

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	July 10, 2018	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing

Department: **Department of Housing and Economic Sustainability**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Subordination Agreement with NEF Preservation Mortgage Loan Fund I LP, and Lakeside Commons, Ltd., for an amount not to exceed \$8,900,000.

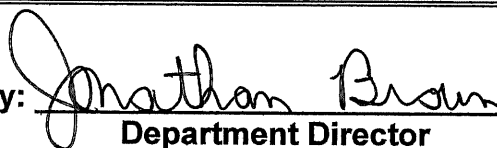
Summary: On August 19, 2003, the County entered into a Loan Agreement (R2003-1215) with Lakeside Commons, Ltd., a Florida limited partnership, which provided, \$231,313 in State Housing Initiative Partnership (SHIP) funds to assist in the construction of Lakeside Commons Apartments, a 99 rental unit complex to serve very low and low income households. The project is located at 550 Executive Center Drive in West Palm Beach. The County secured this three percent (3%) cash flow dependent loan with a second mortgage for a term of 30 years. Lakeside Commons, Ltd., wishes to refinance the existing first mortgage and proposes to encumber the property with a new first mortgage from NEF Preservation Mortgage Loan Fund I LP, a Delaware limited partnership, in the amount of \$8,900,000. Staff recommends approval of this subordination subject to the receipt of \$98,376.75 from Lakeside Commons, Ltd., which will bring the loan payments up to date as of April 30, 2018. **These are SHIP grant funds which require no local match.** District 7 (JB)

Background and Justification: Approval of this agenda item will enable the continuation of the supply of affordable rental housing.

Attachment(s):

1. Subordination Agreement
2. Loan Agreement with Lakeside Commons, Ltd. (R2003-1215)
3. Mortgage from Lakeside Commons, Ltd.

Recommended By:


Department Director


Date

Approved By:


Assistant County Administrator


Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2018	2019	2020	2021	2022
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income	(\$98,377)				
In-Kind Match (County)					
NET FISCAL IMPACT	(\$98,377)				

# ADDITIONAL FTE POSITIONS (Cumulative)					
--------------------------------------------	--	--	--	--	--


Is Item Included In Current Budget? Yes _____ No X
Does this Item include the use of Federal funds? Yes _____ No X

Budget Account No.:

Fund 1100 Dept 143 ^{Rev Source} Unit 7176 Object 6112 Program Code/Period _____

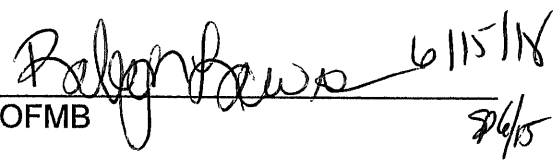
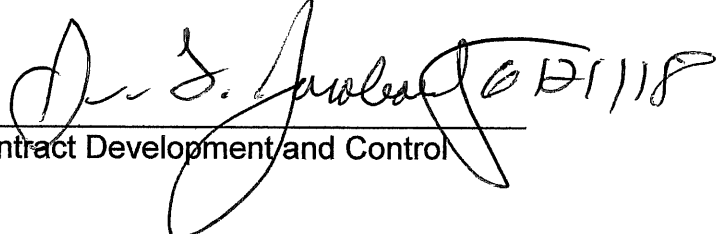
B. Recommended Sources of Funds/Summary of Fiscal Impact:

Approval of this agenda item will provide \$98,376.75 in program income to the Affordable Housing Trust Fund 1100.

C. Departmental Fiscal Review: 
Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

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

 6/15/18
OFMB 8/6/18  6/15/18
Contract Development and Control

B. Legal Sufficiency:

 7/3/18
Assistant County Attorney

C. Other Department Review:

Department Director

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") is entered into on _____, by and among (i) NEF Preservation Mortgage Loan Fund I LP, a Delaware limited partnership (the "Senior Lender"), (ii) the Board of County Commissioners of Palm Beach County, a political subdivision of the State of Florida (the "Subordinate Lender"), and (iii) Lakeside Commons, Ltd., a Florida limited partnership (the "Borrower").

Recitals

A. The Senior Lender has made or is making a loan (the "First Mortgage Loan") to the Borrower in the original principal amount not to exceed \$8,900,000. The First Mortgage Loan is or will be secured by a first mortgage lien (the "First Mortgage") on a multifamily housing project located in Palm Beach County, Florida (the "Property"). The Property is more fully described in Exhibit A attached hereto. The Borrower's obligation to repay the First Mortgage Loan is evidenced by a Multifamily Note dated _____ (the "First Mortgage Note"), and is due in full on _____.

B. The Borrower has requested the Senior Lender to permit the Subordinate Lender to make a subordinate loan to Borrower in the amount of \$231,313 (the "Subordinate Loan") and to secure the Subordinate Loan by, among other things, placing a mortgage lien against the Property.

C. The Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place a subordinate mortgage lien against the Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Borrower and to place a subordinate mortgage lien against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

"Affiliate" means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term "control" for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

"Borrower" means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

"Business Day" means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

"Default Notice" means: (a) a copy of the written notice from the Senior Lender to the Borrower stating that a First Mortgage Loan Default has occurred under the First Mortgage Loan; or (b) a copy of the written notice from the Subordinate Lender to the Borrower stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

"First Mortgage Loan Default" means the occurrence of an "Event of Default" as that term is defined in the First Mortgage Loan Documents.

"First Mortgage Loan Documents" means the First Mortgage Note and all other documents evidencing, securing or otherwise executed and delivered in connection with the First Mortgage Loan.

"Loan Agreement" means the Loan Agreement, dated as of August 19, 2003, by and between Subordinate Lender and Borrower with respect to the Subordinate Loan.

"Person" means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

"Senior Lender" means the Person named as such in the first paragraph on page 1 of this Agreement. When any other Person becomes the legal holder of the First Mortgage Note, such other Person shall automatically become the Senior Lender.

"Subordinate Lender" means the Board of County Commissioners of Palm Beach County, Florida, and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

"Subordinate Loan Default" means a default by the Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

"Subordinate Loan Documents" means the Subordinate Note, the Subordinate Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

"Subordinate Mortgage" means the mortgage or deed of trust encumbering the Property as security for the Subordinate Loan, recorded on November 3, 2003 in the Public Records of Palm Beach County, Florida at Book 16131, Page 1138.

"Subordinate Note" means the promissory note dated October 30, 2003 issued by the Borrower to the Subordinate Lender, or order, to evidence the Subordinate Loan.

