



**Community Redevelopment Agency Board Meeting  
Tuesday, November 5, 2019 - 6:15 PM  
Intracoastal Park Clubhouse, 2240 N. Federal Highway  
561-737-3256**

## **SPECIAL MEETING**

### **AGENDA**

- 1. Call to Order**
- 2. Invocation**
- 3. Roll Call**
- 4. Agenda Approval**
- 5. Consent Agenda**
  - A. Consideration of the First Amendment to the Purchase and Development Agreement with Ocean Breeze East Apartments, LLC**
- 6. Adjournment**

### **NOTICE**

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CRA BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, HE/SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. (F.S. 286.0105)

THE CRA SHALL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES WHERE NECESSARY TO AFFORD AN INDIVIDUAL WITH A DISABILITY AN EQUAL OPPORTUNITY TO PARTICIPATE IN AND ENJOY THE BENEFITS OF A SERVICE, PROGRAM, OR ACTIVITY CONDUCTED BY THE CRA. PLEASE CONTACT THE CRA, (561) 737-3256, AT LEAST 48 HOURS PRIOR TO THE PROGRAM OR ACTIVITY IN ORDER FOR THE CRA TO REASONABLY ACCOMMODATE YOUR REQUEST.

ADDITIONAL AGENDA ITEMS MAY BE ADDED SUBSEQUENT TO THE PUBLICATION OF THE AGENDA ON THE CRA'S WEB SITE. INFORMATION REGARDING ITEMS ADDED TO THE AGENDA AFTER IT IS PUBLISHED ON THE CRA'S WEB SITE CAN BE OBTAINED FROM THE CRA OFFICE.



## **CRA BOARD MEETING OF: November 5, 2019**

### **OLD BUSINESS**

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#### **AGENDA ITEM: A.**

##### **SUBJECT:**

Consideration of the First Amendment to the Purchase and Development Agreement with Ocean Breeze East Apartments, LLC

##### **SUMMARY:**

On December 15, 2017 the CRA Board entered into a Purchase and Development Agreement with Centennial Management Corp. for the CRA-owned property located at 700 N. Seacrest Boulevard for the development of a 123 unit, affordable multi-family rental apartment complex known as the Ocean Breeze East Apartments (see Attachment I).

On January 18, 2018 the CRA Board entered into an Interlocal Agreement with the City of Boynton Beach for Ocean Breeze East for purposes of providing the Local Government Contribution as required under the Florida Housing Finance Corporation's (FHFC) 9% Low Income Housing Tax Credit (LIHTC) Program funding application (see Attachment II). Under the terms of the ILA, the City would provide the financial contribution in the amount of \$567,500 and the CRA would reimburse the City for the expenditure.

The Lender that is providing the 9%LIHTC funding for the construction of the Project has various requirements that must be met in order to close the financing with Centennial Management Corp. One of those requirements is the conversion of the Local Government Contribution from a straight "grant" to a silent, thirty (30) year, zero interest, zero payment Mortgage to be held by the City of Boynton Beach since they are the entity required to contribute the Local Government funds.

At the end of the thirty (30) year term, the City can forgive the debt and release any pay back obligation or they can request repayment of the contribution. It operates similarly to Home Ownership Down Payment Assistance grant in that it acts as a securing document, not an actual repayment mortgage.

In order to move forward with the 9% LIHTC loan closing for the Ocean Breeze East project, the CRA must approve the First Amendment to the Purchase and Development Agreement (see Attachment III) and agree to repay the City the full amount of the City's \$567,500 Local Government Contribution in accordance with the loan documents.

##### **FISCAL IMPACT:**

FY 2017-2018 Budget, Line Item 02-58200-406, \$567,000

**CRA PLAN/PROJECT/PROGRAM:**

2016 Boynton Beach Community Redevelopment Plan, Heart of Boynton District (pages 105-118)

**CRA BOARD OPTIONS:**

Approve and execute the First Amendment to the Purchase and Development Agreement with Ocean Breeze East Apartments, LLC to provide the funding for the Local Government Contribution as required under the 9% Low Income Housing Tax Credit Program application for the Ocean East Project with Centennial Management Corporation.

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**ATTACHMENTS:**

**Description**

- ▣ **Attachment I - Purchase and Development Agreement**
- ▣ **Attachment II - Executed ILA**
- ▣ **Attachment III - First Amendment to Purchase and Development Agreement and Exhibits**

## PURCHASE AND DEVELOPMENT AGREEMENT

This Purchase and Development Agreement (hereinafter "Agreement") is made and entered into as of the Effective Date (hereinafter defined), by and between BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY, a public agency created pursuant to Chapter 163, Part III, of the Florida Statutes (hereinafter "SELLER") and OCEAN BREEZE EAST APARTMENTS LLC or its affiliated assignee (hereinafter "PURCHASER", and together with the SELLER, the "Parties").

In consideration of TEN DOLLARS AND 00/100 DOLLARS (\$10.00) and the mutual covenants and agreements herein set forth, the receipt and sufficiency of which is hereby acknowledged the Parties hereto agree as follows:

1. PURCHASE AND SALE/PROPERTY. SELLER agrees to sell and convey to PURCHASER and PURCHASER agrees to purchase and acquire from SELLER, on the terms and conditions hereinafter set forth, the real property legally described in Exhibit "A," attached hereto (hereinafter the "Property"). The Parties intend that the purchase and sale and ensuing redevelopment of the Property will be effected in order to reduce slum and blight and to enable the construction of an affordable new housing community as set forth herein (the "Project") on the site of the former housing project known as Ocean Breeze East.

2. PURCHASE PRICE AND PAYMENT. The Purchase Price for the Property shall be EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$800,000.00) to be paid in full at Closing. SELLER has complied with Section 163.380, Florida Statutes, in proceeding with the sale of the Property to PURCHASER.

3. DEPOSITS. An Initial Deposit in the amount of TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00) (hereinafter "Initial Deposit") shall be deposited with Lewis, Longman & Walker, P.A. (hereinafter "Escrow Agent") within two (2) business days following execution hereof by the Parties. The Initial Deposit shall be fully refundable to PURCHASER, if prior to the expiration of the Feasibility Period (as hereinafter defined), the PURCHASER advises SELLER in writing that it does not intend to complete the purchase of the Property.

3.1 Second Deposit. An additional deposit in the amount of TWENTY-FIVE THOUSAND AND 00/100 (\$25,000.00), which together with the Initial Deposit shall be referred to as the "Deposit," shall be deposited with the Escrow Agent, at the end of the Feasibility Period (as hereinafter described). The Deposit shall be non-refundable to PURCHASER, except upon (i) failure by SELLER to satisfy any conditions precedent to closing; or (ii) default by SELLER hereunder.. All interest accruing on the Deposit, if any, shall be credited to the Party entitled to retain the Deposit in the event of the cancellation or termination hereof. At closing, the Purchase Price shall be payable in cash, less the Deposit, and subject to prorations and adjustments set forth herein.

4. EFFECTIVE DATE. The date of this Agreement (the "Effective Date") shall be the date when the last one of the SELLER and PURCHASER has signed this Agreement.

5. CLOSING. The PURCHASER'S obligation to close on the purchase of the Property is contingent on the following:

a) PURCHASER's submittal of a formal application for an allocation of 9% Low Income Housing Tax Credit's (LIHTC) from Florida Housing Finance Corporation (the "Allocation") prior to the last date of the applicable Florida Housing Request for Applications period ("RFA") which is estimated to be not later than December 28, 2017 (the "2017 Tax Credit Application Period");

b) Seller's delivery of marketable title to the Property to PURCHASER subject only to the Permitted Exceptions as set forth herein.

6. CLOSING DATE. PURCHASER shall make every reasonable effort to close on or before January 31, 2018, at such location to which the parties may mutually agree in writing. In the event closing is delayed for any reason, it is agreed that the Agreement shall terminate on June 30, 2018, if closing has not occurred.

7. TITLE TO BE CONVEYED. At Closing, SELLER shall convey to PURCHASER, by Special Warranty Deed complying with the requirements of the Title Commitment (hereinafter defined), valid, good, marketable and insurable title in fee simple to the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, restrictions and other conditions except only the following (collectively, the "Permitted Exceptions"): (a) general real estate taxes and special assessments for the year of Closing and subsequent years not yet due and payable; (b) covenants, conditions, easements, dedications, rights-of-way and matters of record included on the Title Commitment or shown on the Survey (as hereinafter defined), to which PURCHASER fails to object, or which PURCHASER agrees to accept.

