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**FLORIDA HOUSING FINANCE CORPORATION
SUBAWARD AGREEMENT
UNDER SECTION 1602 OF ARRA**

([Development Name] / Tax Credit Exchange Program / 2009-____)

by and among

FLORIDA HOUSING FINANCE CORPORATION
as Lender

and

as Borrower

and

as Servicer

Dated as of _____, 20____

Subaward Agt

(Exchange)

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**FLORIDA HOUSING FINANCE CORPORATION
SUBAWARD AGREEMENT
UNDER SECTION 1602 OF ARRA**

(*[Development Name]* / Tax Credit Exchange Program / 2009-____)

THIS SUBAWARD AGREEMENT UNDER SECTION 1602 OF ARRA (this “Agreement”) is made and entered into as of _____, 20__ by and among FLORIDA HOUSING FINANCE CORPORATION, a public corporation and public body corporate and politic created by Section 420.504, Florida Statutes (“Florida Housing”) (which term shall include its successors and assigns), _____, a Florida _____ (the “Borrower”), and _____, a Florida corporation (the “Servicer”).

RECITALS

WHEREAS, Florida Housing has entered into a grant agreement with the United States Department of the Treasury (the “Treasury”) for a grant of funds in lieu of certain federal low-income housing tax credits (the “Tax Credits”) under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”), pursuant to the Tax Credit Exchange Program under Sections 1404 and 1602 of the American Recovery and Reinvestment Act of 2009 (the “ARRA”), as implemented by Florida Housing in accordance with Chapter 420, Florida Statutes, applicable rules, and the Florida Housing Finance Corporation Request for Proposals 2009-04 (the “Exchange Program”);

WHEREAS, Florida Housing is the “designated State housing credit agency” for the State of Florida within the meaning of the ARRA and has the authority to make subawards of the Exchange Program funds (the “Exchange Program Funds”) to eligible applicants in accordance with the Program Requirements to provide affordable housing in the State of Florida;

WHEREAS, the Borrower intends to acquire, construct, [rehabilitate,] develop, improve, maintain, own and operate, a residential rental housing project located in _____ County, Florida, known as _____ Apartments on property more particularly described in Exhibit A attached hereto (the “Development”);

WHEREAS, the Borrower has successfully applied for Tax Credits and/or Exchange Program Funds and the Borrower has demonstrated to Florida Housing that Borrower has made a good faith effort to obtain investment commitments for Tax Credits prior to the date hereof;

WHEREAS, the Borrower has submitted its Response to RFP to Florida Housing for a subaward of Exchange Program Funds to assist in the financing of the construction [acquisition and rehabilitation] of the Development;

WHEREAS, the Borrower has represented that it will use the Exchange Program Funds to finance the construction [acquisition and rehabilitation] of a “qualified low-income building” within the meaning of Section 42 of the Code;

WHEREAS, Florida Housing has approved the subaward of Exchange Program Funds to the Borrower in the aggregate amount of up to _____ AND NO/100 DOLLARS (\$_____) (the “Subaward”), and the Borrower has agreed to accept the Subaward subject to the terms and conditions set forth in the Code, the ARRA, the Loan Documents and herein;

WHEREAS, the parties have agreed that this Agreement is to be recorded in the land records of the County in which the Development is located and is to run with the Land;

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I **DEFINITIONS**

The capitalized terms used in this Agreement shall have the meanings ascribed to them in the Recitals hereto and in this Article I; provided that certain capitalized terms used and not defined herein shall have the meanings ascribed to them in or for purposes of Section 42 of the Code or the Rule.

“Act” means the Florida Housing Finance Corporation Act, Chapter 420, Part V, Florida Statutes as now and hereafter amended.

“Affiliate of the Borrower” means with respect to any Person, (i) any other Person directly or indirectly Controlling, Controlled by, or under common Control with such Person, (ii) any other Person directly or indirectly Controlling fifty percent (50%) or more of the voting securities of such Person, or (iii) any officer, director, manager, member, or partner of such Person and other entity for which any such officer, director, manager, member, or partner acts in any such capacity.

“Agreement” means this Subaward Agreement Under Section 1602 of ARRA, by and between Florida Housing and the Borrower, including any subsequent amendments.

“ARRA” means the American Recovery and Reinvestment Act of 2009.

“Asset Management Fee” means the annual fee payable for the services of the Asset Manager pursuant to Section 9.3 of this Agreement.

“Asset Manager” means, initially, Florida Housing, and any successor thereto chosen by Florida Housing.

“Assignment Instruments” means, collectively,

(i) the Assignment and Subordination of Developer Fees, Pledge and Security Agreement by the Developer and the Borrower to Florida Housing, pursuant to which the Developer and Borrower have pledged to Florida Housing all of their rights under the Development Agreement,

(ii) the Assignment of Management and Service Contracts pursuant to which the Borrower has assigned to Florida Housing all of its rights under the Management Agreement and the service contracts related to the Development,

(iii) the Assignment of Permits, Agreements, Approvals, Fees and Deposits pursuant to which the Borrower has assigned to Florida Housing all of its rights under all permits, agreements, approvals, fees and deposits related to the Development,

(iv) the Collateral Assignment of Construction Contract and Permits pursuant to which the Borrower has assigned to Florida Housing all of its rights under the Construction Documents,

(v) the Assignment of Architect’s Agreement and Architect Plans and Specifications pursuant to which the Borrower has assigned to Florida Housing all of its rights under the Architect’s Agreement and the Architect Plans and Specifications, and

(vi) the Assignment of Engineer’s Agreement and Engineer Plans and Specifications pursuant to which the Borrower has assigned to Florida Housing all of its rights under the Engineer’s Agreement and the Engineer Plans and Specifications,

all of which Assignment Instruments have been assigned by the Borrower and/or the Developer to Florida Housing as additional security for performance by the Borrower of all of its obligations under this Agreement.

“Authorized Officer(s) of the Borrower” means the Person(s) identified in Exhibit E hereof, and any other person designated in writing to Florida Housing by an Authorized Officer of the Borrower.

“Budget” means the final sources and uses for the Development to be attached to the Construction Loan Agreement. The Budget must clearly show the total development costs of the Development, the total amount of Exchange Program Funds awarded to the Development, all other sources of funds, and, if applicable, the total anticipated amount of Tax Credit equity to be paid to the Borrower by the Tax Credit Investor.

“Business Day” means a day of the year on which banks are not required or authorized to close in the State.

“Change Order” means a change order to the Construction Contract, the Construction Draw Schedule or any of the other Construction Documents in connection with the construction

[rehabilitation] of the Improvements that would (i) extend the Completion Date by more than _____ calendar days, or (ii) result in an overall development cost increase in excess of \$ _____.

“Closing” means the date on which this Agreement is executed and delivered by all of the parties hereto.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor statute as it applies to the Tax Credits described herein, together with all applicable final, temporary or proposed Treasury Regulations and Revenue Rulings thereunder. Reference in this Agreement to any specific provision of the Code shall be deemed to include any applicable successor provision of such provision of the Code that may apply to the Tax Credits described herein.

“Completion Date” means the date upon which the Servicer advises Florida Housing that construction [rehabilitation] of the Development is complete, that there are no liens on the property, and that the Development is ready for its intended use, which date is anticipated to occur by _____, 20____.

“Compliance Period” means the compliance period described in Section 42(i)(1) of the Code, which is, with respect to any building that is included in the Development, a period of fifteen (15) years beginning on the first day of the first taxable year of the Credit Period with respect thereto, and which has been extended to fifty (50) years by Florida Housing and by agreement of the Borrower.

“Construction Contract” means the Construction Contract [dated _____] [to be executed] by and between the Borrower and the Contractor.

“Construction Documents” means the Construction Contract, including, without limitation, the general conditions, the final Plans and Specifications, and any addenda thereto, together with all trade contracts pursuant to which construction [rehabilitation] of the Improvements will be accomplished.

“Construction Draw Schedule” means the detailed construction draw schedule for the Development attached to the Construction Loan Agreement.

“Construction Loan Agreement” means the Construction Loan Agreement, dated as of the date hereof, by and among the Borrower, Florida Housing and the Servicer, as may be amended or supplemented from time to time.

“Contractor” means _____, a Florida _____, whose address is _____, and any successor general contractor approved by Florida Housing in writing.

“Control” (and the related terms “Controlling,” “Controlled by,” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the

direction of the management and policies of a Person, whether through the ownership of outstanding securities, equity, or other beneficial ownership interests, by contract or otherwise.

“Cost Certification” means the written certification of a certified public accountant as to the itemized amounts of the construction [rehabilitation] and development costs of the Development.

“County” means _____ County, Florida.

“Credit Period” means, with respect to any building that is included in the Development, the period of ten (10) years beginning with (x) the taxable year in which the building is placed in service, or (y) at the election of the Borrower, the succeeding taxable year.

“Developer” means _____, a Florida _____.

“Development” means the Improvements, the [Borrower’s leasehold interest in the] Land, and all other real and personal property that is used in connection with the development and operation of the Land and Improvements, as further identified herein.

“Development Agreement” means the [Development Agreement] dated _____, 20___, by and between the Borrower and the Developer.

“Eligible Costs” means any of the line item expenditures identified in Exhibit B and such additional expenditures as may be approved by the Servicer from time to time, provided in each such case that to the extent such costs are to be paid or reimbursed with Exchange Program Funds, the payment of such costs must be permissible under the Program Requirements. Eligible Costs for each residential rental building in a Development, determined at the time of Cost Certification, may not exceed 85% of such building’s eligible basis, determined in accordance with Section 42(d) of the Code, as of the end of the first year of the “credit period” applicable to such building, as defined in Section 42(f)(1) of the Code.