2. Permission to Place Mortgage Lien Against Property.

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the First Mortgage Loan Documents and subject to the provisions of this Agreement, to permit the Subordinate Lender to retain a mortgage lien against the Property (which is subordinate in all respects to the lien of the First Mortgage) to secure the Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Borrower to the Subordinate Lender under and in connection with the Subordinate Loan.

3. Borrower's and Subordinate Lender's Representations and Warranties.

The Borrower and the Subordinate Lender each makes the following representations and warranties to the Senior Lender:

(a) Subordinate Note. The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

(b) Terms of the Subordinate Loan. The original principal amount of the Subordinate Loan is \$231,313.00. Interest on the Subordinate Loan accrues at the rate of three percent (3%) per annum and principal and interest on the Subordinate Loan is payable only to the extent of available cash flow as provided in the Subordinate Note. The Subordinate Loan matures on April 30, 2034.

(b) Relationship of Borrower to Subordinate Lender and Senior Lender. The Subordinate Lender is not an Affiliate of the Borrower and is not in possession of any facts which would lead it to believe that the Senior Lender is an Affiliate of the Borrower.

(c) Term. The term of the Subordinate Note does not end before the term of the First Mortgage Note.

(d) Subordinate Loan Documents. The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement. There are no Subordinate Loan Defaults under the Subordinate Loan Documents.

(e) First Mortgage Loan Documents. The executed First Mortgage Loan Documents are substantially in the same forms as, when applicable, those submitted to, and approved by, Fannie Mae prior to the date of this Agreement. Upon execution and delivery of the First Mortgage Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the First Mortgage Loan Documents, certified to be true, correct and complete.

4. Terms of Subordination.

(a) Agreement to Subordinate. The Senior Lender and the Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement to the prior payment in full of the indebtedness evidenced by the First Mortgage Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Mortgage and the other First Mortgage Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the First Mortgage and the other First Mortgage Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the First Mortgage, curing defaults by the Borrower under the First Mortgage Loan Documents or for any other purpose expressly permitted by the First Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property).

(b) Subordination of Subrogation Rights. The Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the First Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the First Mortgage.

(c) Payments Before First Mortgage Loan Default. Until the Subordinate Lender receives a Default Notice of a First Mortgage Loan Default from the Senior Lender, the Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents.

(d) Payments After First Mortgage Loan Default. The Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a First Mortgage Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. The Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without the Senior Lender's prior written consent. If the Subordinate Lender receives written notice from the Senior Lender that the First Mortgage Loan Default which gave rise to the Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to the Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to the Subordinate Lender by the Borrower prior to the Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(e) **Remitting Subordinate Loan Payments to Senior Lender.** If, after the Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, the Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies the Subordinate Lender in writing, will be promptly remitted, in kind to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the First Mortgage Loan Documents in accordance with the provisions of the First Mortgage Loan Documents. By executing this Agreement, the Borrower specifically authorizes the Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by the Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of the Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) **Agreement Not to Commence Bankruptcy Proceeding.** The Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing, any bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Borrower, without the Senior Lender's prior written consent.

5. Default Under Subordinate Loan Documents.

(a) **Notice of Default and Cure Rights.** The Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where the Subordinate Lender has given a Default Notice to the Borrower. Failure of the Subordinate Lender to send a Default Notice to the Senior Lender shall not prevent the exercise of the Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. The Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within 60 days following the date of such notice; provided, however that the Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents. All amounts paid by the Senior Lender in accordance with the First Mortgage Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the First Mortgage.

(b) **Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.** If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender agrees that, without the Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Lender at least 60 days' prior written notice; during such 60 day period, however, the Subordinate Lender shall be entitled to exercise and enforce all other

rights and remedies available to the Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of the Borrower relating to income, rent, or affordability restrictions contained in the Subordinate Loan Documents.

(c) **Cross Default.** The Borrower and the Subordinate Lender agree that a Subordinate Loan Default shall constitute a First Mortgage Loan Default under the First Mortgage Loan Documents and the Senior Lender shall have the right to exercise all rights or remedies under the First Mortgage Loan Documents in the same manner as in the case of any other First Mortgage Loan Default. If the Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice has been cured or waived, as determined by the Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the First Mortgage Loan Documents, any First Mortgage Loan Default under the First Mortgage Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the First Mortgage Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Borrower any default rate interest or other default related charges or payments received by the Senior Lender during such First Mortgage Loan Default.

6. Default Under First Mortgage Loan Documents.

(a) **Notice of Default and Cure Rights.** The Senior Lender shall deliver to the Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Borrower. Failure of the Senior Lender to send a Default Notice to the Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the First Mortgage Loan Documents, subject to the provisions of this Agreement. The Subordinate Lender shall have the right, but not the obligation, to cure any such First Mortgage Loan Default within 60 days following the date of such notice; provided, however, that the Senior Lender shall be entitled during such 60-day period to continue to pursue its remedies under the First Mortgage Loan Documents. Subordinate Lender may have up to 90 days from the date of the Default Notice to cure a non-monetary default if during such 90-day period Subordinate Lender keeps current all payments required by the First Mortgage Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 90-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by the Subordinate Lender to the Senior Lender to cure a First Mortgage Loan Default shall be deemed to have been advanced by the Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) **Cross Default.** At any time after a First Mortgage Loan Default is determined to constitute a default under the Subordinate Loan Documents, the Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Borrower cures any First Mortgage Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice

from the Senior lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such First Mortgage Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such First Mortgage Loan Default had never occurred.

7. Conflict.

The Borrower, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the First Mortgage Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the First Mortgage and the Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any First Mortgage Loan Default or Subordinate Loan Default, as the case may be; give the Borrower the right to notice of any First Mortgage Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the First Mortgage Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

8. Rights and Obligations of the Subordinate Lender Under the Subordinate Loan Documents and of the Senior Lender under the First Mortgage Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) **Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that the Subordinate Lender shall have the right to advance funds to cure First Mortgage Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Borrower under the Subordinate Loan Documents.

(b) **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the First Mortgage remains a lien on the Property the following provisions shall apply:

(1) The Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any

claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the First Mortgage Loan Documents with respect thereto, and the Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of the Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the First Mortgage Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the First Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the First Mortgage Loan shall be paid to, and may be applied by, the Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with the Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) **No Modification of Subordinate Loan Documents.** The Borrower and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the First Mortgage Loan Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under the First Mortgage Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents or assignment of the Subordinate Lender's interest in the Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever.

9. Modification or Refinancing of First Mortgage Loan.

The Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the First Mortgage Loan Documents, including any provision requiring the payment of money, provided that Subordinate Lender shall not be deemed to have consented to an extension of the First Mortgage Loan beyond April 30, 2034.

10. Default by the Subordinate Lender or Senior Lender.

If the Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-

defaulting lender shall have the right to all available legal and equitable relief.