8. INVESTIGATION OF THE PROPERTY. For a period of thirty (30) days from the Effective Date ("Feasibility Period"), PURCHASER and PURCHASER'S agents, employees, designees, Contractors, surveyors, engineers, architects, attorneys and other consultants (collectively, "Agents"), shall have the right, at PURCHASER'S expense, to make inquiries of, and meet with members of Governmental Authorities regarding the Property and to enter upon the Property, at any time and from time to time with reasonable notice to SELLER and so long as said investigations do not result in a business interruption, to perform any and all physical tests, inspections, and investigations of the Property, including but not limited to Phase I and Phase II environmental investigations, which PURCHASER may deem necessary. During the Feasibility Period, PURCHASER may elect, in PURCHASER'S sole and absolute discretion, to terminate this Agreement. If PURCHASER elects to terminate this Agreement in accordance with this Section, PURCHASER shall: (i) leave the Property in substantially the condition existing on the Effective Date, subject to such disturbance as was reasonably necessary or convenient in the testing and investigation of the Property; (ii) to the extent practicable, repair and restore any damage caused to the Property by PURCHASER'S testing and investigation; and (iii) release to SELLER, at no cost, all reports and other work generated as a result of the PURCHASER'S testing and investigation.

PURCHASER hereby agrees to indemnify and hold SELLER harmless from and against all claims, losses, expenses, demands and liabilities, including, but not limited to, reasonable attorney's fees, for nonpayment for services rendered to PURCHASER (including, without limitation, any construction liens resulting therefrom) or for damage to persons or property (subject to the limitation on practicability provided above) arising out of PURCHASER'S investigation of the Property. PURCHASER'S obligations under this Section shall survive the termination, expiration or Closing of this Agreement.

8.1 Seller's Documents. SELLER shall deliver to PURCHASER the following documents and instruments within five (5) days of the Effective Date of this Agreement: any existing title policies, appraisals, copies of any reports or studies (including environmental, engineering, surveys, soil borings and other physical reports) in SELLER'S possession or control with respect to the physical condition of the Property, copies of all permits, authorizations and approvals issued by Governmental Authorities for the Property and any correspondence which discloses claims, allegations or adverse information regarding the Property or SELLER with respect to the Property.

8.2 Title Review. Within thirty (30) days of the Effective Date, PURCHASER's counsel, as closing agent for the transaction contemplated herein (the "Closing Agent") shall obtain, at the PURCHASER'S expense, from a Title Company chosen by PURCHASER (hereinafter "Title Company"), a Title Commitment covering the Property and proposing to insure PURCHASER in the amount of the Purchase Price subject only to the Permitted Exceptions, together with complete and legible copies of all instruments identified as conditions or exceptions in Schedule B of the Title Commitment. PURCHASER shall examine the Title Commitment and deliver written notice to SELLER no later than fifteen (15) days after receipt of the Title Commitment notifying SELLER of any objections PURCHASER has to the condition of title (hereinafter "PURCHASER'S Title Objections"). If PURCHASER fails to deliver PURCHASER'S Title Objections to SELLER within the aforesaid review period, title shall be deemed accepted subject to the conditions set forth in the Title Commitment. If PURCHASER timely delivers the PURCHASER'S Title Objections, then SELLER shall have thirty (30) days to diligently and in good faith undertake all necessary activities to cure and remove the PURCHASER'S Title Objections (hereinafter "Cure Period"). Notwithstanding anything to the contrary in this Section, SELLER shall have an affirmative duty to satisfy all title requirements which are liquidated claims, outstanding mortgages, judgments, taxes (other than taxes which are subject to adjustment pursuant to this Agreement), or are otherwise curable by the payment of money without resort to litigation (collectively, the "Mandatory Objections"), which may, at SELLER'S election, be done at Closing by the Closing Agent's withholding of the applicable amount from the proceeds of sale. In the event that SELLER is unable to cure and remove, or cause to be cured and removed, the PURCHASER'S Title Objections which are not Mandatory Objections within the Cure Period to the satisfaction of PURCHASER, then PURCHASER, in PURCHASER'S sole and absolute discretion, shall have the option of: (i) extending the Cure Period and the Closing for one additional thirty (30) day period at no cost to PURCHASER, (ii) accepting the Title to the Property as of the time of Closing; or (iii) canceling and terminating this Agreement, in which case, any Deposits shall be returned to PURCHASER and the Parties shall have no further obligations or liability hereunder, except for

those expressly provided herein to survive termination of this Agreement.

Prior to the Closing, PURCHASER shall have the right to cause the Title Company to issue an updated Title Commitment ("Title Update") covering the Property. If any Title Update contains any conditions which did not appear in the Title Commitment, and such items render title unmarketable, PURCHASER shall have the right to object to such new or different conditions in writing prior to Closing. All rights and objections of the Parties with respect to objections arising from the Title Update shall be the same as objections to items appearing in the Title Commitment, subject to the provisions of this Section.

8.3 Survey Review. PURCHASER, at PURCHASER'S expense, may obtain a current boundary survey (the "Survey") of the Property, indicating the number of acres comprising the Property to the nearest 1/100th of an acre. If the Survey discloses encroachments on the Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, covenants of this Agreement, or applicable governmental regulations, the same shall constitute a title defect and shall be governed by the provisions of Section 8.2 concerning title objections.

9. CONDITIONS TO CLOSING. PURCHASER shall not be obligated to close on the purchase of the Property unless each of the following conditions (collectively, the "Conditions to Closing") are either fulfilled or waived by PURCHASER in writing:

9.1 Representations and Warranties. All of the representations and warranties of SELLER contained in this Agreement shall be true and correct as of Closing.

9.2 Pending Proceedings. At Closing, there shall be no actions, suits, proceedings or investigations pending or threatened against Seller or the Property affecting any portion of the Property, which has not been disclosed, prior to closing, and accepted by PURCHASER.

9.3 Compliance with Laws and Regulations. The Property shall be in compliance with all applicable federal, state and local laws, ordinances, rules, regulations, codes, requirements, licenses, permits and authorizations as of the date of Closing.

10. CLOSING DOCUMENTS. The SELLER shall prepare, or cause to be prepared, the Closing Documents set forth in this Section, except for documents prepared by the Title Company. At Closing, SELLER shall execute and deliver, or cause to be executed and delivered to PURCHASER the following documents and instruments:

10.1 Deed and Authorizing Resolutions. SELLER shall furnish a Warranty Deed (the "Deed") conveying to PURCHASER valid, good, marketable and insurable fee simple title to the Property free and clear of all liens, encumbrances and other conditions of title other than the

Permitted Exceptions, together with such resolutions or other applicable authorizing documents evidencing approval of the transaction by the SELLER's governing body as the Closing Agent and the title Company may require.

10.2 Seller's Affidavits. SELLER shall furnish to PURCHASER an owner's affidavit attesting that, to the best of its knowledge, no individual or entity has any claim against the Property under the applicable construction lien law, that the SELLER will not record or enter into documents affecting the Property after the last effective date on the Title Commitment, and that there are no parties in possession of the Property other than SELLER. SELLER shall also furnish to PURCHASER a non-foreign affidavit with respect to the Property. In the event SELLER is unable to deliver its affidavits referenced above, the same shall be deemed an uncured Title Objection.

10.3 Closing Statement. A closing statement setting forth the Purchase Price, all credits, adjustments and prorations between PURCHASER and SELLER, all costs and expenses to be paid at Closing, and the net proceeds due SELLER, which SELLER shall also execute and deliver at Closing.

10.4 Corrective Documents. Documentation required to clear title to the Property of all liens, encumbrances and exceptions, if any, other than Permitted Exceptions.

10.5 Additional Documents. Such other documents as PURCHASER or the Title Company may reasonably request that SELLER execute and deliver, and any other documents required by this Agreement or reasonably necessary in order to close this transaction and effectuate the terms of this Agreement.

## 11. PRORATIONS, CLOSING COSTS AND CLOSING PROCEDURES.

11.1 Prorations. Taxes for the Property shall be prorated through the day before Closing. Cash at Closing shall be increased or decreased as may be required by prorations to be made through the day prior to Closing. Taxes shall be prorated based upon the current year's tax with due allowance made for maximum allowable discount. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill which discloses an actual difference in the amount of the taxes estimated at Closing that exceeds \$1,000.

11.2 Closing Costs. SELLER shall pay for documentary stamps on the deed, recording the deed and any cost associated with curing title. Purchaser shall pay all other closing expenses. Each party shall be responsible for their respective attorneys' fees.

11.3 Closing Procedure. PURCHASER shall fund the Purchase Price subject to the credits, offsets and prorations set forth herein. SELLER and PURCHASER (as applicable) shall execute and deliver to the Closing Agent the Closing Documents. The Closing Agent shall, at

Closing: (i) disburse the sale proceeds to SELLER; (ii) deliver the Closing Documents and a "marked-up" Title Commitment to PURCHASER, and promptly thereafter, record the Deed and other recordable Closing Documents in the appropriate public records.