“Entity” means any general partnership, limited partnership, corporation, joint venture, trust, limited liability company, limited liability partnership, business trust, cooperative or other business association.

“Event of Bankruptcy” or “Bankruptcy” means, as to a specified Person:

(i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of his property, or ordering the winding-up or liquidation of his affairs and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or

(ii) the commencement by such Person of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by him to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of his property, or the making by him of any assignment for the benefit of creditors, or the taking of action by the Person in furtherance of any of the foregoing.

“Event of Default” shall have the meaning attributed thereto in Section 10.1A.

“Excess Amount” shall have the meaning attributed thereto in Section 2.1C.

“Exchange Program” or “Tax Credit Exchange Program” means the Tax Credit Exchange Program under Sections 1404 and 1602 of the American Recovery and Reinvestment Act of 2009 pursuant to which grants are appropriated to states for low-income housing projects in lieu of Tax Credits.

“Exchange Program Funds” means the subawards of Exchange Program funds to eligible applicants in accordance with the Program Requirements to provide affordable housing in the State of Florida.

“Expiration Date” means December 31, 2010, as such date may be extended in accordance with Section 4.1E.

“Extended Use Agreement” or “Extended Low-Income Housing Agreement” means the agreement between Florida Housing and the Borrower in which the Borrower agrees to maintain the Development for occupants who meet the income requirements under Code Section 42(g) and to maintain the Development as “rent-restricted” under Code Section 42(g) for a certain period of time set forth in the Extended Use Agreement, subject to certain exceptions set forth therein and as may be amended or supplemented from time to time. The Extended Use Agreement shall comply with the provisions of Section 42(h)(6) of the Code.

“Fiscal Quarter” means any of the three (3) consecutive monthly periods of each Fiscal Year ending on March 31, June 30, September 30 and December 31.

“Fiscal Year” means the twelve (12) month period which begins on January 1 and ends on December 31 of each calendar year.

“Florida Housing” means the Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Florida Statutes, and its successors and assigns.

[“General Partner” means _____, a Florida _____, and its successors and assigns, as general partner of the Borrower.]

“Governmental Authority” means Florida Housing, the IRS, HUD or any other federal, state or local governmental agency or authority having jurisdiction over the particular matter to which reference is being made.

[“Guarantor” means _____, a Florida _____.]

“Guidelines” means the “*Application and Terms and Conditions: Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits for 2009*” published by the Treasury in May 2009, and any updates, modifications or successor guidelines thereto.

“HUD” means the U.S. Department of Housing and Urban Development, and its successors or assigns.

“Improvements” means the ____-unit residential rental housing development, including functionally related and subordinate facilities and other structures, to be developed on the Land in accordance with the Construction Documents.

“Inspector” means the consulting engineer or architect acceptable to Florida Housing for purposes of evaluating the progress of the construction or rehabilitation of the Development in accordance with the Construction Documents, the costs of which are to be paid by Borrower.

“IRS” means the United States Internal Revenue Service.

“Land” means the real property which the Borrower [owns][holds a ground leasehold interest in], upon which the Improvements will be constructed [rehabilitated] and which is described in Exhibit A.

“Lender” means any lender, other than Florida Housing, providing funds to the Borrower secured by a Mortgage for the construction and/or permanent financing of the Development.

“Loan” means the loan of Exchange Program Funds in the principal amount of \$ _____ from Florida Housing as a lender to the Borrower with respect to the Development to be made in accordance with the Subaward Promissory Note secured by the Recapture Mortgage for the purpose of financing the construction [acquisition and rehabilitation] of the Development.

“Loan Documents” means this Subaward Agreement, the Recapture Mortgage, the Subaward Promissory Note, the Construction Loan Agreement and all other documents evidencing, securing, guaranteeing or relating to the Loan.

“Low-Income Units” means _____ of the _____ dwelling units in the Development that are to be held for occupancy by Qualified Tenants and occupied in such a manner as to qualify such units as “low-income units” under Section 42(i)(3) of the Code.

“Management Agreement” means the agreement between the Borrower and the Manager in effect or as amended from time to time, providing for property management services to the Development.

“Management Fee” means the fee payable to the Manager pursuant to the terms of the Management Agreement.

“Manager” means, initially, _____, a Florida _____, and any other Person acting as manager under a Management Agreement.

[“Member” means _____, a Florida _____, and its successors and assigns, as a member or manager of the Borrower.]

“Minimum Set-Aside Test” means the set-aside test described in Section 42(g)(1) of the Code selected by the Borrower in its Response to RFP whereby at least [20][40]% of the units in the Development must be occupied by individuals with incomes less than or equal to [50][60]% of area median income, as adjusted for family size, determined in accordance with Section 42(g)(1) of the Code.

“Mortgage” means any mortgage, mortgage deed, deed of trust, deed to secure debt or any similar security instrument, as amended, restated, modified and/or supplemented from time to time, on the Development given by the Borrower (with prior approval by Florida Housing) to any Lender to secure any indebtedness, together with any other documents pertaining to said indebtedness, which were required by such Lender as a condition to making a Mortgage Loan.

“Mortgage Loans” means the loans listed on Exhibit D.

“Person” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and/or assigns of such Person where the context so admits; and, unless the context otherwise requires, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter and vice versa.

“Plans and Specifications” means the plans and specifications (including, without limitation, specifications for materials) for the construction [rehabilitation] of the Development as reviewed and approved by the Inspector on behalf of Florida Housing prior to the initial Requisition and all amendments and modifications thereto as approved by Florida Housing.

“Program Requirements” means any and all requirements for receiving and maintaining a subaward of Exchange Program Funds as set forth in Sections 1404 and 1602 of the ARRA, the Guidelines, and any other rules, regulations, guidelines or notices published by the IRS or the Treasury from time to time with respect to the Exchange Program that are applicable to the Development, as well as Section 42 of the Code.

“Qualified Tenants” means tenants who at the time of their initial occupancy of the Development satisfy the income limits applicable under the Minimum Set-Aside Test under

executed leases with terms of not less than six (6) months at rentals meeting the requirements of the Rent Restriction Test.

“Recapture Event” shall have the meaning attributed thereto in Section 6.1.

“Recapture Mortgage” means the mortgage granted by the Borrower to Florida Housing, together with the Assignment of Leases, Rents and Contract Rights, the UCC Financing Statements and any other security instruments given to secure the obligation of the Borrower to repay all or a portion of the Subaward in accordance with the terms of this Agreement.

“Rent Restriction Test” means the test described in Section 42(g)(2) of the Code whereby the gross rent charged to tenants of the Low-Income Units in the Development may not exceed thirty percent (30%) of the applicable qualifying income levels based upon the Minimum Set-Aside Test.

“Required In-Service Date” means the date by which at least one unit in each building in the Development must be ready and available for occupancy in accordance with state and local laws, which date shall be the Expiration Date.

“Required Percentage” means the minimum percentage of Low-Income Units in the Development, which shall be the greater of the Minimum Set-Aside and the Subaward Fraction.

“Requisition” means a requisition for Exchange Program Funds signed by the Borrower, the Contractor and the Development architect in the form attached hereto as Exhibit C.

“Response to RFP” means the Borrower’s Response to Florida Housing’s Request for Proposal 2009-04 for an award of funding available through the ARRA.

“Rule” means Chapter 67-48, Florida Administrative Code, in effect as of March 30, 2008, as amended or modified from time to time.

“Servicer” means _____, a _____ corporation, or any subsequent entity appointed by Florida Housing to provide services, including asset management, specified in this Agreement and the Loan Documents.

“State” means the State of Florida.

“Subaward” means the subaward of Exchange Program Funds in the aggregate amount of up to \$_____ to be made by Florida Housing to the Borrower to assist in the financing of the construction [acquisition and rehabilitation] of the Development pursuant to all of the terms and conditions of this Agreement.

“Subaward Fraction” means the lesser of (i) the fraction obtained by dividing the amount of the Subaward, once fully disbursed, into the eligible basis of the Development, determined in accordance with the Section 42(d) of the Code (including any increase in basis pursuant to Section 42(d)(5)(B)), or (ii) the “applicable fraction” set forth in the Extended Use Agreement.

“Subaward Promissory Note” means the Subaward Promissory Note given by the Borrower to Florida Housing to evidence the obligation of the Borrower to repay the Loan, as provided in Section 2.3.

“Tax Credit Investor” means any party making an equity investment in the Borrower in exchange for Tax Credits, together with any party authorized to act on behalf of the Tax Credit Investor hereunder or under the [operating agreement] [partnership agreement] of the Borrower.

“Tax Credits” means federal low-income housing tax credits under Section 42 of the Code.

“Tenant Income Certification” means a tenant’s initial tax credit certification, including the tenant income certification/certificate of resident eligibility, all sources used in verifying income and assets (including, but not limited to, third party verification, checking and savings accounts, pay stubs, verification of assets, etc.), a copy of one completed lease signed and dated for each unit in the Development, and a copy of the first and last page of each resident lease in each Low-Income Unit in the Development, showing the start date of the lease and signature of the resident(s) and Borrower.

“Treasury” means the United States Department of the Treasury, including the United States of America acting through the Treasury.

“Treasury Regulations” means the temporary and final regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

ARTICLE II **LOAN OF EXCHANGE PROGRAM FUNDS**

Section 2.1 Subaward.