11. Notices.

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

SENIOR LENDER:

NEF Preservation Mortgage Loan Fund I LP
10 South Riverside Plaza
Suite 1700
Chicago, Illinois 60606
Attention: General Counsel

With a copy to:

Kraus Lam LLC
230 West Monroe Street, Suite 2528
Chicago, Illinois 60606
Attention: Edward Lam, Esq.

SUBORDINATE LENDER:

Department of Housing and Economic Sustainability
Palm Beach County
100 Australian Avenue, Suite 500
West Palm Beach, Florida 33406

With a copy to:

County Attorney's Office
Palm Beach County
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

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

12. **General.**

(a) **Assignment/Successors.** This Agreement shall be binding upon the Borrower, the Senior Lender and the Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and the Subordinate Lender.

(b) **No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of the Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever the Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) **Further Assurances.** The Subordinate Lender, the Senior Lender and the Borrower each agree, at the Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the First Mortgage, or to further evidence the intent of this Agreement.

(e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) **Governing Law.** This Agreement shall be governed by the laws of the State in which the Property is located.


(g) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) **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 First Mortgage Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which the Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the 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 First Mortgage; or (iv) the acquisition by the Subordinate 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 Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

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

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

**NEF Preservation Mortgage Loan Fund I LP,
a Delaware limited partnership**

By: 
Name: Judy Schneider
Title: Senior Vice President

(COUNTY SEAL BELOW)

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

ATTEST: Sharon R. Bock,
Clerk & Comptroller

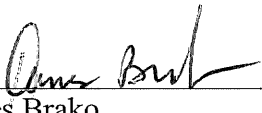
By: _____
Melissa McKinlay, Mayor

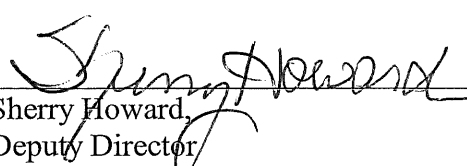
By: _____
Deputy Clerk

Document No.: _____

Approved as to Form
and Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: 
James Brako,
Assistant County Attorney

By: 
Sherry Howard,
Deputy Director

**Lakeside Commons, Ltd.
A Florida limited partnership**

By: _____

Name: _____

Title: _____

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On June 13, 2018, before me, Donna Marie Huntersmith, Notary Public, personally appeared Judy Schneider, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of Illinois that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICAL SEAL.



Donna Marie Huntersmith
Name: Donna Marie Huntersmith
Notary Public

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

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

**NEF Preservation Mortgage Loan Fund I LP,
a Delaware limited partnership**

By: _____

Name: _____

Title: _____

(COUNTY SEAL BELOW)

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

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Melissa McKinlay, Mayor

By: _____
Deputy Clerk

Document No.: _____


Approved as to Form
and Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: _____
James Brako,
Assistant County Attorney

By: _____
Sherry Howard,
Deputy Director

**Lakeside Commons, Ltd.
A Florida limited partnership**

By:  _____

Name: Jonathan A. Gnskin

Title: WP of the GP

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], not Notary)

1 _____
 2 _____
 3 _____
 4 _____
 5 _____
 6 *Jonathan A. Gruskin*
 Signature of Document Signer No. 1 Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me

on this 14th day of June, 2018,
 by _____
 Date Month Year

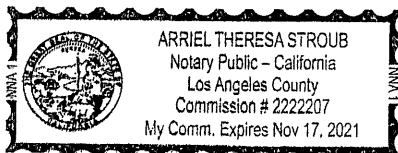
(1) Jonathan A. Gruskin

(and (2) _____),
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature *Arriel T. Stroub*
 Signature of Notary Public

Place Notary Seal and/or Stamp Above



OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Subordination agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: *Jo*

R2003 1215

LOAN AGREEMENT

THIS AGREEMENT, dated as of this ____ day of AUG 19 2003, 2003, by and between Palm Beach County, a political subdivision of the State of Florida, (hereinafter referred to as the "County" and the "Lender") and Lakeside Commons, LTD., a Florida limited partnership, whose Federal I.D. number is 30-0154219 (the "Borrower").

1. RECITALS.

(a) Borrower is the owner of 3.397 acres of real property located at 550 Executive Center Drive in West Palm Beach, Palm Beach County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof, (the "Premises");

(b) Borrower has applied to the County for a loan in the principal amount of \$231,313.00 (the "Loan") to be used by Borrower to construct Improvements on the Premises. Borrower intends to construct a 99-unit apartment complex to serve very low and low income households on the Premises (the "Improvements").

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

(d) Wachovia Bank, National Association, 200 South Biscayne Blvd., 15th Floor, Miami, FL 33131, has agreed to finance up to \$7,150,000.00 of the construction of the Improvements pursuant to a separate construction loan to Borrower, secured by a separate mortgage, encumbering the Premises, which shall be replaced by a permanent loan in an amount up to \$5,500,000. by GMAC Commercial Mortgage Corporation, 2000 Richard Jones Road, Suite 100, Century Plaza, Nashville, TN 37215 (the "First Mortgage").

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

2. THE LOAN. The County shall make the Loan to Borrower in an amount not to exceed \$231,313 upon the terms and conditions set forth herein, and at the rates and terms set forth in its Note and Mortgage attached hereto as Exhibit "B" and "C" respectively, and Borrower shall take the Loan and expressly agrees to comply with and to perform all of the terms and conditions of this Loan Agreement, the Note, the Mortgage and any other documents evidencing and securing this Loan (collectively hereinafter referred to as the "Loan Documents"). The closing of the Loan including the execution of the Note and Mortgage, shall occur at the offices of the County Attorney or such other mutually agreed upon site no later than December 31, 2003.

3. RIGHT TO AUDIT. The Borrower shall maintain adequate records to justify all charges, expenses and costs incurred for

completion of the Improvements for at least three (3) years after completion. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Borrower's place of business.

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

(a) Title Insurance:

(i) Within thirty (30) days of the effective date hereof, Borrower shall deliver to County a title commitment issued by Lawyers Title Insurance Corporation agreeing to issue to County upon recordation 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 there to and Borrower shall act to remove such exceptions, which exception shall be deemed to constitute title defects. The Borrower shall be entitled to thirty (30) days from the day of notification (with the term of Closing Date if necessary) within which to cure such defects or make arrangements with the title insurer for the removal of any such objections from the commitment. If the defect shall not have been so cured or removed from the commitment by endorsement thereto with the termination of said thirty (30) day period, the County shall have the option of accepting title as it then exists or terminating this Loan Agreement, by giving written notice thereof to Borrower, in which event the parties shall be relieved of all further obligations hereunder.