11.4 Existing Mortgages and Other Liens. At Closing, SELLER shall obtain, or cause to be obtained, satisfaction or release of record of all mortgages, liens and judgments applicable to and encumbering the Property.

12. REPRESENTATIONS, COVENANTS AND WARRANTIES. SELLER hereby represents, covenants and warrants to PURCHASER, as of the Effective Date and as of the Closing Date, as follows:

12.1 Authority. The execution and delivery of this Agreement by SELLER and the consummation by SELLER of the transaction contemplated by this Agreement are within SELLER'S capacity and all requisite action has been taken to make this Agreement valid and binding on SELLER in accordance with its terms. The person executing this Agreement on behalf of SELLER has been duly authorized to act on behalf of and to bind SELLER, and this Agreement represents a valid and binding obligation of SELLER.

12.2 Title. SELLER is and will be on the Closing Date, the owner of valid, good, marketable and insurable fee simple title to the Property, free and clear of all liens, encumbrances and restrictions of any kind, except the Permitted Exceptions (and encumbrances of record which will be discharged at Closing).

12.3 Litigation. There are no actions, suits, proceedings or investigations pending or threatened against Seller or the Property affecting any portion of the Property, including but not limited to condemnation actions.

12.4 Parties in Possession. There are no parties other than SELLER in possession or with a right to possession of any portion of the Property.

12.4 Acts Affecting Property. From and after the Effective Date, SELLER will refrain from (a) performing any grading, excavation, construction, or making any other change or improvement upon or about the Property; (b) creating or incurring, or suffering to exist, any mortgage, lien, pledge, or other encumbrances in any way affecting the Property other than the Permitted Exceptions (including the mortgages, liens, pledges, and other encumbrances existing on the Effective Date) and (c) committing any waste or nuisance upon the Property.

13. DEFAULT PRIOR TO CLOSING.

13.1 PURCHASER'S Default Prior to Closing. In the event that this transaction fails to close due to a wrongful refusal to close or default on the part of PURCHASER, SELLER shall be entitled to terminate this Agreement and retain the Deposit, and neither PURCHASER nor SELLER shall have any further obligation or liabilities under this Agreement, except for those

expressly provided to survive the termination of this Agreement; provided, however, that PURCHASER shall also be responsible for the removal of any liens asserted against the Property by persons claiming by, through or under PURCHASER.

13.2 SELLER'S Default Prior to Closing. In the event that SELLER fails to fully and timely perform any of its obligations and covenants hereunder prior to Closing or if SELLER is in breach of any representations herein prior to closing, PURCHASER may, at its option declare SELLER in default under this Agreement in which event PURCHASER's rights shall include the right to demand specific performance of the provisions of this Agreement.

13.3 Notice of Default Prior to Closing. Prior to declaring a default prior to closing and exercising the remedies described in this Section, the non-defaulting Party shall issue a notice of default to the defaulting Party describing the event or condition of default in sufficient detail to enable a reasonable person to determine the action necessary to cure the default. The defaulting Party shall have fifteen (15) days from delivery of the notice during which to cure the default, provided, however, that as to a failure to close, the cure period shall only be three (3) business days from the delivery of notice. Both Parties agree that if an extension is requested, such extension shall not be unreasonably withheld. If the default has not been cured within the aforesaid period, the non-defaulting Party may exercise the remedies described above.

13.4 Survival. The provisions of this Section 13 shall survive the termination of this Agreement.

14. NOTICES. All notices required in this Agreement must be in writing and shall be considered delivered when received by certified mail, return receipt requested, or personal delivery to the following addresses:

If to Seller: Boynton Beach Community Redevelopment Agency  
Executive Director, Michael Simon  
710 N. Federal Highway  
Boynton Beach, Florida 33435

With a copy to: Kenneth Dodge, Esquire  
Lewis, Longman & Walker, P.A.  
515 North Flagler Drive, Suite 1500  
West Palm Beach, Florida 33401

If to Purchaser: Ocean Breeze East Apartments LLC  
Attn.: Lewis Swezy  
7735 NW 146 Street, Suite 306  
Miami Lakes, FL 33016

With a copy to: James Hurchalla, Esq.  
888 E Las Olas Blvd  
Fort Lauderdale, FL 33301

15. BINDING OBLIGATION/ASSIGNMENT. The terms and conditions of this Agreement are hereby made binding on, and shall inure to the benefit of, the successors and permitted assigns of the Parties hereto. SELLER may not assign its interest in this Agreement without the prior written consent of PURCHASER, which shall not be unreasonably withheld. This Agreement may be freely assigned by PURCHASER to an affiliated assignee of PURCHASER, and thereafter PURCHASER'S assignee shall be obligated to close the transaction contemplated herein as if such assignee were the original party to this Agreement. Any assignment by PURCHASER to an unaffiliated party shall be subject to the written approval of SELLER, which shall not be unreasonably withheld.

16. RISK OF LOSS. In the event the condition of the Property, or any part thereof, is materially altered by an act of God or other natural force beyond the control of SELLER, PURCHASER may elect, as its sole option, to terminate this Agreement and receive a refund of the Deposit and the parties shall have no further obligations under this agreement, or PURCHASER may accept the Property without any reduction in the value of the Property. In the event of the institution of any proceedings by any Governmental Authority which shall relate to the proposed taking of any portion of the Property by eminent domain prior to Closing, or in the event of the taking of any portion of the Property by eminent domain prior to Closing, SELLER shall promptly notify PURCHASER and PURCHASER shall thereafter have the right and option to terminate this Agreement by giving SELLER written notice of PURCHASER's election to terminate within fifteen (15) days after receipt by PURCHASER of the notice from SELLER. SELLER hereby agrees to furnish PURCHASER with written notice of a proposed condemnation within two (2) business days after SELLER's receipt of such notification. Should PURCHASER terminate this Agreement, the Deposit shall immediately be returned to PURCHASER and thereafter the Parties shall be released from their respective obligations and liabilities hereunder. Should PURCHASER elect not to terminate, the parties hereto shall proceed to Closing and SELLER shall assign all of its right, title and interest in all awards in connection with such taking to PURCHASER.

17. BROKER FEES. The Parties hereby confirm that neither of them has dealt with any broker in connection with the transaction contemplated by this Agreement. Each Party shall indemnify, defend and hold harmless the other Party from and against any and all claims, losses, damages, costs or expenses (including, without limitation, attorney's fees) of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by either Party or on its behalf with any broker or finder in connection with this Agreement. However, SELLER'S indemnification obligations shall not exceed the statutory limits provided within Section 768.28, Florida Statutes, and CRA does not otherwise waive its sovereign immunity rights. The provisions of this Section shall survive Closing or termination of this Agreement.

18. ENVIRONMENTAL CONDITIONS. To the best of SELLER'S knowledge, the Property and the use and operation thereof are in compliance with all applicable county and governmental laws, ordinances, regulations, licenses, permits and authorizations, including, without limitation, applicable zoning and environmental laws and regulations.

19. DEVELOPMENT AND SALE OF THE PROPERTY. SELLER and PURCHASER acknowledge that the Property is being sold to PURCHASER for the sole purpose of developing a multi-family affordable development as described herein.

19.1 SELLER DESIGN APPROVAL. The PURCHASER agrees that the SELLER shall have the right to reasonably approve the design of the Project. PURCHASER shall submit plans to the SELLER for review prior to submission to the City for formal site plan approval. SELLER shall provide comments or approval of the design to PURCHASER at its next regularly scheduled Board meeting after PURCHASER submits plans for approval.

19.2 REQUIRED PROJECT IMPROVEMENTS. The Project shall include the following elements and improvements:

a) If requested or required by the SELLER, the Project will be designed to be a gated community to enhance the value of the Property. A decorative fence may be installed around the buildings comprising the Project to create an enclosed space. If requested or required by the SELLER, a mechanical gate will be installed at the entry and exit of the Project requiring proof of residency for entry. Gates shall not be required if space required for gates (including stacking and turn-around requirements) is impractical or would negatively impact other elements of the site plan including the unit count.

b) The Project will have a minimum of a 6' sidewalk constructed around the entirety of the Project.

c) The Project will include street lights installed along the entire perimeter of the Project that are complimentary to those existing along the east side of N. Seacrest Boulevard adjacent to the Property.

d) The Project will include on-street parking spaces, where feasible.

e) The Project will include street and site trees that exceed the size and caliper requirement of the City's Land Development Regulations which will be installed along the entire perimeter of the Project.

f) The Project will include enhanced resident amenities within the proposed project boundaries.

g) The Project will include plaza style open space that exceeds the requirement of the City's Land Development Regulations with landscape, hardscape and accent lighting features preferably located on N. Seacrest Boulevard or at the corner of N. Seacrest Boulevard and NE 7<sup>th</sup> Avenue.

h) The Project will include construction of a three (3) story, 100-123 unit affordable multi-family rental housing development, approximately 2,500 sq.ft. of flex space for a new Neighborhood Officer Program office and community space, which shall be provided to the CRA for said use rent free.