A. Florida Housing agrees to make the Subaward of Exchange Program Funds to the Borrower pursuant to the terms and conditions of this Agreement. In no event shall the aggregate amount of funds advanced pursuant to this Agreement exceed the lesser of \$_____ or the amount determined by Florida Housing to be necessary for the financial feasibility of the Development and its viability as a qualified low-income housing development throughout the Compliance Period.

B. The Borrower shall receive the Subaward and use the proceeds thereof to pay Eligible Costs incurred by the Borrower in connection with the construction [acquisition and rehabilitation] of the Development. The funding of the Subaward (and any portion thereof) is expressly conditioned upon the Borrower complying with all of the Program Requirements and the terms of this Agreement.

C. If, at the time of Cost Certification, Florida Housing shall determine that (i) the amount of the Subaward is more than the amount necessary for the financial feasibility of the Development and its viability as a qualified low-income housing development throughout the Compliance Period, (ii) a portion of the Subaward has been expended on uses impermissible under the Exchange Program (e.g., non-Eligible Costs), or (iii) the total amount of the Subaward exceeds 85% of the Eligible Basis of the Development as determined by Florida Housing (in each such case, the amount determined by Florida Housing to have been excessive or impermissible is the “Excess Amount”), Florida Housing shall provide the Borrower with notice thereof and the Borrower shall pay in immediately available funds within ten (10) Business Days from the date of such notice an amount equal to the Excess Amount, to be payable to Florida Housing which shall remit such funds to the Treasury. In addition to the foregoing, Florida Housing may take any other remedial action it deems necessary or advisable to fulfill its Exchange Program obligations to the Treasury or otherwise carry out the principal purposes of the Exchange Program.

D. The Subaward and each disbursement of the proceeds thereof are contingent upon the appropriation and disbursement of sufficient Exchange Program Funds by the Treasury to Florida Housing for reimbursement of Eligible Costs incurred by the Borrower with respect to the Development. If Florida Housing fails to receive adequate Exchange Program Funds from the Treasury, Florida Housing shall so notify the Borrower in writing within a reasonable period of time and shall not be liable for failure to make any payments under this Agreement.

Section 2.2 Term.

A. This Agreement shall be effective upon its execution and delivery and shall remain in full force and effect until the expiration of the Compliance Period, unless earlier terminated in accordance with the terms hereof.

Section 2.3 Subaward as Loan.

A. The Subaward shall be in the form of a loan to the Borrower, which loan shall be repayable only in accordance with the terms set forth in this Section 2.3, the Subaward Promissory Note and the Program Requirements.

B. The terms of the Subaward as loaned to the Borrower shall be as follows:

- (i) The Subaward shall bear no interest;
- (ii) No payments of principal shall be due on the Subaward until the end of the first fifteen (15) years of the Compliance Period;
- (iii) Upon the end of the first fifteen (15) years of the Compliance Period, if there has been no Recapture Event, the full amount of the Loan shall be forgiven by Florida Housing and discharged in full and the Recapture Mortgage deemed satisfied;

- (iv) The entire principal balance of the Loan shall become immediately due and payable, to the extent applicable in accordance with Article VI of this Agreement, upon the occurrence of a Recapture Event.

C. The obligation of the Borrower to repay the Subaward in accordance with this Agreement, the Subaward Promissory Note and the Program Requirements shall be secured by the Recapture Mortgage. Florida Housing shall determine the priority of the lien of the Recapture Mortgage, subordinating it to such of the Mortgage Loans as Florida Housing determines necessary or advisable to permit the financing of the Development.

D. The Borrower agrees to execute the Subaward Promissory Note and to execute and record the Recapture Mortgage in such form as shall be required by Florida Housing, consistent with the requirements of this Section 2.3.

ARTICLE III **INITIAL DISBURSEMENT OF EXCHANGE PROGRAM FUNDS**

Section 3.1 Due Diligence and Closing Requirements.

A. The Borrower shall provide Florida Housing, its counsel and the Servicer with the due diligence materials listed on a due diligence checklist, as well as all due diligence and information required in the Credit Underwriting Report dated _____, 20___, all in form and substance reasonably satisfactory to Florida Housing, its counsel and the Servicer, at least fourteen (14) days prior to Closing.

Section 3.2 Other Closing Conditions.

A. The Borrower shall execute and deliver this Agreement to Florida Housing and shall record this Agreement in the land records of the county in which the Development is located.

B. The Borrower shall execute and deliver the Subaward Promissory Note to Florida Housing.

C. The Borrower shall execute, record and deliver the Recapture Mortgage to Florida Housing. Upon request of the Borrower, Florida Housing shall subordinate the Recapture Mortgage to such of the Mortgage Loans as Florida Housing had determined necessary or advisable to permit the financing of the Development.

D. The Developer and the Borrower shall execute and deliver to Florida Housing the Assignment Instruments to which they are a party. Upon request of the Borrower, Florida Housing shall subordinate the Assignment Instruments to such of the Mortgage Loans as Florida Housing determines necessary or advisable to permit the financing of the Development.

E. The Borrower shall execute, record (as applicable) and deliver the Construction Loan Agreement and all other Loan Documents required by Florida Housing.

F. The Manager and the Contractor, respectively, shall execute and deliver to Florida Housing the Consent to Assignment of Management Agreement and the Consent to Assignment of Construction Documents.

G. If any disbursement of Exchange Program Funds is requested upon the Closing, the Borrower shall complete a Closing Requisition and provide such back-up documentation as may be reasonably required by Florida Housing to support the request of Exchange Program Funds.

ARTICLE IV
DISBURSEMENTS OF EXCHANGE PROGRAM FUNDS

Section 4.1 Request for Exchange Program Funds from the Treasury.

A. Florida Housing shall use the Exchange Program Funds it receives from the Treasury with respect to the Development to reimburse the Borrower for Eligible Costs incurred in connection with the development of the Development to the extent such costs are properly submitted to Florida Housing in accordance with the procedures set forth in this Article IV and all other terms and conditions of this Agreement and the Loan Documents. The Borrower may not request a disbursement of Exchange Program Funds from Florida Housing until such funds are needed to pay Eligible Costs of the Development. Accordingly, the amount of each Requisition must be limited to the amount of money needed to pay Eligible Costs actually incurred by the Borrower at the time of the Requisition, may not include amounts for prospective or future needs, and may not be placed into escrow accounts or advanced in lump sums to the Borrower.

B. Requisitions shall be submitted to the Servicer for approval in accordance with the Construction Loan Agreement.

C. Florida Housing shall submit a request for Exchange Program Funds to the Treasury in an amount equal to the approved amount of the current Requisition (not to exceed, in the aggregate, the amount of the Subaward) within five (5) Business Days of the approval of the Requisition by the Servicer.

D. The Borrower shall cooperate with Florida Housing and the Servicer in obtaining and providing any additional documentation that may be required by the Treasury to approve the request for Exchange Program Funds.

E. The Borrower acknowledges and agrees that no Exchange Program Funds may be disbursed after the Expiration Date. All Requisitions shall be submitted to the Servicer at least thirty (30) Business Days prior to the Expiration Date.

- F. Florida Housing will not make any payments to the Borrower for costs that:
- (i) are not Eligible Costs or are otherwise prohibited under Program Requirements;
 - (ii) are not strictly in accordance with the terms of this Agreement and the Loan Documents;
 - (iii) were requested and/or incurred after termination of this Agreement;
 - (iv) were requested during the occurrence and continuation of an Event of Default; or
 - (v) were requested and/or incurred less than twenty (20) Business Days prior to the Expiration Date.

G. Florida Housing is authorized to make modifications to the disbursement procedures set forth herein and in the Construction Loan Agreement and to establish such additional requirements for payment of the Subaward to the Borrower as may be necessary or advisable for compliance with all Program Requirements.

Section 4.2 Disbursements of Exchange Program Funds to Borrower.

A. Not later than three (3) Business Days after receipt of the Exchange Program Funds by Florida Housing from the Treasury, Florida Housing shall disburse such funds to the Borrower. Such funds shall be disbursed in accordance with this Agreement and the Construction Loan Agreement [and any interlocal agreement or other funding agreement with the Lenders] (by ACH or wire transfer) upon the direction of an Authorized Officer of the Borrower to the parties designated in the Requisition or pursuant to such other instructions as may be designated in writing by an Authorized Officer of the Borrower, consistent with Program Requirements, from time to time.

B. Borrower agrees to comply with all requirements of this Agreement and the Construction Loan Agreement for requesting funds under the Exchange Program.

Section 4.3 Construction Draw Schedule; Change Orders.

A. The Borrower expects to submit Requisitions to the Servicer for disbursements of Exchange Program Funds at the times and in the amounts set forth in the projected Construction Draw Schedule. The Borrower shall update the Construction Draw Schedule as and when Requisitions for disbursements of Exchange Program Funds are made. Any expenditure which, when added to any prior expenditures, exceeds the Budget or any line item specified in the Budget shall require the approval of the Servicer.