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

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

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

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

(iii) the location of all building setback lines:

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

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

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

(vii) flood zone certification; and

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

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

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

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

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

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

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

accurate statement thereof, and an up-to-date zoning map similarly certified,

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

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

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

(vi) satisfactory soil test report;

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

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

(ii) certified resolutions of the Borrower authorizing the execution and delivery of this Agreement, the Mortgage, Note and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement;

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

and shall bear interest from the date of disbursement at the same rate as other Disbursements and payment of said funds and interest shall be secured by the Mortgage. Satisfactory evidence of flood area designation shall be a certification from the Surveyor appearing on the survey drawing;

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

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

(ii) that Borrower is a 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 based on certification to be supplied by Borrower, Borrower is in compliance with all laws, regulations, ordinances and orders of all governmental authorities, including, but not limited to, if applicable, the Interstate Land Sales Full Disclosure Act, all applicable federal and state securities laws, and all laws of the State of Florida, applicable to the type of development contemplated hereunder,

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

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

(vi) that to counsel's knowledge and based on Borrower's certification, 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 within counsel's knowledge which could lead to such proceedings,

(vii) that the lien of the Mortgage is a valid lien on the Premises and the security interest described in the

mortgage are good and valid security interests.

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

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

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

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

5. DISBURSEMENT OF LOAN FUNDS: Upon receipt of documentation evidencing payment of construction costs associated with the construction of the Improvements on the Premises by Borrower, the County shall disburse the Loan funds to Borrower in an amount not to exceed \$231,313.00. Payment will not be made hereunder for any other purpose or purposes except with prior written approval of the Board of County Commissioners of Palm Beach County.

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

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

(a) Borrower agrees that the Improvements will consist of a 99-unit apartment complex, and that 83 of the apartment units to be constructed on the Premises shall be reserved for households who have Low Income pursuant to U.S. Government HUD guidelines (i.e., earning 80% or less of the Palm Beach County Median Income, as adjusted for family size) for a period of thirty (30) years and 16 of the apartment units to be constructed on the Premises shall be reserved for households who have Very Low Income pursuant to U.S. Government HUD guidelines (i.e., earning 50% or less of the Palm Beach County Median Income, as adjusted for family size) for a period of thirty (30) years.

(b) The Borrower shall not discriminate on the basis of race, creed, religion, color, sex, marital status, sexual orientation, national origin, age, familial status or handicap in the use, or occupancy of any housing constructed on the Premises.

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

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

(e) The Mortgage shall be non-assumable.

(f) Borrower agrees that the project will:

- (i) provide energy efficient heating and cooling;
- (ii) provide ceiling fans in at least one living area and bedroom;
- (iii) provide awnings, blinds, sun screening or similar window treatment;
- (iv) provide high efficiency appliances over 8 SEER;
- (v) provide high efficiency water heater;
- (vi) provide water-conserving irrigation system;
- (vii) provide xeriscape vegetation;
- (viii) provide washer and dryer hook-up in each unit;
- (ix) provide safe pedestrian and bicycle paths;
- (x) provide covered porches on the ground units;
- (xi) maximize open space (30% or more of site);
- (xii) include hurricane impact windows and a barrel tile roof;
- (xiii) provide age appropriate playground and equipment;
- (xiv) provide security;
- (xv) provide a clubhouse with amenities;
- (xvi) provide residents with a Homeownership Opportunity Program whereby 7% of the rents paid by the tenant must be made available to the qualifying tenant, plus interest thereon, to be used by the tenants at the time the tenants leave the subject Premises to become homeowners towards the purchase of their home. Borrower will escrow \$10,000.00 in an interest bearing account, which when drawn for purposes of the Homeownership Opportunity Program, the Borrower will immediately replenish to the full \$10,000.00 amount.
- (xvii) provide resident programs in the form of first-time homebuyer education; job training; financial counseling; resident activities; health and nutrition classes;

life safety training; resident assistance referral program; computer lab; health care; welfare to work self-sufficiency programs; and swimming lessons.

(xviii) conduct background checks on adult members of household prior to occupancy.

(ix) utilize leases which requires parents to be held legally and financially liable for the acts of their children in the complex and allows 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.

Conditions (a) (b) and (f) above shall, upon closing become covenants running with the land and shall survive the closing, and the payment or other termination of the Mortgage and Note except that upon foreclosure of the First Mortgage or a deed in lieu thereof to the holder of the First Mortgage, such covenants shall terminate in all respects as of the date of foreclosure or deed in lieu thereof. These conditions and covenants will be recorded in the land records of Palm Beach County, Florida by inclusion in the mortgage and/or by separate document satisfactory to the County's Attorney citing the granting of this loan and mortgage as consideration.

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

(a) Organization Status. Borrower is a 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 \$231,313.00 and execute all Loan the documents pertaining thereto.

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

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

(d) Validity of Loan Documents. The Loan Documents have been approved by those persons having proper authority, and to

the best of Borrower's knowledge are in all respects legal, valid and binding according to their terms;

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

(f) Pending Litigation. There are no actions, suits or proceedings pending before any court or law 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.

(g) 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 or to an easement available to Borrower, including water supply, storm and sanitary sewer facilities, and electric and telephone facilities, and Borrower has obtained all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the intended Improvements;

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

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

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

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

(1) Hazardous Waste. Borrower is in compliance with all provisions of the federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980 and Solid Waste Disposal Act, Florida Statutes, Chapter 376, and other similar federal, state and local statutory schemes imposing liability on Borrower relating to the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and order issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts 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.

(m) 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.

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

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

In addition, Borrower agrees, at its sole cost and expense, to have any mechanics' lien or equitable lien which may be filed against the Premises or undisbursed funds of this Loan released, 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. 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, the Premises or any part thereof shall not be sold, leased, conveyed, mortgaged or encumbered in any way without the prior written consent of the County except as provided elsewhere herein or in the Mortgage, it being understood and agreed that part of the consideration for the Loan is the obligation of Borrower.

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

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

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

(i) Upon the County's request, but not more than semi-annually, a complete and current financial statement of all assets and liabilities, contingent or otherwise, prepared in accordance with generally accepted accounting principles and verified by affidavit of Borrower and, at the request of the County, certified (in form satisfactory to the County) by an independent certified public accountant acceptable to the County;

(ii) within ninety (90) days after the end of each fiscal year of Borrower, commencing with the year after the year in which closing occurs, a balance sheet and statements of income, surplus, and cash flow, together with schedules, all compiled and presented by an independent accounting firm in accordance with standard and uniform accounting practices

showing the financial condition of Borrower at the close of each year and the results of operations of Borrower during each year;

(iii) with the statements submitted under (ii) above, a certificate signed by the principal financial officer of Borrower to the effect that no Event of Default specified herein, nor any event which upon notice or lapse of time or both, would constitute such an Event of Default, has occurred which has not been cured or otherwise waived in writing by the Lender; and

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

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

(g) Insurance Proceeds. The Borrower shall keep the Premises continually insured in an amount not less than full insurable value of the Premises, which coverage shall insure the Premises against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the County, in its sole discretion, shall from time to time require, for the benefit of the County. All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to the County, with loss, if any, payable to the County as provided herein, as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be satisfactory to the County; and forthwith upon the issuance of such policies they will deliver to the County 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.

