv) the acquisition by Junior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Junior Security Instrument, but only if such acquisition of title does not violate any of the terms of this Agreement.

11. **Miscellaneous.**

(a) Junior Lender shall, within ten (10) business days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Junior Loan, the aggregate accrued and unpaid interest under the Junior Loan, and stating whether, to the knowledge of Junior Lender, any default or event of default exists under the Junior Loan, and containing such other information with respect to the Junior Indebtedness as Senior Lender may require. Upon notice from Senior Lender from time to time, Junior Lender shall execute and deliver such additional instruments and documents, and shall take such actions, as are required by Senior Lender in order to further evidence or effectuate the provisions and intent of this Agreement.

(b) Junior Lender shall give Senior Lender a concurrent copy of each notice of a Junior Loan Default or other material notice given by Junior Lender under the Junior Loan Documents.

(c) This Agreement shall bind and inure to the benefit of all successors and assigns of Junior Lender and Senior Lender. Senior Lender may assign its interest in the Senior Loan Documents without notice to or consent of Junior Lender. Junior Lender may only assign its rights and interests hereunder following the prior written consent of

Senior Lender, which consent may be withheld or conditioned in its sole and absolute discretion.

(d) Senior Lender hereby consents to the Junior Loan and the Junior Loan Documents; provided, however, that this Agreement does not constitute an approval by Senior Lender of the terms of the Junior Loan Documents. Junior Lender hereby consents to the Senior Loan and the Senior Loan Documents; provided, however, that this Agreement does not constitute an approval by Junior Lender of the terms of the Senior Loan Documents.

(e) This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

(f) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(g) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(h) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(i) Each party hereto hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(j) Borrower hereby acknowledges and consents to the execution of this Agreement, and agrees to be bound by the provisions hereof that are applicable to Borrower. Solely as between Senior Lender and Junior Lender, all of the signatories below hereby agree that to the extent of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Senior Loan Documents and/or the Junior Loan Documents respectively, the terms and provisions of this Agreement shall govern and control. By executing this Agreement in the place provided below, Borrower hereby (i) acknowledges the provisions hereof, (ii) agrees not to take any action inconsistent with Senior Lender's rights or Junior Lender's rights under this Agreement, (iii) waives and relinquishes to the maximum extent permitted by law any and all rights, defenses and claims now existing or hereinafter accruing relating to Junior Lender's

forbearance from exercising any rights and remedies pursuant to Section 4 of this Agreement, including, without limitation, any defenses based on the statute of limitations or any equitable defenses, such as laches, and (iv) acknowledges and agrees that (A) this Agreement is entered into for the sole protection and benefit of Senior Lender and Junior Lender (and their respective successors, assigns and participants), and no other person (including Borrower) shall have any benefits, rights or remedies under or by reason of this Agreement, (B) nothing in this Agreement is intended, or shall be construed to, relieve or discharge the obligations or liabilities of any third party (including Borrower under the Senior Loan Documents and the Junior Loan Documents), (c) neither of them nor any of their affiliates shall be, or be deemed to be, beneficiaries of any of the provisions hereof or have any rights hereunder whatsoever, and (D) no provision of this Agreement is intended to, or shall be construed to, give any such third party (including Borrower) any right subrogating to the rights of, or action against, Senior Lender or Junior Lender.

(k) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

(l) No party other than Senior Lender and Junior Lender shall have any rights under, or be deemed a beneficiary of any of the provisions of, this Agreement.

(m) Nothing herein or in any of the Senior Loan Documents or Junior Loan Documents shall be deemed to constitute Senior Lender as a joint venturer or partner of Junior Lender.

## 12. Attached Exhibits.

The following Exhibits are attached to this Agreement and are incorporated by reference herein as if more fully set forth in the text hereof:

### **Exhibit A – Legal Description**

The terms of this Agreement are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Agreement, the terms of said Exhibits shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Subordination and Intercreditor Agreement or caused this Subordination and Intercreditor Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above. The undersigned intend that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**JUNIOR LENDER:**

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

By: [Signature]  
Karen Marcus.  
Chair

Approved as to Form and  
Legal Sufficiency

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

By: [Signature]  
Tammy K. Fields  
Senior Assistant County Attorney

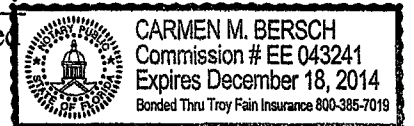
By: [Signature]  
Journey Beard, Director of Contract  
Development and Quality Control

STATE OF FLORIDA )  
  )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of October, 2011, by Karen Marcus, Chair of PALM BEACH COUNTY, FLORIDA, 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)

Carmen M. Bersch  
(Typed, Printed, or Stamped  
Name of Notary)



My Commission Expires:  
December 18, 2014

(signatures follow on subsequent page)





EXHIBIT A

LEGAL DESCRIPTION

PARCEL I:

PARCEL A OF WESTGATE PLAZA APARTMENTS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 114, PAGE 116, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

PARCEL II:

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE ACCESS EASEMENT BY AND BETWEEN WESTGATE ASSOCIATES, LLC, A FLORIDA LIMITED LIABILITY COMPANY AND FAITH CATHEDRAL WORSHIP CENTER, INC., A FLORIDA CORPORATION DATED MARCH 15, 2005 AND RECORDED MARCH 15, 2005 IN OFFICIAL RECORD BOOK 18288, PAGE 1983, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 25, TOWNSHIP 43 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SAID NORTHEAST QUARTER OF SECTION 25, RUN THENCE S 89° 22' 11" EAST ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 25, A DISTANCE OF 1686.44 FEET; THENCE S 01° 31' 58" W, ALONG THE WEST LINE OF THE EAST ONE-HALF OF THE NORTHWEST ONE-QUARTER OF SAID NORTHEAST ONE-QUARTER OF SECTION 25, A DISTANCE OF 1390.37 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF WESTGATE AVENUE AS SAME IS SHOWN ON ROAD PLAT BOOK 2, PAGE 205, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA AND THE POINT OF BEGINNING; THENCE CONTINUE S 01° 31' 58" W ALONG SAID WEST LINE, A DISTANCE OF 60.00 FEET; THENCE N 89° 07' 02" W, A DISTANCE OF 35.00 FEET; THENCE N 01° 31' 58" E, A DISTANCE OF 60.00 FEET TO A POINT OF INTERSECTION WITH SAID SOUTH RIGHT-OF-WAY LINE OF WESTGATE AVENUE; THENCE S 89° 07' 02" E ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 35.00 FEET TO THE POINT OF BEGINNING. SAID LANDS DESCRIBE THE SAME LANDS AS DESCRIBED IN EXHIBIT "C" OF OFFICIAL RECORD BOOK 18288, PAGE 1983 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

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