B. The Borrower shall obtain the prior written consent of Florida Housing and the Servicer for any Change Order, regardless of whether any proposed disbursement of Exchange

Program Funds would be affected by such Change Order. As a condition to Florida Housing's and the Servicer's consent to any Change Order, the Borrower shall submit to Florida Housing (with a copy to the Servicer and the Inspector) a description of the curative actions to be taken by the Developer and the Contractor to accelerate construction progress and/or align the sources and uses of funds for the Development notwithstanding such Change Order (the "Action Plan"). The Action Plan shall be in form and substance reasonably satisfactory to Florida Housing and the Servicer and shall be signed by the Developer and the Borrower as evidence of their intent to implement or cause to be implemented the Action Plan as described. Failure of the Borrower to submit and/or cause implementation of an Action Plan reasonably acceptable to Florida Housing and the Servicer shall entitle Florida Housing to suspend making disbursements of Exchange Program Funds under this Agreement and the Construction Loan Agreement until such time as an acceptable Action Plan has been received and approved by Florida Housing and implementation thereof has commenced.

C. Florida Housing and/or the Servicer will not approve any Change Order which would, in the reasonable determination of Florida Housing and/or the Servicer, cause the Development to fail to meet the Required In-Service Date or prevent the Subaward from being fully disbursed to the Borrower in accordance with the requirements and procedures set forth herein by the Expiration Date.

Section 4.4 Construction Meetings; Monitoring.

A. The Servicer and the Inspector shall have the right to participate in construction progress meetings and monitor the Development's construction until the Completion Date.

Section 4.5 Development Expenditures.

A. The proceeds of the Subaward must be used to pay Eligible Costs. The Servicer shall determine the Borrower's compliance with this requirement at the time of construction completion based upon a review of the Cost Certification for the Development and at the time each request for a disbursement of Exchange Program Funds is made based upon a review of the current Requisition (if required by the Exchange Program). Florida Housing may establish such additional limitations on the expenditure of Exchange Program Funds as it determines are appropriate to ensure compliance with Program Requirements.

B. In the event that Florida Housing shall determine that the proceeds of the Subaward have been used to pay non-Eligible Costs, whether such costs are non-Eligible Costs because they are not approved as Eligible Costs in accordance with this Agreement or because they violate Program Requirements, Florida Housing shall provide the Borrower with written notice thereof and the Borrower shall pay in immediately available funds within ten (10) Business Days from the date of said notice an amount equal to that portion of the Subaward used to pay non-Eligible Costs, such amount to be payable to Florida Housing which shall remit such funds to the Treasury.

ARTICLE V
COVENANTS AND RESTRICTIONS

Section 5.1 Extended Low-Income Housing Agreement.

A. The Borrower and Florida Housing shall enter into an Extended Low-Income Housing Agreement dated as of the date hereof. The terms and conditions of the Extended Low-Income Housing Agreement are incorporated herein by reference.

Section 5.2 Compliance with Program Requirements.

A. The Borrower shall comply with all of the Program Requirements applicable to the Development throughout the Compliance Period.

B. The Borrower shall comply with all of the requirements of Section 42 of the Code and any regulations promulgated thereunder, to the extent necessary to receive and maintain an award of Exchange Program Funds.

C. The Borrower shall comply with the Act and with the Rule, as applicable to the Housing Credit Program.

D. The Borrower shall maintain the Required Percentage throughout the Compliance Period.

E. The Borrower shall comply with the income and rent restrictions and maintain the “applicable fraction” set forth in the Extended Use Agreement throughout the term of the Extended Use Agreement.

F. No later than _____, 20____, which is the first anniversary of the date of this Agreement, the Borrower shall have a basis in the Development that is no less than ten percent (10%) of its “reasonably expected basis in such development” as of the Required In-Service Date for purposes of Section 42(h)(1)(E)(ii) of the Code. Florida Housing will ascertain and require documentation of compliance with this requirement in the same fashion as it does with respect to developments receiving carryover allocations of Tax Credits.

G. One unit in each building in the Development which is required to contain Low-Income Units shall be ready and available for occupancy by the Required In-Service Date.

H. The Development shall become a “qualified low-income housing development” (as defined in Section 42(g)(1) of the Code) by the end of the year following the year in which the first building in the Development, which is required to contain Low-Income Units, is placed in service.

Section 5.3 Covenants Regarding Sale or Assignment of Development, Contracts or Interests.

A. The Borrower shall not sell, lease (other than by residential leases in the ordinary course of business), transfer or otherwise dispose of any portion of the Development without the prior written consent of Florida Housing and in compliance with Section 67-48.030, Fla. Admin. Code.

B. The Borrower shall not, without the prior written consent of Florida Housing, permit any change in the ownership interests in the Borrower or its [Member][General Partner] that, when added to any prior changes in the ownership interests in such entity, exceeds thirty-three and one-third percent (33.3%) of the total aggregate ownership interests in the Borrower or its [Member][General Partner], as applicable. [FOR CORPORATIONS USE: The Borrower shall not, without the prior written consent of Florida Housing, permit any change in the beneficial ownership interests in the Borrower which, when added to any previous changes in such ownership, exceeds thirty-three and one-third percent (33.3%) of the total ownership interests in the Borrower.]

C. Without the prior written consent of Florida Housing, which consent shall not be unreasonably withheld, the Borrower shall not:

- (i) designate a new Manager;
- (ii) designate a new Contractor;
- (iii) designate a new Developer; or
- (iv) make any assignment of, or material change to, the Management Agreement, the Development Agreement or the Construction Contract.

Section 5.4 Treasury Regulations.

Borrower acknowledges that certain of the covenants contained in this Agreement are based upon the Treasury Regulations of the United States Department of Treasury as they exist on the date hereof and that the Treasury Regulations may be subsequently modified or interpreted by the federal government in a manner which Florida Housing believes is inconsistent with the covenants set forth herein. Borrower agrees to comply with any additional covenants and restrictions which Florida Housing believes is necessary to insure compliance with Treasury Section 1602 Regulations and other Treasury requirements and which is communicated in writing to the Borrower, even though such covenants or restrictions are not a part of this Agreement as originally executed; provided, however, that if Borrower disagrees with such amended or additional requirements, Borrower shall have the right, at its own expense, to proceed with obtaining a favorable ruling from the IRS or interpretation from the appropriate court which Borrower deems advisable and in its best interest, and Florida Housing agrees to cooperate fully with Borrower in this connection, so long as Borrower bears Florida Housing's

expense in obtaining such ruling. In such event, such additional covenants or restrictions shall be considered a material part of this Agreement as if they had been originally included herein.

ARTICLE VI
RECAPTURE

Section 6.1 Recapture Event.

BORROWER ACKNOWLEDGES THAT FAILURE TO COMPLY WITH ALL EXCHANGE PROGRAM REQUIREMENTS MAY TRIGGER RECAPTURE, AND ANY DEBT DETERMINED TO BE SUBJECT TO SUCH RECAPTURE WILL BE A DEBT OWED TO THE UNITED STATES PAYABLE TO THE GENERAL FUND OF THE TREASURY AND ENFORCEABLE BY ALL AVAILABLE MEANS AGAINST ANY ASSETS OF THE BORROWER, INCLUDING FORECLOSURE OR OTHER REMEDIES UNDER THIS AGREEMENT, THE RECAPTURE MORTGAGE AND THE LOAN DOCUMENTS.

A. A “Recapture Event” shall be deemed to occur if, at any time during the first fifteen (15) years of the Compliance Period, any one or more of the following events shall occur:

- (i) the Borrower has not expended on the Development an amount equal to at least ten percent (10%) of its “reasonably expected basis in such Development” for purposes of Section 42(h)(1)(E)(ii) of the Code by the first anniversary of the date of this Agreement;
- (ii) any building in the Development which is required to contain Low-Income Units is not placed in service by the Required In-Service Date;
- (iii) the Development does not become a “qualified low-income housing development” (as defined in Section 42(g)(1) of the Code) by the end of the year following the year in which the first building in the Development, which is required to contain Low-Income Units, is placed in service;
- (iv) the percentage of Low-Income Units in the Development falls below the Required Percentage;
- (v) the Development ceases to be a “qualified low-income housing development” (as defined in Section 42(g)(1) of the Code);
- (vi) Exchange Program Funds have been determined by Florida Housing or the Treasury to have been expended for costs that are not Eligible Costs in violation of Program Requirements and have not been repaid;
- (vii) 100% of Exchange Program Funds advanced to the Borrower have not been expended by the Expiration Date; or

- (viii) the Borrower or the Development fails to comply with any other requirements of this Agreement, Section 42 of the Code, or Chapter 67-48, Fla. Admin. Code, as applicable to Housing Tax Credits.

B. If a Recapture Event shall occur, the applicable portion of Exchange Program Funds disbursed to the Borrower shall be subject to “recapture” in the amounts set forth below (the “Recapture Amount”).

(i) If the Recapture Event arises under Section 6.1A(iv) or (v) above, after allowing any permitted period for correction, the Recapture Amount shall be equal to the full amount of the Subaward, less 6.67% for each year (full 12-month period) of the first fifteen (15) years of the Compliance Period in which a Recapture Event has not occurred; provided, however, that if the Borrower (a) restores the percentage of Low-Income Units to the Required Percentage and/or (b) restores the Development as a “qualified low-income housing development,” as applicable, and/or (c) otherwise cures such Recapture Event within thirty (30) days of written notification of the Recapture Event by Florida Housing or the Servicer (which time for cure may be extended by Florida Housing in its sole, reasonable discretion), the Recapture Event may be waived by Florida Housing.

(ii) If the Recapture Event arises under Section 6.1A(i), (ii) or (iii) above, the Recapture Amount shall be an amount equal to the entire amount of Exchange Program Funds actually disbursed to the Borrower under the terms of this Agreement.