19.3 LOCAL CONTRACTORS: Purchaser commits to prioritize using local contractors and sub-contractors during construction and to make efforts to hire local residents as part of the Project's operations team. These efforts will include, but are not limited to, providing public notice within the CRA area of available contracts and positions and hosting job fairs or other employment opportunities within the community. Prior to and during the construction of the Project, the Developer shall:

- a) Hire a job placement consultant during the construction of the Project;
- b) Host a job fair;
- c) Give priority to Contractors that are Locally Owned Small Businesses to participate in the construction of the Project;
- d) Include in all contracts with Contractors requirements that the Contractors use Good Faith Efforts to hire and train City residents to participate in the construction of the Project;
- e) Provide a list of job positions and descriptions to a Community Outreach Partner and agree to give priority to qualified job applicants referred by the Community Outreach Partner to participate in the construction of the Project;
- f) Use Good Faith Efforts to offer permanent job positions resulting from the Project to qualified City residents;
- g) Notify and refer job training and job placement opportunities to the Boynton Beach Community High School and South Tech Academy in Boynton Beach in the event each are able and willing to provide such training; and
- h) Pay or cause to be paid new hires in all permanent post-construction positions residing within the City a minimum of the Living Wage

19.4 Construction Permit Approval. The SELLER will cooperate with the PURCHASER with regard to signing and processing any applications and forms required by the City or other authorities having jurisdiction over the PROPERTY to obtain building permit approval and such other design and construction documents as may be reasonably required by PURCHASER to permit the Project to be constructed and operated. The PURCHASER will be responsible for all costs associated with development and construction of the Project including the formulation of the Project's design and construction documents as well any and all applicable permit fees associated with the Project.

20. FUNDING OPTIONS. BUYER shall have the following options to obtain funding for the Project.

a) PURCHASER shall submit an application for 9% Low Income Housing Tax Credits (LIHTC) from Florida Housing Finance Corporation (FHFC) in the 2017 Tax Credit Application Period.

a) If PURCHASER's application to FHFC during the 2017 Tax Credit Application Period is successful and 9% Tax Credits are awarded to Seller for the Project, then the development of the Project shall commence pursuant to FHFC underwriting schedule.

b) If PURCHASER is NOT successful, and no 9% Tax Credits are awarded through the 2017 Tax Credit Application Period, then SELLER shall, at its option, either: (i) instruct PURCHASER to apply to FHFC for a SAIL loan and/or 9% LIHTC funds through FHFC's 2018 RFA cycle ("2018 Tax Credit Application Period"); or (ii) instruct PURCHASER to obtain non-competitive Tax Exempt Multifamily Revenue Bond funding from FHFC or from the Palm Beach County Housing Finance Authority as well as non-competitive 4% Tax Credits from FHFC, and SELLER shall provide Tax Increment Revenue (TIR) funding (TIR) to the PURCHASER for the Project in an amount to cover the difference between total Project development costs and the sum total of all Bond and 4% LIHTC funds received by Purchaser for the Project, which amount of TIR funding provided by Seller shall not exceed \$350,000.00 per year over a fifteen (15) year period without the approval of Seller (hereinafter "Gap Funding"). If Seller instructs Purchaser to pursue option (ii) above, SELLER shall return to PURCHASER an amount equal to the \$800,000 purchase price paid for the Property and provide \$500,000 in local government grant as proffered in PURCHASER's RFA response.

c) If SELLER instructs PURCHASER to apply for SAIL funds in the 2018 Tax Credit Application Period and SAIL funds are awarded to PURCHASER for the Project, then the development of the Project shall commence pursuant to FHFC underwriting schedule.

d) If Seller instructs PURCHASER to apply for 9% LIHTC in the 2018 Tax Credit Application Period, and 9% Tax Credits are awarded to the PURCHASER for the Project through the 2018 cycle, the development of the Project shall commence pursuant to FHFC underwriting schedule. If Seller instructs Purchaser to apply for both SAIL funds and 9% LIHTC in the 2018 Tax Credit Application Period, the development of the Project shall commence pursuant to FHFC underwriting schedule at the earliest of either SAIL funds or 9% Tax Credits being awarded to the PURCHASER for the Project.

e) If PURCHASER is instructed to apply for SAIL funds and/or 9% LIHTC in 2018 and neither is successful, and no SAIL loan and no 9% Tax Credits are awarded to PURCHASER for the Project, the development of the Project shall commence pursuant to Section 21 and SELLER shall:

i) Instruct PURCHASER to obtain non-competitive Tax Exempt Multifamily Revenue Bond funding from FHFC or from the Palm Beach County Housing Finance Authority as well as non-competitive 4% Tax Credits from FHFC, and

ii) Provide TIR funding to the Purchaser for the Project in an amount to cover the difference between total Project development costs and the sum total of all Bond and 4% LIHTC funds received by Purchaser for the Project, which amount of TIR funding provided by Seller shall not exceed \$350,000.00 per year over a fifteen (15) year period without the approval of Seller (hereinafter "Gap Funding") . If Seller instructs Purchaser to pursue option (ii) above, shall return to PURCHASER an amount equal to the \$800,000 purchase price paid for the Property and provide \$500,000 in local government grant as proffered in PURCHASER's RFP response.

g) SELLER shall support PURCHASER in its effort to obtain funding from FHFC by giving Local Government Area of Opportunity preference to PURCHASER when PURCHASER applies to FHFC in both 2017 and 2018 Tax Credit Application Periods for SAIL or 9% LIHTC funding for the Project. SELLER shall in a timely fashion execute this Agreement as well as other documents required to be submitted as part of PURCHASER's applications to FHFC pursuant to this Agreement and SELLER shall provide a \$567,500 Local Government Contribution to the Purchaser for the Project, which funds shall only be disbursed upon award of either SAIL or 9% LIHTC funds to PURCHASER for the Project.

h) If the Project is funded by 9% LIHTCs or SAIL, financing will be obtained and documentation provided to the CRA within the time frame set forth in FHFC's credit underwriting procedures for the SAIL with bonds and 4% LIHTC or 9% LIHTC as the case may be.

21. DEVELOPMENT TIMELINE FOR TAX INCREMENT FUNDING OPTION. PURCHASER shall commence development of the Project by conducting the following actions pursuant to the development timeline set forth in this Section. Completion of each action set forth below must be documented in writing, and all such documentation must be provided to SELLER upon completion of each action.

a) PURCHASER shall submit an application and all necessary supporting documents to the City for site plan approval within ninety (90) days of notice to PURCHASER from FHFC that it has **not** received either SAIL or 9% LIHTC funding in either the 2017 and 2018 Tax Credit Application Periods and written confirmation by SELLER that the Project will be funded pursuant to Section 20(f) above.

b) Purchaser shall submit applications and all necessary supporting documents to the City for a building permit within one hundred twenty (120) days of the City's approval of the site plan for the Project. Proof of permit application fees paid will be provided to the SELLER upon submission to the City. PURCHASER shall provide a copy of the building permit for the Project upon issuance of the same by the City.

c) SELLER shall assist PURCHASER's request for site plan approval and building permit issuance to the extent practicable and permitted by law and to the extent the same is consistent with the terms of this Agreement.

d) If the Project is funded by TIR, PURCHASER shall obtain non-competitive Tax Exempt Multifamily Revenue Bond funding from FHFC or from the Palm Beach County Housing Finance Authority as well as non-competitive 4% Tax Credits from FHFC. Financing shall be obtained and documentation provided to the CRA within the time frame set forth in the HFA's and/or FHFC's credit underwriting procedures for the SAIL with bonds and the 4% LIHTC.

e) Regardless of funding source, PURCHASER shall conduct a groundbreaking ceremony and commence construction of the Project within sixty (60) days following the issuance of a building permit by the City for the Project. SELLER will be in attendance at the ceremony with limited participation in its planning.

d) Temporary or permanent certificate of occupancy shall be obtained within twenty-four (24) months following issuance of the building permit for the Project by the City, regardless of funding source.

g) Purchaser shall diligently pursue and use all reasonable efforts to obtain all necessary approvals for the construction and development of the Project. Upon receipt of the building permit for the Project from the City, PURCHASER shall diligently pursue completion of construction of the project regardless of funding source.

22. DEFAULT AFTER CLOSING. Failure of PURCHASER to strictly comply with the any of the provisions set forth in this Agreement after the Closing shall constitute a default and breach of this Agreement. If PURCHASER has not provided SELLER with written notice explaining the reason or circumstances not under the control of PURCHASER that has prevented PURCHASER from complying with the provisions of this Agreement and SELLER has not agreed in writing to same, then the PURCHASER shall be required to reconvey the Property to the SELLER, and this Agreement shall be terminated, and SELLER shall be released from any and all obligations under this Agreement, and, assuming the SELLER has not otherwise returned to Purchaser an amount equal to the purchase price for the Property pursuant to Section 20(b) above or any other provisions of this Agreement, SELLER shall reimburse PURCHASER the purchase price of the property described herein.