(h) Indebtedness. With respect to the Premises encumbered by the Borrower pursuant to a mortgage in favor of County, Borrower will not incur, create, assume or permit to exist any indebtedness constituting the deferred purchase price of any property or assets, or any indebtedness or liability evidenced by notes, bonds, debentures or similar obligations without the written approval of the County, except indebtedness owed the County and the aforementioned First Mortgage; provided however,

that the First Mortgage shall not exceed the amounts contained in the recitals incorporated in this Loan Agreement.

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

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

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

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

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

(b) Breach of Covenants, Warranties and Representations. If any warranty or representation made by Borrower in this Loan Agreement or in any other Loan Document shall be false or misleading in any material respect when made, or if Borrower shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Loan Agreement, the Note, the Mortgage, the Loan Documents, and any other document given in connection with the Loan or development of the Improvement (provided, that with respect to nonmonetary defaults, the County shall give written notice to Borrower, who shall have thirty (30) days to cure), or is unwilling to meet its obligations thereunder; or

(c) Material Adverse Change of Borrower. If any material adverse change shall occur in the financial condition of Borrower at any time during the term of the Loan from the financial condition revealed in statements already presented to and accepted by the County; or

(d) Borrower shall fail to use all funds under this loan agreement for costs associated with the construction of the

Premises by December 31, 2005. In the event Borrower fails to use all funds by December 31, 2005, all remaining funds shall revert to the County and the County may reallocate for other projects or needs.

(e) Borrower shall fail to complete construction of the Improvements and secure a Certificate of Occupancy for the Improvements by December 31, 2005.

(f) 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, then the County may, at its option, upon written notice to Borrower:

(a) Cancel this Loan Agreement;

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

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

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

(e) Lender acknowledges that the First Mortgage lender shall have a reasonable opportunity, but not an obligation to cure any of Borrower's defaults prior to exercising the remedies stated herein.

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

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

(b) Borrower is not the County's Agent. Nothing in this Agreement, the Note, the Mortgager or any other Loan Document shall be construed to make the Borrower the County's agent for any purpose whatsoever, or the Borrower and the County partners,

or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

(c) The County Not Liable for Damage or Loss. All inspections and other services rendered by or on behalf of the County pursuant to this Loan 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 Loan Agreement.

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

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

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

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

(h) Headings. The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of

reference only, and shall not limit or otherwise affect any of the terms hereof.

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

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

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

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

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

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

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

TO LENDER:

Office

Board of County Commissioners
c/o Palm Beach County Attorney's

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

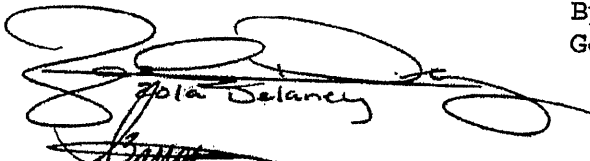
TO BORROWER:

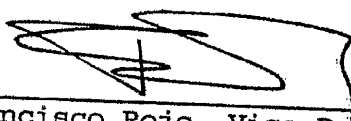
Lakeside Commons, Ltd.

this
Agreement to be executed on the date first above written.

Signed, sealed and delivered
in the presence of:

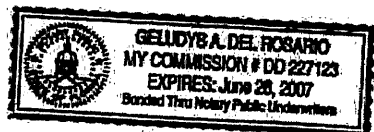
LAKESIDE COMMONS, LTD
By Lakeside Commons, Inc., its
General partner

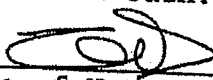

ALEX BARROSO

By: 
Francisco Rojo, Vice-President

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 17
day of July, 2003 by Francisco Rojo, Vice-President of
Lakeside Commons, Inc., general partner of Lakeside Commons,
Ltd., who is personally known to me or who has produced
as identification and who did/did not take an oath.




(Signature of Notary)

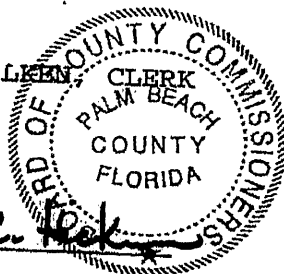
(Typed, Printed, or Stamped
Name of Notary)

My Commission Expires: 6/26/07

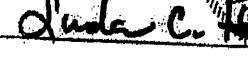
R2003 1215

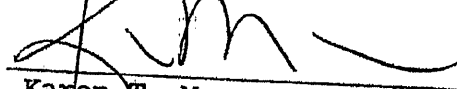
ATTEST:

DOROTHY H. WILKIN

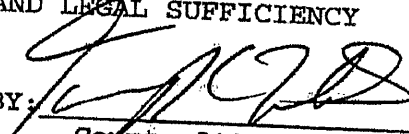


PALM BEACH COUNTY, FLORIDA, a
political subdivision of the
State of Florida
BY ITS BOARD OF COUNTY
COMMISSIONERS

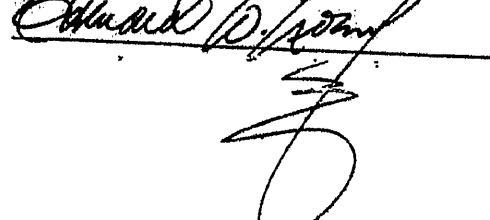
BY: 
Deputy Clerk

BY: 
Karen T. Marcus, Chair **AUG 19 2003**

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY: 
County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

BY: 

07-09-03

C:\Documents and Settings\LJETERS\Local Settings\Temp\lakesidecommons-Loan.Agr.wpd

Carmen Canelas, CLA
Museum Tower Suite 2200
150 West Flagler Street
Miami, Florida 33130

EXHIBIT C

11/03/2003 15:51:00 20030680405
OR BK 16131 PG 1138
Palm Beach County, Florida
AMT 231,313.00
Deed Doc 809.90

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 INDENTURE, executed this 30 day of October, 2003, by Lakeside Commons, 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;

W I T N E S S E T H:

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 Two Hundred Thirty-One Thousand Three Hundred Thirteen Dollars (\$231,313.00) to Mortgagor and in connection therewith Mortgagor has this date executed and delivered to Mortgagee its Promissory Note in that amount (the "Note"). A true copy of the Note is annexed hereto as Exhibit "B" and forms a part hereof.