(iii) If the Recapture Event arises under Section 6.1A(vi) above, the Recapture Amount shall be an amount equal to the amount of Exchange Program Funds determined to have been expended for costs that are not Eligible Costs in violation of Program Requirements.

(iv) In the event of any Recapture Event set forth above, the Recapture Amount shall include any interest or penalties that may accrue in accordance with the Program Requirements.

C. If a Recapture Event occurs, in addition to the Recapture Amount, the Borrower shall pay to Florida Housing upon demand an amount equal to the costs and fees, including attorneys’ fees and costs, incurred by Florida Housing in connection with the Recapture Event.

Section 6.2 Enforcement.

A. The Recapture Amount shall be due and payable to the General Fund of the Treasury and shall be deemed a debt owed to the Treasury, enforceable against any assets of the Borrower. Such debt shall be secured and enforceable by the lien of the Recapture Mortgage in favor of Florida Housing on behalf of the Treasury pursuant to the Exchange Program; provided, however, that upon any foreclosure of the lien of the Recapture Mortgage, Florida Housing may bid the lien amount (on behalf of the Treasury) and may take title to the Development in its own name, to be held for the benefit of the Treasury.

B. Upon the occurrence of a Recapture Event, a notice of lien imposed hereunder shall be filed and recorded in one office within the state, county or other governmental subdivision in which the Development is situated, as designated by the laws of such state.

C. Unless another date is specifically fixed by law, the lien imposed hereunder shall arise at the time the Recapture Amount becomes due and shall continue until liability for the Recapture Amount is satisfied in full.

D. The priority of the mortgage lien imposed hereunder shall be determined by Florida Housing and such priority shall be reflected upon recordation and through appropriate subordination documents.

Section 6.3 Notice.

Florida Housing or the Servicer, as applicable, shall provide the Borrower with written notice, in accordance with Section 11.2, of any Recapture Event or of any circumstances which, with the passage of time, would give rise to a Recapture Event, of which, in either event, it shall become aware. Upon the giving of any such notice to the Borrower, Florida Housing or the Servicer, as applicable, shall also provide copies of any such notice(s) to the Lender [and the Tax Credit Investor]. The failure of Florida Housing or the Servicer, as applicable, to provide notice as herein required shall not relieve the Borrower of any obligation hereunder or prevent the declaration or occurrence of a Recapture Event, nor shall it serve to relieve the Borrower of any of the consequences thereof.

Section 6.4 Right to Cure.

The Borrower shall have the right to cure a Recapture Event within a reasonable period of time after the Borrower has received notice of the circumstances giving rise to such Recapture Event or after the Borrower would have become aware of the circumstances giving rise to such Recapture Event had the Borrower exercised reasonable diligence with respect thereto. Florida Housing shall have the right to determine what constitutes “a reasonable period of time” and whether a cure has been properly and timely effected for purposes of this Section, except to the extent that such determinations are governed by or otherwise prescribed or delimited by Program Requirements. Any cure made or tendered by any Lender or any Tax Credit Investor shall be accepted or rejected on the same basis as a cure made directly by the Borrower, to the extent not inconsistent with Program Requirements.

Section 6.5 Preservation of Rights and Remedies.

Any action under this Article VI shall not serve to limit or deprive Florida Housing or the Treasury in or from the exercise of any other rights and remedies that they have under law or equity, or any rights and remedies provided herein with respect to Events of Default or Recapture Events.

Section 6.6 Third-Party Rights.

The Treasury shall be deemed a third-party beneficiary of this Article VI.

Section 6.7 Tax Credit Exchange Program Guaranty.

Borrower unconditional guarantees to repay to Florida Housing (on behalf of the Treasury) the full amount of Exchange Program Funds provided by Florida Housing to develop, construct [rehabilitate] and place in service the Development, and shall fully guaranty and pay the Recapture Amount to Florida Housing (on behalf of the Treasury) upon a Recapture Event.

This guaranty shall commence on the date of this Agreement and shall end upon completion of the initial fifteen (15) years of the Compliance Period (the "Recapture Term"). This guaranty is intended by the parties to be equal to, but not exceed, the Recapture Amount that may be outstanding from Borrower to Florida Housing (on behalf of the Treasury) at any particular time during the Recapture Term.

This guaranty obligation is a recourse obligation to the Borrower and supersedes any contrary obligation set forth in the Subaward Promissory Note, the Recapture Mortgage or the other Loan Documents.

ARTICLE VII
REPRESENTATIONS AND WARRANTIES

Section 7.1 Representations, Warranties and Covenants of the Borrower.

The Borrower hereby represents, warrants and covenants to Florida Housing that the following are true as of Closing and will be true on the due date of each disbursement of Exchange Program Funds and, as applicable, throughout the Compliance Period:

A. The Borrower is a duly organized [corporation] [limited partnership] [limited liability company] validly existing under the laws of the state of its organization and has full power and authority to perform its obligations under this Agreement and the Loan Documents.

B. No litigation, demand, investigation, claim or proceeding against the Borrower or any other litigation or proceeding directly affecting the Development is pending or, to the best knowledge of the Borrower, threatened before any court, administrative agency or other Governmental Authority that would, if adversely determined, have a material adverse effect on the Borrower or the construction [rehabilitation], use and operation of the Development or the Borrower's ability to perform its obligations under this Agreement and the Loan Documents

C. No default by the Borrower or any affiliate thereof having any relationship with the Development has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the financing documents for the Development or other

documents or instruments governing the development, use, occupancy and operation of the Development.

D. All building, zoning, health, safety, business and other applicable certificates, permits and licenses necessary to permit the construction [rehabilitation], use, occupancy and operation of the Development have been or will, at the time required, be obtained and maintained (other than, prior to completion of construction [rehabilitation] of the Development or a specified portion thereof, such as are issuable only upon completion of construction [rehabilitation] or such specified portion thereof); and the Borrower has not received any notice nor has any knowledge of any violation with respect to the Development of any law, rule, regulation, order or decree of any Governmental Authority having jurisdiction which would have a material adverse effect on the Development or the construction [rehabilitation], use or occupancy thereof, except for violations which have been cured or can be cured within any applicable cure period, and are in the process of being cured, and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

E. The Borrower has a fee interest in the Development [and a ground leasehold interest in the Land] and has good and marketable title thereto, free and clear of any liens, charges or encumbrances other than the Mortgages, the encumbrances the Borrower is permitted to create under the terms of this Agreement, and mechanics' or other liens that have been bonded against (or as to which other cash equivalent security has been provided) in such a manner as to preclude the holder of such lien from having any recourse to the Development or the Borrower for payment of any debt secured thereby.

F. No Event of Default or Recapture Event has occurred and is continuing.

G. No Event of Bankruptcy has occurred as to the Borrower, any Guarantor or the Developer.

H. As of the date of Closing, all reserves and accounts required to be maintained by the Borrower under the terms of this Agreement are currently funded (or will be funded at the time(s) required) up to the specified levels.

I. Construction of the Development [commenced on _____] [will commence no later than _____].

J. The Borrower will construct [acquire and substantially rehabilitate] the Development which shall be comprised of ___ units of [multifamily][senior] housing in ___ building(s) located in _____ County, Florida, as more particularly described in Exhibit A hereto. If the Land is comprised of multiple parcels, either (a) all such parcels are contiguous, that is, their boundaries meet at one or more points, except for the interposition of a road, street, stream or similar property, or (b) 100% of the units will be Low-Income Units. All utilities are, or will be, available to the Development, including sanitary and storm sewers, water, gas and electricity.

K. The sources of funds available to the Borrower are sufficient to enable the Borrower to complete construction [rehabilitation] of the Development in accordance with the Plans and Specifications and the Construction Draw Schedule.

L. The Development will continue to be owned and operated by the Borrower throughout the Compliance Period or, if later, the date (if any) through which the Borrower is required to own and operate the Development pursuant to any of the documents governing the use and operation of the Development.

M. The Development will be operated so that it will meet (and an appropriate election has been or will be made with respect to) the Minimum Set-Aside Test as of the dates established by Section 42(g)(3) of the Code and at all times thereafter through the end of the Compliance Period.

N. The Development will, at all times throughout the Compliance Period, meet the Required Percentage.

O. At all times throughout the Compliance Period, [no less than ____ of the units in the Development will be leased to and occupied by tenants with incomes equal to or less than sixty percent (60%) of area median income], [no less than ____ of the units in the Development will be leased to and occupied by tenants with income equal to or less than fifty percent (50%) of area median income] [and no less than ____ of the units in the Development will be leased to and occupied by tenants with incomes equal to or less than ____ percent (____%) of area median income].

P. The Borrower will have the right to receive annual reports from tenants of Low-Income Units of the Development concerning their incomes and family sizes. Except to the extent permitted by Section 42(g)(2)(E) of the Code, the gross rents (as adjusted in accordance with Section 42(g)(2)(B) of the Code) charged for each of the Low-Income Units will not, at any time during the Compliance Period, exceed 30% of the income limitation applicable to the tenant(s) of each such unit for purposes of the Minimum Set-Aside Test and Section 7.1.O above.

Q. The Development will be operated so that ____ of the ____ units in the Development will qualify as Low-Income Units at all times during the Compliance Period, which is the “applicable fraction” required for purposes of the Extended Use Agreement.

R. None of the Low-Income Units will be occupied entirely by students (as defined in Section 152(f)(2) of the Code), unless (i) the Low-Income Unit is occupied by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, state or local laws, or (C) a student and previously under the care and placement of a foster care program under parts B or E of Title VI of the Social Security Act, or (ii) the Low-Income Unit is occupied entirely by full-time students and such students are (A) single parents and their children and such parents and children are not dependents (as defined in

Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) of another individual, or (B) married and file a joint return.