23. REVERTER CLAUSE. The Warranty Deed of conveyance shall contain a reverter clause that shall run with the Property until the Project is completed and the PURCHASER has obtained a Certificate of Occupancy for the Project. The reverter clause shall require the Property to be reconveyed to SELLER by quit claim deed should PURCHASER default under the terms of this Agreement. In the event the SELLER exercises its right of reverter, SELLER shall reimburse PURCHASER the purchase price of the property described herein. To carry out the terms of this paragraph, PURCHASER shall execute a reverter agreement in the form set forth on Exhibit "B".

24. RIGHT OF FIRST REFUSAL. In the event SELLER provides TIRF funds to PURCHASER for the Project under this Agreement, PURCHASER shall grant SELLER a Right of First Refusal for repurchase of the Property which shall be in full force and effect and shall not terminate until PURCHASER obtains its Certificate of Occupancy. The terms and conditions of this right shall be as follows:

(i) If Purchaser receives an offer to purchase the Property pursuant to a written contract or letter of intent, Purchaser shall give Seller notice of the offer by delivering a copy of the contract or letter of intent to Seller ("Notice") pursuant to the Notice requirements of Section 14 above.

(ii) Within ten (10) days of receipt of the Notice, Seller shall either waive or exercise its right of first refusal. If Seller elects to exercise its right of first refusal, Seller shall, within ten (10) days after receipt of the Notice, deliver to Purchaser an agreement to purchase the Property on the same terms as set forth in the Notice including the delivery of a deposit (if applicable), and upon receipt by the Purchaser of the foregoing from the Seller, Purchaser and Seller shall enter into a Purchase and Sale Agreement pursuant to the same terms and conditions as the Notice.

(iii) If Seller fails to exercise or waive its right of first refusal in accordance with the terms and conditions stated herein, within ten (10) days after receipt of the Notice, then Seller's right of first refusal shall be deemed to have been waived.

25. MISCELLANEOUS.

25.1 General. This Agreement, and any amendment hereto, may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall, together, constitute one and the same instrument. The section and paragraph headings herein contained are for the purposes of identification only and shall not be considered in construing this Agreement. Reference to a Section shall be deemed to be a reference to the entire Section, unless otherwise specified. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by Parties. This Agreement sets forth the entire agreement between the Parties relating to the Property and all subject matter herein and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Parties. This Agreement shall be interpreted in accordance with the laws of the State of Florida. The Parties hereby agree that jurisdiction of any litigation brought arising out of this Agreement shall be in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, or, should any cause of action be limited to federal jurisdiction only, in the United States District Court for the Southern District Court of Florida.

25.2 Computation of Time. Any reference herein to time periods which are not measured in business days and which are less than six (6) days, shall exclude Saturdays, Sundays and legal holidays in the computation thereof. Any time period provided for in this Agreement which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full business day. Time is of the essence in the performance of all obligations under this Agreement.

Time periods commencing with the Effective Date shall not include the Effective Date in the calculation thereof.

25.3 Waiver. Neither the failure of a party to insist upon strict performance of any of the terms, provisions, covenants, agreements and conditions hereof, nor the acceptance of any item by a party with knowledge of a breach of this Agreement by the other party in the performance of their respective obligations hereunder, shall be deemed a waiver of any rights or remedies that a party may have or a waiver of any subsequent breach or default in any of such terms, provisions, covenants, agreements or conditions. This paragraph shall survive termination of this Agreement and the Closing.

25.4 Construction of Agreement. The Parties to this Agreement, through counsel, have participated freely in the negotiation and preparation hereof. Neither this Agreement nor any amendment hereto shall be more strictly construed against any of the Parties. As used in this Agreement, or any amendment hereto, the masculine shall include the feminine, the singular shall include the plural, and the plural shall include the singular, as the context may require. Provisions of this Agreement that expressly provide that they survive the Closing shall not merge into the Deed.

25.5 Severability. If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law. The provisions of this Section shall apply to any amendment of this Agreement.

25.6 Handwritten Provisions. Handwritten provisions inserted in this Agreement and initialed by SELLER and PURCHASER shall control all printed provisions in conflict therewith.

25.7 Waiver of Jury Trial. As an inducement to PURCHASER agreeing to enter into this Agreement, PURCHASER and SELLER hereby waive trial by jury in any action or proceeding brought by either party against the other party pertaining to any matter whatsoever arising out of or in any way connected with this Agreement.

25.8 Attorneys Fees and Costs. Should it be necessary to bring an action to enforce any of the provisions of this Agreement, reasonable attorneys' fees and costs, including those at the appellate level, shall be awarded to the prevailing party.

25.9 Binding Authority. Each party hereby represents and warrants to the other that each person executing this Agreement on behalf of the PURCHASER and SELLER has full right and lawful authority to execute this Agreement and to bind and obligate the party for whom or on whose behalf he or she is signing with respect to all provisions contained in this Agreement.

25.10 No Recording. This Agreement shall not be recorded in the Public Records of Palm Beach County, Florida.

25.11 Survival. The covenants, warranties, representations, indemnities and undertakings of SELLER set forth in this Agreement, shall survive the Closing, the delivery and recording of the Deed and PURCHASER'S possession of the Property.

25.12 SELLER Attorneys' Fees and Costs. SELLER acknowledges and agrees that SELLER shall be responsible for its own attorneys' fees and all costs, if any, incurred by SELLER in connection with the transaction contemplated by this Agreement.

25.13 Public Records. SELLER is public agency subject to Chapter 119, Florida Statutes. The PURCHASER shall comply with Florida's Public Records Law. Specifically, the PURCHASER shall:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the SELLER in connection with this Agreement;
- b. Provide the public with access to such public records on the same terms and conditions that the SELLER would provide the records and at a cost that does not exceed that provided in chapter 119, Fla. Stat., or as otherwise provided by law;
- c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and
- d. Meet all requirements for retaining and providing public records and transfer to the SELLER, at no cost, all public records in possession of the PURCHASER upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the SELLER in a format that is compatible with the information technology systems of the SELLER.

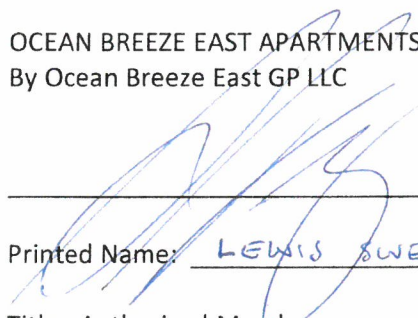
SELLER shall, upon request, provide guidance to PURCHASER as to the public records keeping and reporting duties that are imposed upon PURCHASER as provided above and shall take all steps reasonably required to assist PURCHASER in not violating them. The failure of PURCHASER to comply with the provisions set forth in this Agreement shall constitute a Default and Breach of this Agreement. If PURCHASER fails to cure the default within seven (7) days' notice from the SELLER the SELLER may terminate the Agreement.

SIGNATURES APPEAR ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective date.

**PURCHASER:**

OCEAN BREEZE EAST APARTMENTS LLC  
By Ocean Breeze East GP LLC

  
Printed Name: LEWIS SWERY

Title: Authorized Member

Date: 12/08/2017

**SELLER:**

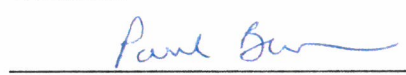
BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY

  
Printed Name: Steven B. Grant

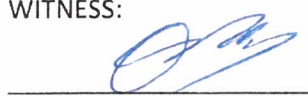
Title: Chair

Date: 12/15/17

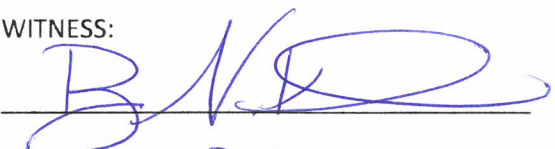
**WITNESS:**

  
Printed Name: PAUL BILTON

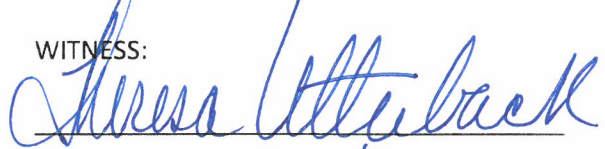
**WITNESS:**

  
Printed Name: KAMLESH THAKUR

**WITNESS:**

  
Printed Name: BONNIE NICKLIEN

**WITNESS:**

  
Printed Name: Theresa Herback

Approved as to form and legal sufficiency:

  
CRA Attorney

## EXHIBIT "A"

### LEGAL DESCRIPTION

PARCEL 1: A portion of Block C of the Plat of BOYNTON HILLS, Boynton Beach, Palm Beach County, Florida, according to the Plat thereof, as recorded in Plat Book 4, at Page 51, of the Public Records of Palm Beach County, Florida, described as follows:

Commence at the Northeast corner of Lot 147 of said Block C; thence South (assumed), along the East line of said Lot 147 a distance of 20.00 feet to the Point of Beginning; thence continue South, along the East line of said Block C, 228.36 feet to the Southeast corner of Lot 134 of said Block C; thence West, along the South line of said Lot 134, a distance of 100 feet to the East line of Lots 135 and 136 of said Block C; thence South, along said East line and the Southerly prolongation thereof, 189.19 feet to the centerline of Grand Circle "N", being a curve concave Southwesterly having a radius of 591.65 feet, (a line radial to said curve bears North 41° 04' 57" East); thence Northwesterly, along the arc of said curve 5.02 feet through a central angle of 0° 29' 11" to the intersection with the Northerly prolongation of the East line of Lot 129 of said Block C (a line radial to said curve at the said point of intersection bears North 40° 35' 46" East); thence South along the said Northerly prolongation of the East line of said Lot 129, a distance of 57.60 feet to the Southeast corner of said Lot 129; thence West, along the South line of said Lot 129 and the South line of said Lot 128 a distance of 150.00 feet to the West line of said Lot 128; thence North, along said West line 15.00 feet to the South line of Lots 127 and 126 of said Block C; thence West, along the said South line of Lots 127 and 126, a distance of 100.00 feet to the West line of said Lot 126; thence North, along said West line, 45.00 feet to the South line of Lots 124 and 123 of said Block C; thence West along said South line, 100.00 feet to the West line of said Lot 123; thence North along said West line and the Northerly prolongation thereof, 193.23 feet to the intersection with the Westerly prolongation of the South line of Lot 141 of said Block C; thence North 76°43'35" East along said Westerly prolongation, 157.99 feet to the West line of said Lot 141; thence North, along said West line, 101.25 feet to the North line of said Lot 141; thence North 83° 17' 55" East, along the North line of Lots 141 and 142 of said Block C, a distance of 75.51 feet to a line 25 feet West of and parallel with the East line of Lot 150 of said Block C; thence North, along said parallel line 92.44 feet to the North line of Lots 150, 149, 148 and 147 of said Block C; thence East, along said North line 205.00 feet to the beginning of a curve concave Southwesterly having a radius of 20.00 feet and a central angle of 90° 00' 00"; thence Southeasterly along the arc of said curve, 31.42 feet to the Point of Beginning aforescribed.

and

PARCEL 2: Lots 3 through 12 inclusive, in Block 1, Lots 1 and 2, in Block 1, LESS all that portion of lots 1 and 2 lying West of the East right-of-way line for "Seacrest Boulevard" as shown on Road Plat Book 5, at Page 182 and less a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the Plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

and

PARCEL 3: and the South Half (S1/2) of the East Half (E1/2) of Lot 2 of Subdivision of the West Half (W1/2) of the Southeast Quarter (SE1/4) of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; Less parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642 and LESS the right-of-way for "Seacrest Boulevard" as shown on Road Plat Book 5, at Page 182, according to the Plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

## EXHIBIT B REVERTER AGREEMENT

This REVERTER AGREEMENT is dated as of this 15<sup>th</sup> day of December, 2017, by and between the BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY (the "SELLER") and OCEAN BREEZE EAST APARTMENTS, LLC or its affiliated assignee (the "PURCHASER"; and together with the SELLER, the "Parties").

### RECITALS

A. The SELLER has conveyed to the PURCHASER that certain real estate described on Exhibit "A" attached hereto (the "Property") pursuant to a Deed of even date herewith between the SELLER and PURCHASER.

B. The PURCHASER has agreed to construct certain Improvements on the Property in accordance with the guidelines and criteria set forth in the Purchase and Development Agreement ("Agreement") executed by the Parties.

C. The Deed shall provide that if the PURCHASER does not timely construct the Improvements as set forth in this Agreement, then the Property shall revert to the SELLER.

NOW THEREFORE, in consideration of the transfer of the Property to the PURCHASER and other consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. PURCHASER agrees at its sole cost and expense to complete the construction of the Improvements in accordance with the terms and timeframes set forth in the Agreement.

2. In the event the Improvements are not timely completed (unless extended pursuant to the terms of the Agreement), the Property shall revert to and thereafter become fee simple real estate owned by the SELLER. Within 30 days of the written request of the SELLER, the PURCHASER will provide a quit claim deed to the Property in form and substance acceptable to the SELLER evidencing the reconveyance of the Property. In the event the SELLER exercises its right of reverter, SELLER shall reimburse PURCHASER the purchase price of the property described herein.

3. During the construction of the Improvements, PURCHASER will not place any additional liens or encumbrances on the Property except as consented to by the SELLER. In that regard, the SELLER agrees not to unreasonably withhold its consent to any construction loan financed with a commercial bank or similar lender intended to fund the construction and development of the Improvements. In such an event, the SELLER will enter into a Subordination Agreement satisfactory to such lender. Upon completion of the Improvements satisfactory to

the SELLER, the SELLER agrees to record a release of the reverter rights described herein.

This Agreement shall be binding upon the parties hereto and shall be binding upon and inure to the benefit of their successors and assigns.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.

This Agreement may only be modified or amended by a written agreement signed by authorized representatives of the parties hereto.

WITNESS the following signatures as of the year and date first above written.

**PURCHASER:**

OCEAN BREEZE EAST APARTMENTS, LLC

Printed Name: LEWIS/SWEZY

Title: MANAGER OF MANAGER

Date: 12/12/2017

**SELLER:**

BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY

Printed Name: Steven B. Grant

Title: Chairman

Date: 12/15/17

INTERLOCAL AGREEMENT BETWEEN CITY OF BOYNTON BEACH AND BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY TO PROVIDE FOR THE PAYMENT OF THE LOCAL GOVERNMENT CONTRIBUTION UNDER THE FLORIDA HOUSING FINANCE CORPORATION STATE APARTMENT LOAN PROGRAM FOR THE PROJECT KNOWN AS THE OCEAN BREEZE EAST PROJECT SITE TO BE DEVELOPED BY OCEAN BREEZE EAST APARTMENTS LLC, PURSUANT TO CHAPTER 420, PART V, SECTIONS 420.5093 - 420.5099, FLORIDA STATUTES, PROVIDING AN EFFECTIVE DATE.

THIS AGREEMENT, made and entered into on the 12<sup>th</sup> day of February 2018 by and between:

CITY OF BOYNTON BEACH, FLORIDA  
a Florida municipal corporation  
100 E. Boynton Beach Boulevard  
Boynton Beach, Florida 33425  
(hereinafter referred to as "CITY")

AND

BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY,  
a Public Agency of the State of Florida  
710 N. Federal Highway  
Boynton Beach, Florida 33435  
(hereinafter referred to as "CRA")

WITNESSETH:

WHEREAS, CITY and CRA ("Parties") desire to encourage Affordable and Workforce Housing development within the City and the CRA; and

WHEREAS, the CRA has determined that the provision of Affordable and Workforce Housing within the CRA furthers the CRA's purpose of eliminating slum and blight; and

WHEREAS, the CRA has approved a financial contribution of five hundred sixty-seven thousand and five hundred dollars (\$567,500.00) in the form of a grant contribution ("Grant") to assist the developer, Ocean Breeze East Apartments LLC ("Grantee"), in the development of certain properties located 700 N. Seacrest Boulevard in Boynton Beach, Florida, as described in Exhibit "A" attached hereto, and

WHEREAS, the Parties desire to enter into an Interlocal Agreement ("Agreement") for the City of Boynton Beach to pay the Grant, on behalf of the CRA, to the "Grantee," under the condition that the Grantee obtains award underwriting approval of a 9% Low Income Housing Tax Credit allocation from the Florida Housing Finance Corporation by June 30, 2018, and

WHEREAS, CITY and CRA have determined that it is mutually beneficial and in the best interests of its citizens and residents to enter into this Agreement; and

WHEREAS, Part I of Chapter 163, Florida Statutes, as amended (the "Florida Interlocal Cooperation Act"), permits the Parties, as public agencies under the Interlocal Cooperation Act, to enter into interlocal agreements with each other to authorize one public agency to exercise, on behalf of the other public agency, jointly held powers, privileges or authorities which each such public agency shares in common and which each might exercise separately, permitting the public agencies to make the most efficient use of their power by enabling them to cooperate on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that accords best with geography, economy, population and other factors influencing the needs and development of such public agencies; and

WHEREAS, this Interlocal Agreement will become effective upon filing with the Clerk of the Court in the Fifteenth Judicial Circuit in accordance with the provisions of the Interlocal Cooperation Act; and

WHEREAS, CITY hereby represents to CRA that it has the authority, pursuant to the Interlocal Cooperation Act, to execute any and all documents necessary to effectuate and to implement the terms of this Agreement; and

WHEREAS, CRA hereby represents to CITY that it has the authority, pursuant to the Interlocal Cooperation Act, to execute any and all documents necessary to effectuate and to implement the terms of this Agreement; and

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the mutual covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

#### **Section 1. RECITALS**

1.01 The above recitals are true and correct and are incorporated herein.

#### **Section 2. TERM OF AGREEMENT**

2.01 This Agreement shall be effective upon the approval of both parties and upon filing with the Clerk of the Court in the Fifteenth Judicial Circuit and shall terminate upon the earlier of the following: 1) the CRA reimbursing the CITY for final payment of the Grant of five hundred sixty-seven thousand and five hundred dollars (\$567,500.00) to Grantee consistent with the terms of this Agreement; or 2) the failure of Grantee to obtain award underwriting approval of a 9% Low Income Housing Tax Credit from Florida Housing Finance Corporation by June 30, 2018.