This Mortgage is given in accordance with that certain Loan Agreement executed on the 19th day of August, 2003 between Mortgagor and Mortgagee. This Mortgage and Security Agreement, the Note, and the Loan Agreement shall hereinafter collectively be referred to as the "Loan Documents".

GRANTING CLAUSE

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

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

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in fee simple and has good right to convey the same, that the same are unencumbered excepting taxes accruing subsequent to 2002, 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 Wachovia Bank, National Association, 200 South Biscayne Blvd., 15th Floor, Miami, FL 33131, in an original principal amount not to exceed \$7,150,000.00 during construction in favor of GMAC Commercial Mortgage Corporation, 2000 Richard Jones Road, Suite 100, Century Plaza, Nashville, TN 37215, in an original principal amount not to exceed \$5,500,000.00 after completion of construction("First Mortgage").

PROVIDED ALWAYS that if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note, which Note is in the original principal amount of \$231,313.00 and has a maturity date of April 30, 2034, unless such maturity is accelerated as set forth in the Note, and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents, then in such event this Mortgage and Security Agreement and the estate hereby created shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

1.1 Payments of Indebtedness. The Mortgagor shall punctually pay the principal and 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, 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 unless contested by lawful process. The Mortgagor will, upon the 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, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and other persons or entities which, if unpaid, might result in or permit the creation of, a lien on

Mortgaged Property or any part hereof, or on the revenues, rents, issues, income and profits arising therefrom whether such lien is or may become prior or remain inferior to the Mortgage and also, irrespective of the priority of such other lien(s). Mortgagor in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

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

1.3 Insurance. The Mortgagor will keep the Mortgaged Property continuously insured in an amount no less than full insurable value which coverage shall insure the Mortgaged Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the Mortgagee, in its sole discretion, shall from time to time require, for the benefit of the Mortgagee. All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to the Mortgagee, with loss, if any, payable to the Mortgagee as its interest may appear, pursuant to a noncontributory mortgage clause which shall be satisfactory to the Mortgagee; and forthwith upon the issuance of such policies they will deliver to the Mortgagee 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. The Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property. Each insurance company is hereby authorized and directed to make payment for all such losses to the Mortgagor and the Mortgagee jointly. Should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Mortgaged Property, then in such event, Mortgagee and Mortgagor may jointly elect to use the proceeds for the reconstruction and repair of the Mortgaged Property or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not. 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, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) If the Premises or any part thereof is damaged by fire or any other cause, the 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 at its own expense.

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

(e) If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor will, upon request of the

Mortgagee and following receipt of insurance proceeds, promptly restore the Premises to the equivalent of its condition immediately prior to such damage, and if a part of the Premises shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Premises in a manner satisfactory to the Mortgagee. 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 request by the Mortgagee, the Mortgagor will make, exercise and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any failure by the Mortgagor so to do the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.6 Expenses. In addition to the expenses described in subparagraph 2.6(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 Estoppel Affidavits. The Mortgagor, upon ten days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets 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 Mortgage; then the Mortgagee, at its option, may perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the

Mortgagor to the Mortgagee with interest thereon at the maximum rate provided by law. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgagor unless such entry results in loss or damage caused by the negligent willful act or omission of mortgagee or its agents.

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

1.11 Environmental Representations.

(a) 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.

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

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

(d) Mortgagor shall give written notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any hazardous substances on the Mortgage Property or of any

hazardous substances contamination thereon, or of any notices received by Mortgagor that are violations or potential violations of any environmental regulation laws, ordinances, rules or regulations exists on the Mortgage Property.

ARTICLE II.

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

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

(a) any sale, conveyance, assignment or other transfer of or the grant of a security interest in, all or any part of the title to the premises,

(b) any new or additional liabilities secured by the property without the prior written consent of Mortgagee,

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

2.2 Default. A default shall have occurred hereunder if:

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

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

(c) Any warranties or representations made or agreed to be made in any of the Loan Documents shall be breached by the Mortgagor or shall prove to be false or misleading in any material manner 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 or transferred within sixty (60) days after receipt of 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; 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 Mortgaged Property shall cease to be reserved for households who have low or very low income pursuant to U.S. Government HUD guidelines for a period of thirty (30) years from the date hereof; or beyond expiration of applicable cure or grace period.

(m) The Mortgagor shall default on the First Mortgage.

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

- (1) Expenses of the sale;
- (2) First Mortgage debt in full, including fees;
- (3) Second Mortgage debt in full, including fees.
- (4) All accrued but unpaid interest on the Note;
- (5) Third 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 default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Premises and if, and to the extent permitted by law, the Mortgagee may enter and take possession of the Premises and may exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom. In the event Mortgagee exercises its rights pursuant to this subparagraph (a), the Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Premises.

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

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

(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, and First Mortgage Lender shall be given a reasonable opportunity, but not an obligation to cure any defaults.

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) 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. The Mortgagor's liability under this paragraph will survive the repayment of indebtedness under the Note.

ARTICLE III.

3.1 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder without the prior written consent of the Mortgagee, which shall not be unreasonably withheld.

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

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

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

ARTICLE IV.

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

Mortgagor:	Lakeside Commons, Ltd. 1130 Washington Ave., 4 th Floor Miami Beach, FL 33139 Attn: Francisco Rojo
Mortgagee:	Palm Beach County c/o County Attorney's Office 301 North Olive Avenue, Suite 601 West Palm Beach, FL 33401
With copies to:	Wachovia 200 South Biscayne Blvd., 15 th Floor Miami, Florida 33131 Attn: Jess Lawhorn
And:	GMAC Commercial Mortgage 100 Witmer Road Horsham, Pennsylvania 19044

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

ARTICLE V.

5.1 Subordination. Mortgagee shall approve a First Mortgage provided that it does not exceed \$7,150,000.00 for the construction loan and \$5,500,000 for permanent financing, 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.

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

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

5.4 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 MORTGAGEE 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 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.

5.5 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.


5.6 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.

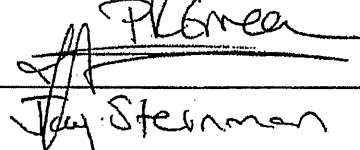
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IN WITNESS WHEREOF, the Mortgagor has executed and sealed this Mortgage, the day and year first above written.