S. All services provided to tenants will be optional (i.e., payment for the service will not be required as a condition of occupancy) and no services that are not optional (i.e., mandatory services) will be provided, or if so provided, the charges for any such services shall be included in determining compliance with the applicable rent restriction for purposes of Section 7.1.O.

T. Tenants for the units will be screened and selected from a pool of eligible tenants based on uniformly applied tenant selection criteria that are commonly employed by other property owners in determining tenant eligibility in similar developments to the Development, and:

- (i) no preferences or discrimination will be employed in selecting tenants (i.e., no discrimination based on race, color, religion, sex, disability, familial status, age or national origin) and will be consistent with federal housing policy governing nondiscrimination as determined under HUD rules and regulations;
- (ii) units in the Development will be available for use by the general public within the meaning of Section 1.42-9 of the Treasury Regulations and Section 42(g)(9) of the Code;
- (iii) the units will be rented on a non-transient basis.

U. The tenant facilities of the Development included in eligible basis will be available to all tenants on a comparable basis without separate fees.

V. At least one (1) unit in each building in the Development will be ready and available for occupancy in accordance with state and local laws on or before the Required In-Service Date.

W. Each of the representations and disclosures made by the Borrower to Florida Housing in the Response to RFP and in any application for Tax Credits is true and correct as of the date hereof. Each of the covenants, agreements and conditions contained in the Response to RFP or such applications have been duly performed or satisfied by the Borrower to the extent that performance or satisfaction is required on or prior to the date of Closing, and the Borrower has no reason to believe that the covenants, agreements, and conditions required to be performed or satisfied after the date hereof will not be performed or satisfied in a timely manner.

X. The Extended Use Agreement, which constitutes an “extended low-income housing commitment” as defined in Section 42(h)(6) of the Code, will be in effect as of the end of the taxable year in which the first building in the Development is placed in service.

Y. The Development constitutes “residential rental property” within the meaning of Section 1.103-8(b)(4) of the Treasury Regulations.

Z. The Borrower will develop and operate the Development in accordance with (i) the applicable provisions of Section 42 of the Code, (ii) the terms of this Agreement, (iii) the Program Requirements, (iv) all applicable federal, State, and local statutes, rules and regulations with respect to the Development including, without limitation, the Fair Housing Act (42 U.S.C. 3601, et seq.), as amended, and (v) all applicable requirements of any Governmental Authority having jurisdiction over the Development.

AA. In the event the Federal Drug Free Workplace Act of 1988 and the regulations promulgated thereunder, including without limitation, 54 CFR 4956 (1989), as such Workplace Act and regulations have been amended, are applicable, the Borrower has complied and will continue to comply with such Workplace Act.

BB. No federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any Person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.

CC. No funds have been paid for influencing or attempting to influence an officer or employee of a member of Congress in connection with a federal contract, grant, loan and/or cooperative agreement benefiting the Borrower. To the best knowledge of the Borrower, the Borrower has complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal entity in connection therewith, if applicable.

DD. Neither the Borrower nor any of its partners, members, officers, directors, or employees, nor, to the best knowledge of the Borrower, any contractor or agent of the Borrower nor any affiliate (including but not limited to parents, subsidiaries and Entities under common control) of the Borrower, nor any Person who or which directly or indirectly owns or controls the Borrower or any of its or their constituent Entities, nor any Person who or which directly or indirectly owns or controls any affiliate of the Borrower or any of its constituent Entities, nor any Person who or which directly or indirectly holds a substantial (i.e., ten percent (10%) or more) equity interest in the Borrower or in any of its constituent Entities or in any affiliate of the Borrower or any of its or their constituent Entities (collectively, “Borrower Parties”), is a Barred Person or has ever been a Barred Person (as hereinafter defined). The term “Borrower Parties” does not include any Tax Credit Investor or any of their officers, directors, employees, contractors and agents or any affiliate of the Tax Credit Investor. “Barred Person” means any Person with whom a U.S. Person is barred from transacting business under U.S. law, including but not limited to (i) Persons identified as specially designated terrorists, narcotics traffickers, or blocked persons by the U.S. Government on the “Specially Designated Nationals and Blocked

Persons List” maintained by the U.S. Treasury Department; and (ii) Persons that are citizens of or organized or domiciled or resident in countries subject to U.S. economic embargo restrictions and thereby barred from transactions with U.S. Persons. “U.S. Person” means a Person, that is a citizen of or organized or domiciled or resident in the United States. “Owned or controlled” and variations thereof mean a direct or indirect interest in the entity in question, including but not limited to voting or non-voting equity, partnership, joint venture and other arrangements, and specifically including but not limited to (1) all members of limited liability companies, (2) all shareholders owning ten percent (10%) or more of the outstanding shares of corporations, measured on an aggregate and/or class-by-class basis, (3) all general partners of limited partnerships and general partnerships, (4) all limited partners owning twenty-five percent (25%) or more of the outstanding limited partnership interests in limited partnerships, (5) all trustees and settlors of trusts, and (6) all beneficiaries owning twenty-five percent (25%) or more of the beneficial interests in trusts.

EE. No General Partner nor any other Borrower Party nor any of the Borrower’s property is or has ever been subject to or a party to or bound by any agreement or other arrangement with any Barred Person.

FF. The Borrower and each other Borrower Party will prevent, and have instituted or will institute (and will update from time to time to correspond to changes in circumstances and changes in applicable laws and regulations) policies and procedures to prevent, any circumstance or event described in subclauses DD. and EE. above.

GG. The Borrower and all other applicable Borrower Parties have not engaged and shall not engage in any act or omission that would violate anti-money-laundering laws, including but not limited to 18 USC § 1956; have complied or will comply with requirements for instituting an anti-money laundering compliance program required under 31 USC § 5318(h) and applicable to all “financial institutions” as defined in 31 USC § 5312(a)(2); and have instituted or will institute policies and procedures and use commercially reasonable due diligence to identify and report Suspicious Transactions to relevant U.S. Government officials. “Suspicious Transactions” that may require reporting include, but are not limited to, (i) individual or related transactions in which a third-party provides payment in U.S. or foreign currency in excess of \$10,000 that may require reporting under 31 USC § 5331 and 26 USC § 6050I; (ii) any transaction where the Borrower or any Borrower Party knows, suspects, or has reason to know that the transaction (A) is for an illegal purpose, including but not limited to money laundering; (B) is otherwise an attempt to disguise funds derived from illegal activity or evade reporting requirements under U.S. law; or (C) is suspicious because the transaction appears to serve no business or lawful purpose.

HH. The Borrower is and the Development is and shall continue to comply with all requirements of the Act and the Rule.

Section 7.2 Covenant of Completion.

A. The Borrower unconditionally covenants and warrants that it shall cause completion of the Development to occur by the Completion Date (which must occur prior to the

Required In-Service Date). The Borrower shall satisfy and shall cause the Development to satisfy all construction-related requirements of the Mortgage Loans, including any requirement related to completion of the Development. The Borrower shall pay all costs to complete construction of the Development in accordance with the Loan Documents and Section 42 of the Code. The obligation of the Borrower under this Section 7.2 shall be unconditionally guaranteed by the Guarantor pursuant to a completion guaranty.

ARTICLE VIII **BOOKS AND REPORTING**

Borrower unconditionally covenants and warrants that it shall comply with all financial and compliance monitoring requirements of the Exchange Program, the Loan Documents, and the Compliance, Financial Monitoring and Servicing Agreement dated as of the date hereof among Florida Housing, Borrower and the Servicer (the “Compliance, Financial Monitoring and Servicing Agreement”).

ARTICLE IX **ASSET MANAGEMENT**

Section 9.1 Appointment of Asset Manager.

A. Florida Housing shall perform certain asset management duties and shall be referred to as the “Asset Manager.”

B. Florida Housing may appoint a third party Asset Manager to perform its asset management duties hereunder. Florida Housing hereby appoints the Servicer to perform certain asset management/servicing duties hereunder, as well as certain duties under the Compliance, Financial Monitoring and Servicing Agreement, as of the date hereof.

Section 9.2 Asset Management Duties.

A. The Servicer will, among other things, provide the following services to the Development:

- (i) select and consult with the Inspector;
- (ii) review the use of the proceeds of the Subaward to ensure such proceeds are being spent only in accordance with the requirements of this Agreement, in particular and without limitation, Article IV hereof, and with Program Requirements;
- (iii) review and report to Florida Housing, no less than quarterly, on the progress of construction of the Development, its compliance with the Construction Draw Schedule, the Plans and Specifications, and the Budget, and any Change Orders, changes to anticipated sources and uses, or other matters which, in the judgment of the Servicer, may adversely

affect the ability of the Borrower to complete construction of the Development;

- (iv) review all financial status reports required to be delivered pursuant to the Compliance, Financial Monitoring and Servicing Agreement;
- (v) review all compliance monitoring reports required to be delivered pursuant to the Compliance, Financial Monitoring and Servicing Agreement; and
- (vi) advise Florida Housing as to such measures as may be necessary or desirable to remedy any unfavorable compliance or financial circumstances concerning the Development.

B. The Borrower and the Servicer each covenant and warrant that Borrower and Servicer are not related parties, nor are they affiliated in any way.