#### **Section 3. DUTIES AND RESPONSIBILITIES OF THE PARTIES**

3.01 The Parties agree that per Resolution No. \_\_\_, the Grant shall be paid by the CITY to Grantee on behalf of the CRA. The Parties agree further that the CRA will reimburse the CITY for the payment of said Grant, within 30 days of CITY's notice of making payment. Payment shall be made to Grantee upon: 1) Grantee providing evidence that they have been awarded a nine percent (9%) low income tax

credit from the Florida Housing Finance Corporation; and 2) a real estate closing for the sale of the project properties located at 700 N. Seacrest Boulevard in Boynton Beach, Florida, as described in Exhibit "A."

## **Section 5. RECORDS**

5.01 CRA and CITY shall each maintain their own respective records and documents associated with this Agreement in accordance with the requirements set forth in Chapter 119, Florida Statutes. All such records shall be adequate to justify all charges, expenses, and costs incurred in accordance with generally accepted accounting principles. Each party shall have access to the other party's books, records and documents as required in this Agreement for the purpose of inspection or audit during normal business hours during the term of this Agreement and for at least three (3) years after completion of the development of the on the Ocean Breeze East project site located at 700 N. Seacrest Boulevard in Boynton Beach, Florida, as described in Exhibit "A."

## **Section 6. ASSIGNMENT**

6.01 The respective obligations of the parties shall not be assigned, in whole or in part, without the written consent of the other party.

## **Section 7. DEFAULT**

7.02 If either party fails to perform or observe any of the material terms and conditions of this Agreement for a period of ten (10) calendar days after receipt of written notice of such default from the other party, the non-defaulting party may terminate this Agreement. Failure of any party to exercise its right in the event of any breach by the other party shall not constitute a waiver of such rights. No party shall be deemed to have waived any failure to perform by the other party unless such waiver is in writing and signed by the other party. Such waiver shall be limited to the terms specifically contained therein. This section shall be without prejudice to the rights of any party to seek a legal remedy for any breach of the other party as may be available to it in law or equity.

## **Section 8. COMPLIANCE WITH LAWS**

8.01 CITY and CRA shall comply with all statutes, laws, ordinances, rules, regulations and lawful orders of the United States of America, State of Florida and of any other public authority which may be applicable.

## **Section 9. VENUE**

- 9.01 Any and all legal actions necessary to enforce the terms of this Agreement shall be conducted in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, or, if in federal court, in the United States District Court for the Southern District of Florida.

## **Section 10. GOVERNING LAW**

- 10.01 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida.

## **Section 11. ENTIRE AGREEMENT**

- 11.01 This Agreement contains the entire understanding of the parties relating to the subject matter hereof superseding all prior communications between the parties whether oral or written, and this Agreement may not be altered, amended, modified or otherwise changed nor may any of the terms hereof be waived, except by a written instrument executed by both parties. The failure of a party to seek redress for violation of or to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

## **Section 12. SEVERABILITY**

- 12.01 Should any part, term or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby so long as the Parties' rights and obligations contained in this Agreement are not materially prejudiced and the intentions of the Parties can continue to be achieved.

## **Section 13. NOTICES**

- 13.01 Whenever either party desires to give notice to the other, such notice must be in writing and sent by United States mail, return receipt requested, courier, evidenced by a delivery receipt, or by overnight express delivery service, evidenced by a delivery receipt, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice.

CITY: Lori LaVerriere, City Manager  
City of Boynton Beach  
100 E. Boynton Beach Boulevard  
Boynton Beach, FL 33435

CRA: Michael Simon, Executive Director  
Boynton Beach CRA  
710 N. Federal Highway  
Boynton Beach, Florida 33435

Copies To: James A. Cherof  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308

Tara Duhy, Esquire  
Lewis, Longman & Walker, P.A.  
515 North Flagler Drive, Suite 1500  
West Palm Beach, Florida 33401

#### **Section 14. INTERPRETATION**

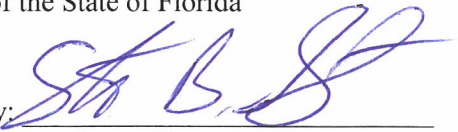
14.01 This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

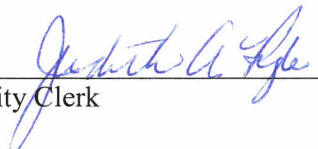
IN WITNESS WHEREOF, the CITY OF BOYNTON BEACH and the BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY have caused these presents to be executed in their respective names by the proper officials the day and year first above written.

**CITY OF BOYNTON BEACH**

a municipal corporation organized and existing under the laws of the State of Florida

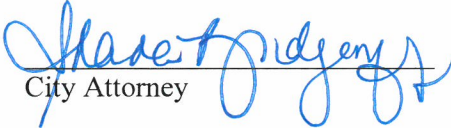
By:   
Steven Grant, Mayor

ATTEST:

  
City Clerk

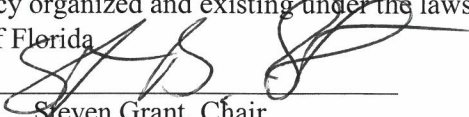


Approved as to form:

  
City Attorney

**BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

a public agency organized and existing under the laws of the State of Florida

By:   
Steven Grant, Chair

Approved as to form:

CRA Attorney

  
\_\_\_\_\_

## EXHIBIT "A"



**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Lots 3 through 12 inclusive, in Block 1, Lots 1 and 2, in Block 1, LESS all that portion of lots 1 and 2 lying West of the East right-of-way line for "Seacrest Boulevard" as shown on Road Plat Book 5, at Page 182 and less a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the Plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida, and the South Half (S1/2) of the East Half (E1/2) of Lot 2 of Subdivision of the West Half (W1/2) of the Southeast Quarter (SE1/4) of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; Less parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642 and LESS the right-of-way for "Seacrest Boulevard" as shown on Road Plat Book 5, at Page 182, according to the Plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

**FIRST AMENDMENT  
TO  
PURCHASE AND DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO PURCHASE AND DEVELOPMENT AGREEMENT** (the “First Amendment”) made as of \_\_\_\_\_, 2019 by and between BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY, a public agency created pursuant to Chapter 163, Part III, of the Florida Statutes (the “Seller”), and OCEAN BREEZE EAST APARTMENTS LLC, a Florida limited liability company (the “Purchaser”).

**WHEREAS**, the parties entered into that certain Purchase and Development Agreement dated effective as of December 15, 2017 (“PDA”);

**WHEREAS**, the PDA contained an error in the legal description of the real property;

**WHEREAS**, pursuant to the PDA, the Purchaser and Seller closed on the purchase and sale of the Property and recorded that certain Warranty Deed on March 2, 2018;

**WHEREAS**, the Purchaser closed on equity financing for the Project in the approximate amount of \$20,594,440 and construction debt financing for the Project in the approximate amount of \$13,700,000 (altogether the equity and construction debt financing is hereby referred to as the “Financing”) and building permits for the Project have been approved;

**WHEREAS**, Purchaser has agreed to repay the City the full amount of the City’s \$567,500 Local Government Contribution in accordance with the loan documents attached hereto as Exhibit A (the “Loan Documents”) and, Lewis V. Swezy, a principal of Purchaser has agreed to provide to the Seller the Completion Guaranty attached hereto as Exhibit B (the “Guaranty”);

**WHEREAS**, the Purchaser and the Seller desire to amend the PDA in accordance with the terms hereof; and

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

1. Capitalized terms herein shall have the meaning assigned to them in the PDA, unless otherwise specifically provided herein.
2. The definition of “Property” in the PDA is amended, as of the date of the Warranty Deed, to identify the property more particularly described on Exhibit D.
3. Purchaser represents and warrants that the Financing has closed or will close concurrently with the consummation hereof.
4. Upon execution and delivery of the Loan Documents by the Purchaser and the Guaranty by Lewis V. Swezy (a) Seller’s sole and exclusive remedy for any default relating to the PDA shall be an action to enforce the Completion Guaranty, which shall be subject to senior lender’s subordination agreement, except that Seller shall retain the right to bring

an action to enforce Section 19.2(h) of the PDA, (b) the Reverter Agreement shall be terminated in accordance with that certain Reverter Termination Agreement attached hereto as Exhibit C, and (c) Sections 22, 23 and 24 shall be terminated in connection herewith.