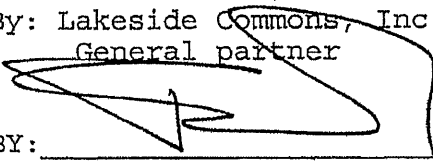
Witnesses:

Lakeside Commons, Ltd.
By: Lakeside Commons, Inc., its
General partner





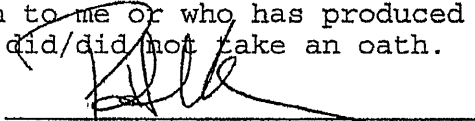
Jay Steinman

BY: 

Francisco Rojo,
Vice-President

STATE OF FLORIDA
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 30
day of Oct, 2003 by Francisco Rojo as Vice-President
of Lakeside Commons, Inc., general partner of Lakeside Commons,
Ltd., who is personally known to me or who has produced _____
as identification and who did/did not take an oath.



(Signature of Notary)

(Typed, Printed, or Stamped
Name of Notary)

My Commis



My Commission DD210670
Expires 09/23/2007.

07-09/03

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Exhibit "A"

A parcel of land lying in Parcel 9, according to the Plat of EXECUTIVE CENTER PARK, as recorded in Plat Book 28, Pages 229 through 232, in and for the Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the Southeast corner of Parcel 9, aforesaid; thence North 35°19'34" East, along the Easterly line of said Parcel 9, (the Southerly line of said Parcel 9 is assumed to bear North 54°40'26" West and all other bearings are relative thereto), a distance of 564.01 feet to the Point of Beginning of the herein described parcel; thence North 54°40'26" West, parallel with the Southerly line of said Parcel 9 and departing from the Easterly line of said Parcel 9, a distance of 282.67 feet to a point; thence South 35°19'34" West, parallel with the Easterly line of said Parcel 9, a distance of 20.09 feet to a point lying on the arc of a curve concave to South, having a radius of 102.34 feet, a central angle of 26°19'52" and a radial bearing at this point of South 01°11'03" East; thence Westerly, along the arc of said curve, a distance of 47.03 feet to a point of compound curve concave to the Southeast, having a radius of 122.48 feet and a central angle of 13°12'36"; thence Southwesterly, along the arc of said curve, a distance of 28.24 feet to a point; thence North 54°40'26" West, departing from the arc of said curve, a distance of 278.27 feet to a point; thence North 31°18'34" East a distance of 135.16 feet to a point; thence North 28°22'09" East a distance of 70.23 feet to a point of intersection with the Northerly line of said Parcel 9, said point lying on the arc of a curve concave to the Northeast, having a radius of 2213.18 feet, a central angle of 06°33'02" and a radial bearing at this point of North 28°09'05" East; thence Southeasterly, along the arc of said curve and along the Northerly line of said Parcel 9, a distance of 253.03 feet to a point of compound curve concave to the North, having a radius of 256.06 feet and a central angle of 46°35'22" thence Easterly along the arc of said curve and continuing along the Northerly line of said Parcel 9, a distance of 208.21 feet to a point of reverse curve concave to the South, having a radius of 148.12 feet and a central angle of 76°36'41"; thence Easterly, along the arc of said curve and continuing along the Northerly line of said Parcel 9, a distance of 198.05 feet to a point of compound curve concave to the Southwest having a radius of 1400.00 feet and a central angle of 01°38'31"; thence Southeasterly, along the arc of said curve and continuing along the Northerly line of said Parcel 9, a distance of 40.12 feet to a point, said point being the Northeast corner of said Parcel 9; thence South 35°19'34" West, along the Easterly line of said Parcel 9 and departing from the arc of said curve and the Northerly line of said Parcel 9, a distance of 347.34 feet to the Point of Beginning.

LESS:

A portion of Parcel 9, of EXECUTIVE CENTER PARK, according to the Plat thereof, as recorded in Plat Book 28, Pages 229 through 232, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the Southeast corner of said Parcel 9; thence North 35°19'34" East, along the Easterly line of said Parcel 9, a distance of 564.01 feet; thence North 54°40'26" West, parallel with the Southerly line of said Parcel 9, a distance of 43.17 feet to the Point of Beginning; thence continue North 54°40'26" West, a distance of 56.27 feet; thence North 35°19'34" East, a distance of 22.60 feet; thence North 54°40'26" West, a distance of 108.57 feet; thence North 67°44'45" East, a distance of 41.07 feet; thence North 22°15'15" West, a distance of 16.00 feet; thence North 64°38'03" East, a distance of 42.02 feet; thence North 75°46'19" East, a distance of 50.58 feet; thence South 54°40'26" East, a distance of 73.81 feet; thence South 13°23'55" East, a distance of 53.63 feet; thence South 35°19'34" West, a distance of 91.66 feet; thence South 80°19'34" West, a distance of 15.80 feet; thence South 35°19'34" West, a distance of 2.77 feet to the Point of Beginning.

Said lands lying in the City of Palm Beach, Florida.

TOGETHER WITH INGRESS, EGRESS EASEMENT as described in Official Records Book 7313, Page 1698:

A portion of Parcel 9, of EXECUTIVE CENTER PARK, according to the Plat thereof, as recorded in Plat Book 28, Pages 229 through 232, of the Public Records of Palm Beach County, Florida, being more particularly described as follows:

Commencing at the Southeast corner of said Parcel 9; thence North 54°40'26" West, along the Southerly line of said

Parcel 9, a distance of 25.80 feet to the Point of Beginning; thence continuing North 54°40'26" West, along said Southerly line of Parcel 9, a distance of 24.00 feet; thence North 35°19'34" East, parallel with the Easterly line of said Parcel 9, a distance of 504.01 feet to a Point of Curvature; thence Northwesterly along the arc of a curve to the left having a radius of 36.00 feet, a central angle of 90°00'00", a distance of 56.55 feet to a Point of Tangency; thence North 54°40'26" West, a distance of 135.98 feet to a Point of Curvature; thence Southwesterly along the arc of a curve to the left having a radius of 78.34 feet, a central angle of 62°50'29", a distance of 85.92 feet to a Point of Compound Curvature; thence continue Southwesterly along the arc of a curve to the left having a radius of 98.48 feet, a central angle of 27°09'31", a distance of 46.48 feet to a Point of Tangency; thence South 35°19'34" West, parallel with said Easterly line of Parcel 9, a distance of 395.48 feet; thence South 54°40'26" East, parallel with said Southerly line of Parcel 9, a distance of 0.11 feet to a Point of Curvature; thence Southeasterly along the arc of a curve to the right having a radius of 44.00 feet a central angle of 90°00'00", a distance of 69.12 feet to a Point of Tangency; thence South 35°19'34" West, a distance of 13.00 feet to a point on said Southerly line of Parcel 9; thence North 54°40'26" West, along said Southerly line, a distance of 24.00 feet; thence North 35°19'34" East, a distance of 13.00 feet to a Point of Curvature; thence Northwesterly along the arc of a curve to the left having a radius of 20.00 feet, a central angle of 90°00'00", a distance of 31.42 feet to a Point of Tangency; thence North 54°40'26" West, a distance of 24.11 feet; thence North 35°19'34" East, parallel with said Easterly line of Parcel 9, a distance of 419.48 feet to a Point of Curvature; thence Northeasterly along the arc of a curve to the right, having a radius of 122.48 feet, a central angle of 27°09'31", a distance of 58.06 feet to a Point of Compound Curvature; thence continuing Northeasterly along the arc of a curve to the right, having a radius of 102.34 feet, a central angle of 26°19'52" a distance of 47.03 feet; thence North 35°19'34" East, parallel with said Easterly line of Parcel 9, a distance of 20.09 feet; thence South 54°40'26" East, parallel with and 564.01 feet Northeast of (as measured at right angles) said Southerly line of Parcel 9, a distance of 270.65 feet to a point on a curve to the right and from which the radius point of said curve bears North 27°18'34" West; thence Southwesterly along the arc of said curve to the right having a radius of 44.80 feet, a central angle of 27°09'22", a distance of 21.23 feet; thence South 35°19'34" West, parallel with said Easterly line of Parcel 9, a distance of 548.12 feet to the Point of Beginning.