C. The Servicer may, and upon the direction of and following consultation with Florida Housing shall, take such of the following actions with respect to the Development as it and/or Florida Housing shall deem advisable:

- (i) declare that an Event of Default has occurred hereunder, specifying the nature of said Event of Default;
- (ii) exercise any of the remedies provided to Florida Housing pursuant to this Agreement with respect to an Event of Default;
- (iii) recommend to Florida Housing (I) that further disbursements of Exchange Program Funds be delayed, suspended or terminated, (II) that the Developer, the Manager, the Contractor or any other party providing services to the Borrower be replaced, (III) any appropriate measures to assure that the Completion Date can be achieved within the applicable time period and available resources, (IV) such measures as may be needed to address instances of noncompliance with Program Requirements, the Extended Use Agreement, the requirements of this Agreement or the Loan Documents; and
- (iv) advise Florida Housing that a Recapture Event has occurred or that circumstances exist which may give rise to a Recapture Event, together with making such suggestions for remediation as the Servicer deems appropriate.

Section 9.3 Asset Management Fee.

A. In consideration of the services and obligations of the Asset Manager, the Borrower hereby agrees to pay to Florida Housing an annual fee of \$2,000.00 (the “Asset Management Fee”).

B. In consideration of the services and obligations of the Servicer hereunder, the Borrower hereby agrees to pay to the Servicer fees for certain asset management functions, compliance monitoring and financial monitoring (the “Servicing Fee”) as provided in the Compliance, Financial Monitoring and Servicing Agreement.

C. Asset Management Fees payable pursuant to this Agreement are distinct from and independent of fees for compliance monitoring that may be collected by Florida Housing pursuant to its Qualified Allocation Plan, as applicable to the Development.

ARTICLE X **DEFAULT; TERMINATION**

Section 10.1 Default.

A. Any of the following events shall constitute an “Event of Default” under this Agreement:

- (i) a breach by the Borrower of any of its representations, warranties or covenants contained in this Agreement or in the performance of any of its obligations under this Agreement, in either event that (a) has or might reasonably be expected to have a material adverse impact on the operation of the Development, and (b) is not cured within ten (10) Business Days (in the case of a monetary default) or twenty (20) Business Days (in the case of a non-monetary default) following notice of such breach or default from the Servicer to the Borrower, provided, however, that if a non-monetary default cannot reasonably be cured within twenty (20) Business Days and the Borrower commences a cure within twenty (20) Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended for up to the lesser of (x) an additional seventy (70) Business Days or (y) the latest permissible date for correction of the applicable breach under the Program Requirements without causing a Recapture Event; or
- (ii) the commencement of foreclosure proceedings with respect to any Mortgage, which have not been withdrawn or dismissed within thirty (30) calendar days after the date of such commencement; or
- (iii) a violation of any law, regulation or order applicable to the Borrower or the Development that has or might reasonably be expected to have a material adverse impact on the operation of the Development and is not

cured within the applicable cure period, if any, provided in such law, regulation, or order; or

- (iv) a default has occurred under the Extended Use Agreement which is not cured within the time period for cure as provided therein; or
- (v) gross negligence, fraud, willful misconduct, misappropriation of funds, or criminal activity by the Borrower or any Affiliate of the Borrower providing services to or in connection with the Borrower or the Development; or
- (vi) the Completion Date as set forth in the Construction Draw Schedule has been delayed by more than sixty (60) calendar days and the Borrower has failed to submit an acceptable Action Plan to Florida Housing in accordance with Section 4.3B; or
- (vii) repeated or prolonged failure to provide reports required by the Compliance, Financial Monitoring and Servicing Agreement; or
- (viii) a Recapture Event shall occur and the Recapture Amount due in connection therewith shall remain unpaid for a period of ten (10) Business Days after notice thereof from Florida Housing or the Treasury, unless a later date is specified in such notice; or
- (ix) the Borrower fails to comply with, or any default has occurred under, this Agreement or any of the Loan Documents; or
- (x) the Borrower violates any of the covenants contained in Section 5.3 hereof.

Section 10.2 Remedies on Default.

A. Florida Housing shall have the right to exercise any of the following remedies upon an Event of Default:

- (i) temporarily, wholly or partially, suspend making payments of Exchange Program Funds under this Agreement pending correction of the deficiency or default by the Borrower;
- (ii) cease, in whole or in part, making any further payments under this Agreement;
- (iii) terminate this Agreement;
- (iv) disallow all or part of the cost of the activity or action not in compliance;

- (v) require that the Developer, the Manager, the Contractor or any other party providing services to the Borrower be replaced;
- (vi) remove the [General Partner] [Member] of the Borrower and require the Borrower to provide for an alternate entity, acceptable in advance by Florida Housing, to act in its stead, pending appointment of a replacement [general partner] [member] under the organizational documents of the Borrower;
- (vii) draw upon and apply any escrows and/or reserve accounts in accordance with their terms;
- (viii) call upon the guaranty provided by Borrower in Section 6.7 hereof in accordance with its terms and the remaining terms of this Agreement;
- (ix) exercise any rights it may have under the Recapture Mortgage (in the event of a default under this Agreement or the Loan Documents) and the Assignment Instruments, including but not limited to foreclosure of the liens thereunder;
- (x) exercise any other rights and remedies that may be available under the Loan Documents; and
- (xi) exercise any other rights and remedies that may be available under law or in equity.

B. In addition to the remedies described in Section 10.2A above, the Borrower shall, upon demand by Florida Housing following an Event of Default, (i) repay to Florida Housing, which shall remit such funds to the Treasury, any amount of Exchange Program Funds previously disbursed to the Borrower under the terms of this Agreement and (ii) pay to Florida Housing an amount equal to the costs and fees, including attorneys' fees and costs, incurred by Florida Housing in connection with the Event of Default and/or the exercise of remedies with respect thereto.

C. Florida Housing may defer the enforcement of remedies upon the occurrence of an Event of Default for such period as it determines appropriate, if it determines that [the Tax Credit Investor or] any Lender is taking appropriate measures to correct the circumstances giving rise to the Event of Default.

D. Each right and remedy provided in this Agreement is distinct from all other rights or remedies under this Agreement, the Recapture Mortgage, the Assignment Instruments, the Extended Use Agreement or the Loan Documents, or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

Section 10.3 Third-Party Rights to Notice and Cure.

Florida Housing shall provide the Lenders [and the Tax Credit Investor] with a copy of any written notice of default provided to the Borrower pursuant to the terms of this Article X. Florida Housing hereby agrees that any cure of any default made or tendered by any Lender [or the Tax Credit Investor] shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if such cure were made or tendered by the Borrower.

Section 10.4 Enforcement of Provisions.

The Borrower acknowledges that one of the primary purposes for requiring compliance with the provisions of this Agreement is to assure compliance with Section 42 of the Code and the other Program Requirements. In consideration for receiving Exchange Program Funds, the Borrower hereby agrees and consents that Florida Housing, the State and/or the United States of America shall be entitled to enforce specific performance by the Borrower (and its successors and assigns) of its obligations under this Agreement in any tribunal in the State for any and all breaches of the conditions and restrictions hereof or material representations made by the Borrower at any time in addition to all other remedies expressly provided in this Agreement and/or by law or in equity.

ARTICLE XI **GENERAL PROVISIONS**

Section 11.1 Tax Credit Compliance.

The provisions of this Agreement are intended to comply with Section 42 of the Internal Revenue Code, as well as the Exchange Program, as the same may be amended or interpreted from time to time by regulation or public pronouncement issued by the IRS. If any provision of this Agreement is inconsistent with any provisions of Code Section 42, the Exchange Program, or official IRS interpretations thereof, then such inconsistent provision(s) shall be construed and applied in a manner so as to comply with Code Section 42 and the Exchange Program.

Section 11.2 Notices.

Except as otherwise specifically provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been given (i) two (2) Business Days after being deposited in the United States mail and sent by certified or registered mail, postage prepaid, (ii) one (1) Business Day after being delivered to a nationally recognized overnight delivery service, (iii) on the day sent by telecopier or other facsimile transmission, answerback requested, or (iv) on the day delivered personally, in each case, to the parties at the addresses set forth below or at such other addresses as such parties may designate by notice to all other parties:

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

with a copy to: Shuffield, Lowman & Wilson, P.A.
1000 Legion Place, Suite 1700
Orlando, Florida 32801
Attention: Jan Albanese Carpenter, Esq.
Phone: (407) 581-9800
Fax: (407) 581-9801

Borrower: _____

Attention: _____
Phone: (____) _____
Fax: (____) _____

with a copy to: _____

Attention: _____
Phone: (____) _____
Fax: (____) _____

Lenders (pursuant to
Sections 6.3 or 10.3): _____

Attention: _____
Phone: (____) _____
Fax: (____) _____

with a copy to: _____

Attention: _____
Phone: (____) _____
Fax: (____) _____

Tax Credit Investor

(pursuant to
Sections 6.3 or 10.3): _____

Attention: _____

Phone: (____) _____

Fax: (____) _____

with a copy to: _____

Attention: _____

Phone: (____) _____

Fax: (____) _____

Servicer: _____

Attention: _____

Phone: (____) _____

Fax: (____) _____

Section 11.3 Rules of Construction.

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

(i) Words importing the singular number include the plural number and words importing the plural number include the singular number;

(ii) Words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;

(iii) The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;

(iv) Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof;

(v) Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;

(vi) Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and

(vii) When any reference is made in this document or any of the schedules or exhibits attached to this Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.

Section 11.4 Binding Provisions.

The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

Section 11.5 Assignments.

This Agreement and the proceeds of the Subaward may not be assigned, pledged, hypothecated, transferred, mortgaged or otherwise conveyed by the Borrower to any Person or Entity, by operation of law or otherwise, and Borrower may not delegate its duties hereunder without the prior written approval of Florida Housing.

Section 11.6 Absence of Rights in Third-Parties.

No provision of this Agreement shall be construed in any manner so as to create any rights in Persons or Entities that are not a party to this Agreement other than the Treasury as contemplated in Article VI hereof. The provisions of this Agreement shall be interpreted solely to define specific duties and responsibilities between the Borrower, Florida Housing and the Servicer (as agent and representative of Florida Housing), and shall not provide any basis for claims of any other Person or Entity other than the Treasury.

All conditions of Florida Housing hereunder are imposed solely and exclusively for the benefit of Florida Housing and its successors and assigns, and no other Person or Entity shall have standing to require satisfaction of such conditions or be entitled to assume that Florida Housing will fund Requisitions in the absence of strict compliance with any or all thereof, and no other Person or Entity shall, under any circumstances, be deemed to be a beneficiary of this Agreement or the Loan Documents, any provisions of which may be freely waived in whole or in part by Florida Housing at any time if, in its sole discretion, it deems it desirable to do so. In particular, Florida Housing 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.

Section 11.7 Borrower Not Florida Housing's Agent.

Nothing in this Agreement, the Subaward Promissory Note, the Recapture Mortgage or any other Loan Document shall be construed to make the Borrower Florida Housing's agent for

any purpose whatsoever, or the Borrower and Florida Housing partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

Section 11.8 Florida Housing Not Liable for Damage or Loss.

All inspections and other services rendered by or on behalf of Florida Housing or the Servicer shall be rendered solely for the protection and benefit of Florida Housing. Neither Borrower nor other third persons shall be entitled to claim any loss or damage against Florida Housing or the Servicer or against their agents or employees for failure to properly discharge their duties.

Section 11.9 Florida Housing Not Obligated to Insure Proper Disbursement of Exchange Program Funds to Third Parties.

Nothing contained in this Agreement, or any of the Loan Documents, shall impose upon Florida Housing any obligation to oversee the proper use or application of any disbursements and advances of Exchange Program Funds made pursuant to the Loan.

Section 11.10 Applicable Law.

The laws of the State of Florida shall control the construction, interpretation and enforcement of this Agreement and all matters related to this Agreement notwithstanding its place of execution and delivery.

Section 11.11 Consent to Jurisdiction.

Any action to enforce or interpret this Agreement, whether arising in contract or tort, by statute or otherwise, may be brought in or removed to a state or federal court of competent jurisdiction in or for _____ [*county in which Development is located*] or Leon Counties, Florida, and parties hereto hereby submit themselves to the jurisdiction of said courts.

Section 11.12 Attorneys' Fees.

The nonprevailing party(ies) agrees to pay all costs of collection and/or enforcement against the prevailing party(ies) under this Agreement, including reasonable legal fees and costs, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors' proceeding or otherwise.

Section 11.13 Waiver.

If Florida Housing shall waive any provisions of the Loan Documents, or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and Florida Housing 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.

Section 11.14 Counterparts.

This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

Section 11.15 Survival.

All representations, warranties, and indemnifications contained herein shall survive the termination of this Agreement.

Section 11.16 Sole Discretion of Florida Housing.

Wherever pursuant to this Agreement (a) Florida Housing exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Florida Housing, or (c) any other decision or determination is to be made by Florida Housing, the decision of Florida Housing to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Florida Housing, shall be in the sole and absolute discretion of Florida Housing and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

Section 11.17 Separability of Provisions; Rights and Remedies; Consistency with Program Requirements.

A. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.

B. Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.

C. The provisions of this Agreement are intended to implement the Exchange Program in accordance with the Program Requirements and with Section 42 of the Code as applicable to the Exchange Program, and shall be interpreted consistently therewith. In the event of any conflict between the provisions of this Agreement and the Program Requirements, the Program Requirements shall govern and, to the extent necessary, the inconsistent provisions of this Agreement shall be without effect.

Section 11.18 Conflict of Interest.

No person (i) who is a director, officer, member, official, employee, agent, consultant, or elected or appointed official of Florida Housing or of any applicant that received Exchange Program Funds and who exercises or has exercised any functions or responsibilities with respect to activities assisted with Exchange Program Funds provided under this Agreement, or (ii) who is in a position to participate in the decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an Exchange Program-assisted activity, or have an interest in any contract, subcontract or agreement (or the proceeds thereof) with respect to an Exchange Program-assisted activity either for themselves or those whom they have family or business ties, during their tenure and for one (1) year thereafter.

Section 11.19 Non-Discrimination.

The Borrower shall ensure that no person shall on the grounds of race, color, religion, sex, disability, familial status, age or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Exchange Program Funds provided under this Agreement.

ARTICLE XII
INDEMNIFICATION FROM THIRD PARTY CLAIMS

Borrower shall indemnify and hold harmless Florida Housing and the Servicer from any liability, claims or losses, including attorneys' fees and costs, resulting from the disbursement of the Loan proceeds to Borrower or its designee or from the condition of the Development, whether related to the quality of construction [rehabilitation] or otherwise, and whether arising during or after the term of the Loan. This provision shall survive the repayment or forgiveness of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims, or losses exists.

Whether or not the Loan is made under this Agreement or any Requisitions are approved and funds so advanced, the Borrower shall, on demand, pay or reimburse Florida Housing and its assignees and agents for (a) all transfer, documentary, stamp and similar taxes, broker's fees and commissions, surveys, travel expenses, photocopying, secretarial overtime and long distance telephone charges (including but not limited to those imposed by Florida Housing's counsel), abstracting charges, policies and all endorsements therefor, license and permit fees, fees and costs of the Inspector and Florida Housing's disbursing agent(s), and all recording and filing fees, payable in connection with, arising out of or in any way related to the execution, delivery and performance of the Loan Documents or the making of the Loan, and (b) all of Florida Housing's costs and expenses incurred, including fees and disbursements of legal counsel and other experts employed or retained by Florida Housing, and all payments made, and indemnify and hold Florida Housing harmless from and against all losses suffered, by Florida Housing in connection with, arising out of, or in any way related to (i) the negotiation, preparation, execution and delivery of (A) the Loan Documents (whether or not executed), (B) any waiver, amendment or consent thereunder or thereto, (ii) the administration of any operations under the

Loan Documents, (iii) consulting with respect to any matter in any way arising out of, relating to, or connected with, the Loan Documents, including but not limited to the enforcement by Florida Housing of any of its rights thereunder or the performance by Florida Housing of any of its obligations thereunder, (iv) protecting, preserving, exercising or enforcing any of the rights of Florida Housing under the Loan Documents, (v) any appraisals, (vi) any claim (whether asserted by Florida Housing, the Borrower or any other Person and whether asserted before or after the payment, performance and observance in full of the Borrower's obligations hereunder, under the Subaward Promissory Note, or the other Loan Documents) and the prosecution or defense thereof, in any way arising under, related to, or connected with, the Loan Documents or the relationship established hereunder and thereunder, (vii) any governmental investigation arising out of, relating to, or in any way connected with the Loan Documents, except that the foregoing indemnity shall not be applicable to any loss suffered by Florida Housing to the extent such loss is determined by a judgment of a court that is binding on Florida Housing, final and not subject to review on appeal, to be the result of acts or omissions on Florida Housing's part constituting willful misconduct, knowing violations of law or, in the case only of claims by the Borrower against Florida Housing, Florida Housing's failure to observe any other standard applicable to Florida Housing under any of the other provisions of this Agreement, or the Loan Documents or, but only to the extent not available thereunder, applicable law.

Borrower hereby authorizes Florida Housing to pay any and all expenses or other amounts for which Borrower is obligated under this Article from the proceeds of disbursement under the Loan, and no further authorization for such disbursement and payment shall be required from Borrower or any Guarantor, if any. In no event shall Florida Housing be obligated to make any such disbursement or payment and Borrower shall in any event remain unconditionally obligated to pay any and all such amounts. All obligations of Borrower under this Article shall bear interest at the Default Interest Rate provided for in the Subaward Promissory Note from the date of Florida Housing's payment thereof or request to Borrower for payment thereof (whichever shall first occur) and shall be part of the obligations secured by the Development encumbered by the Recapture Mortgage and the other Loan Documents.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE TO
FLORIDA HOUSING FINANCE CORPORATION
SUBAWARD AGREEMENT
UNDER SECTION 1602 OF ARRA**

([Development Name] / Tax Credit Exchange Program / 2009-____)

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date first written above.

FLORIDA HOUSING:

FLORIDA HOUSING FINANCE
CORPORATION

By: _____
Kevin L. Tatreau
Director of Multifamily Development
Programs

**COUNTERPART SIGNATURE PAGE TO
FLORIDA HOUSING FINANCE CORPORATION
SUBAWARD AGREEMENT
UNDER SECTION 1602 OF ARRA**

([Development Name] / Tax Credit Exchange Program / 2009-____)

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date first written above.

BORROWER:

a Florida _____

By: _____
Print: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

ELIGIBLE COSTS

EXHIBIT C

FORM OF REQUISITION

EXHIBIT D

MORTGAGE LOANS

EXHIBIT E

AUTHORIZED OFFICER(S) OF BORROWER

Name

Specimen Signature