Said lands lying in the City of West Palm Beach, Palm Beach County, Florida.

EXHIBIT D

PERMITTED EXCEPTIONS

1. Restrictions, reservations, covenants, conditions, pursuant to that certain instrument recorded in Official Records Book 873, Page 796.

NOTE: This exception omits any restriction, covenant, or condition based on race, color, religion, sex, handicap, familial status or national origin, if any, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.

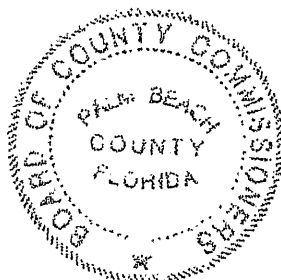
2. Restrictions, reservations, covenants, conditions, pursuant to that certain instrument recorded in Official Records Book 1743, Page 973.

NOTE: This exception omits any restriction, covenant, or condition based on race, color, religion, sex, handicap, familial status or national origin, if any, unless and only to the extent that the restriction is not in violation of state or federal law, or relates to a handicap, but does not discriminate against handicapped people.

3. Easement(s) as set forth in instrument(s) recorded in Official Records Book 3391, Page 1122; Official Records Book 4157, Page 426; Official Records Book 4370, Page 1388 and Official Records Book 4444, Page 597.
4. Easements as reserved and shown on that certain Plat of Subdivision, as recorded on Plat Book 28, Page 229 and modified by Affidavit recorded in Official Records Book 4135, Page 1890.
5. Terms and conditions of Easement and Access Agreement recorded in Official Records Book 7313, Page 1698.
6. Right-of-Way Easement(s) in favor of Florida Power and Light Company set forth in instrument(s) recorded in Official Records Book 7518, Page 1146.
7. Right-of-Way Easement(s) in favor of Southern Bell Telephone and Telegraph Company set forth in instrument(s) recorded in Official Records Book 7528, Page 60.
8. Easement set forth in Notice of Claim recorded in Official Records Book 10366, Page 1920.
9. First Mortgage in favor of Wachovia Bank, N.A. for the construction loan and GMAC Commercial Mortgage Corporation for the permanent loan.
10. Restrictive Covenant in favor of the City of West Palm Beach.

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STATE OF FLORIDA, COUNTY OF PALM BEACH
I, DOROTHY H. WILKEN, ex-officio Clerk of the
Board of County Commissioners certify this to be a
true and correct copy of the original filed in my office
on August 19, 2003
DATED at West Palm Beach, FL on 9-9-2003
DOROTHY H. WILKEN, Clerk
By: Shirley C. Link D.C.



PROMISSORY NOTE

\$231,313.00

West Palm Beach, Florida
October 30, 2003

FOR VALUE RECEIVED the undersigned Lakeside Commons, Ltd., a Florida limited partnership ("Maker"), 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 Two Hundred Thirty-One Thousand Three Hundred and Thirteen Dollars (\$231,313.00) plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) This Note shall bear interest only computed at the stated rate of three (3%) percent per annum on the outstanding principal balance from time to time remaining unpaid from the date of each disbursement.
- 2) Repayment hereunder shall occur as follows:
 - (a) From the date hereof until December 31, 2004 no payments will be required and interest will accrue and be payable at the maturity date.
 - (b) Repayment thereafter shall be limited to the actual cash flow of the Project which shall be determined annually on a calendar year basis, commencing with the year 2004, and certified by an independent Certified Public Accountant reasonably acceptable to the County, prior to the annual payment due date. The first annual payment due date hereunder shall be on April 30, 2005, with respect to all payments due under subparagraph 4) below for the preceding calendar year. Subsequent annual payments shall be due on the 30th day of April for each preceding calendar year thereafter through April 30, 2034 (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, which shall be used by Holder to determine payments due hereunder. Said certification shall be provided prior to each annual due date commencing in the year 2004.
- 4) Commencing with the year 2005, payments from Project income as determined by Holder shall be applied to pay the following items in order of priority:
 - a) First Mortgage fees and debt service, and all Project expenses; and
 - b) Base interest payment on principal balance hereof equal to three percent (3%) per annum; and

- c) Any such base payment of interest hereunder deferred from previous years commencing with the year 2004.
- 5) Any payments of current or deferred base interest due annually hereunder shall be deferred until the next annual due date to the extent that Project income is insufficient to make said payments pursuant to the payment priority schedule in paragraph (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 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 August 19, 2003 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."

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 principal or 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. Exercise of this right shall be without notice to Maker or to any other person liable for payment hereof,

notice of such exercise being hereby expressly waived.

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 when said payment is due pursuant to the Mortgage. 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 therefrom, 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, demand for payment, notice of dishonor, protest, notice of nonpayment or protest, all other forms of notice whatsoever, 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

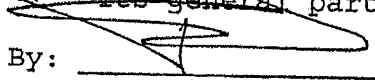
against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

ANYTHING CONTAINED HEREIN TO THE CONTRARY NOTWITHSTANDING, IN THE EVENT OF ANY DEFAULT BY THE BORROWER 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 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.

MAKER WAIVES ITS RIGHT 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.

Lakeside Commons, Ltd.,
By: Lakeside Commons, Inc.,
~~its general partner~~

By: 
Francisco Rojo
President

07-09-03

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