5. The provisions set forth in Section 25 of the PDA shall survive and are incorporated herein by reference.
6. By its joinder hereto, the City approves of the Loan Documents and will execute the Note and Loan Agreement and a subordination agreement in form and substance reasonably acceptable to the first mortgage lender and any refinancing thereof.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be duly executed as of the date first written above.

**SELLER:**

**BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**PURCHASER:**

**OCEAN BREEZE EAST APARTMENTS LLC,**  
a Florida limited liability company

By: Ocean Breeze Manager LLC, a Florida  
limited liability company, its manager

By: \_\_\_\_\_  
Lewis V. Swezy, Manager

\_\_\_\_\_  
**LEWIS V. SWEZY**

**THE CITY OF BOYNTON BEACH,** a political  
subdivision of the State of Florida

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**EXHIBIT A**

Prepared by and return to:  
Randal M. Alligood, Esq.  
Nelson Mullins Broad and Cassel  
390 N. Orange Avenue, Suite 1400  
Orlando, FL 32801

*THIS MORTGAGE IS GIVEN TO SECURE THE FINANCING OF HOUSING UNDER PART V OF CHAPTER 420, FLORIDA STATUTES, AND IS EXEMPT FROM TAXATION PURSUANT TO SECTION 420.513, FLORIDA STATUTES. ACCORDINGLY, NO DOCUMENTARY STAMP TAX OR INTANGIBLE TAX IS DUE IN CONNECTION WITH THIS MORTGAGE.*

**Folio #s:** \_\_\_\_\_

**MORTGAGE**

THIS MORTGAGE, hereinafter referred to as the "Mortgage" is made on or as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between OCEAN BREEZE EAST APARTMENTS LLC, a Florida limited liability company, hereinafter referred to as "Borrower," whose principal address is 7735 NW 146 Street, Suite 306, Miami Lakes, FL 33016, and THE CITY OF BOYNTON BEACH, a political subdivision of the State of Florida, whose principal address is 3301 Quantum Blvd, Suite 101, Boynton Beach, FL 33426 hereinafter referred to as "Lender".

**WITNESSETH:**

THAT to secure the payment of an indebtedness in the principal amount of Five Hundred Sixty-Seven Thousand Five Hundred and NO/100 Dollars (\$567,500.00), hereinafter referred to as the "Loan", which shall be payable in accordance with that certain Promissory Note and Loan Agreement, bearing even date herewith, inclusive of the signature of the Borrower, which is affixed hereto and made a part hereof, hereinafter referred to as the "Note", and all other indebtedness which Borrower is obligated to pay to Lender pursuant to the provisions of the Note and this Mortgage, Borrower hereby grants, conveys and mortgages to Lender all of its right, title and interest in:

ALL THAT certain lot, piece or parcel of land situated in Palm Beach County and State of Florida, bounded and described in **Exhibit "A"**

TOGETHER with all of Borrower's right, title and interest in the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions hereto, shall be deemed to be and remain a part of the property covered by this Mortgage and all of the foregoing, together with said property are herein referred to as the "Property"; and

TOGETHER with any and all of Borrower's right, title and interest in awards now or hereafter made for the taking of the property mortgaged hereby, or any part thereof (including any easement) by the exercise of the power of eminent domain, including any award for change of grade of any street or other roadway, which awards are hereby assigned to Lender and are deemed a part of the property mortgaged hereby; and Lender is hereby authorized to collect and receive the same toward the payment of indebtedness secured by this Mortgage, notwithstanding the fact that the amount thereon may not then be due and payable; and

TOGETHER with all rights, title and interest of Borrower in and to the land lying in the streets, roads, or alleys adjoining to the above-described land. All the above described land, buildings, other structures, fixtures, articles of personal property, awards and other rights and interests being hereinafter collectively referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property and every part thereof unto Lender, its successors and assigns forever for the purposes and uses herein set forth.

AND Borrower further covenants and agrees with Lender, as follows:

**1. PAYMENT OF PRINCIPAL AND INTEREST.**

Borrower shall promptly pay the principal of the indebtedness evidenced by the Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times and in the manner provided in the Note.

Payment of principal shall be due in full on twentieth annual anniversary of the date hereof (hereinafter referred to as the "Loan Term") or prior to the expiration of the Loan Term if the Property is sold without the Lender's prior written consent. The Loan may be forgiven any time after the end of the Compliance Period (as defined in the Borrower's Amended and Restated Operating Agreement) in the sole and absolute discretion of the Lender.

**2. FUNDS FOR TAXES, ASSESSMENTS AND LIENS.**

Borrower shall pay before the same become delinquent, as hereinafter provided, all taxes, assessments, and other governmental charges, fines and impositions, of every kind and nature whatsoever, now or hereafter imposed on the Mortgaged Property, or any part thereof, and will pay when due every amount of indebtedness secured by any lien to which the lien of this Mortgage is expressly subject.

**3. COMPLETION OF IMPROVEMENTS.**

This Mortgage and the attached Note were executed and delivered to secure moneys advanced in full to Borrower by Lender as or on account of a loan evidenced by the Note for the purpose of constructing on the Mortgaged Property one hundred twenty-three (123) rental apartments, hereinafter collectively referred to as the "Improvements." Borrower shall make or cause to be made all of the Improvements.

**4. BUILDING REMOVAL, ADDITIONS AND COMPLIANCE WITH REQUIREMENTS.**

No building, structure, improvement, fixture or personal property mortgaged hereby shall be removed or demolished without the prior written consent of Lender except for obsolete or worn property replaced by adequate substitutes equal or greater in value than the replaced items when new and inventory and goods in the ordinary course of business. Borrower will not make, permit, or suffer any alteration of or addition to any building, structure or improvement which may hereafter be erected or installed upon the Mortgaged Property, or any part thereof, except the Improvements required to be made pursuant to Paragraph 3 hereof, nor will Borrower use, or permit or suffer the use of, any of the Mortgaged Property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written consent of Lender. Borrower will maintain the Mortgaged Property in good condition and state of repair and will not suffer or permit any waste to any part thereof, and will promptly comply with all the requirements of Federal, State and local governments or of any departments, divisions or bureaus thereof, pertaining to such property or any part thereof.

**5. CHARGES AND LIENS.**

Borrower will not voluntarily create, or permit or suffer to be created or to exist, on or against the Mortgaged Property or any part thereof, any lien superior to the lien of this Mortgage, exclusive of the lien or liens to which this Mortgage is expressly subject, and will keep and maintain the same free from the claims of all parties supplying labor and/or materials which will enter into the construction or installation of the Improvements. **The Lender hereby acknowledges and agrees that the Mortgage will be subordinate to the first construction loan and first permanent mortgage loan and any refinancing thereof, including increases in the first mortgage loan amounts (collectively, the "Prior Mortgage"). All of the provisions herein shall be subject to the terms of the Prior Mortgage.**

**6. NOTICE OF FIRE OR CASUALTY.**

Borrower will give immediate notice by registered or certified mail to Lender of any fire, damage or other casualty affecting the Mortgaged Property, or of any conveyance, transfer or change in ownership of such property, or any part thereof excepting a transfer otherwise permitted in the Borrower's Amended and Restated Operating Agreement.

**7. COVERAGE OF INSURANCE POLICIES.**

a. Borrower will keep all buildings, other structures and improvements insured against loss by fire, flood (when applicable) and other hazards, casualties and contingencies in such amounts and manner and for such periods as may be reasonably required by Lender. Lender's insurance requirements may change from time to time throughout the term of the indebtedness. All such insurance policies must include standard fire and extended coverage in amounts not less than necessary to comply with the coinsurance clause. Flood insurance IS NOT required for the subject property during the term of the mortgage loan unless required by the Prior Mortgage. When required, flood insurance shall be in an amount at least equal to the outstanding principal balance of all mortgage(s), or the maximum amount of insurance available with respect to the project under the National Flood Insurance Act, whichever is lesser. All such insurance shall be carried by companies reasonably approved by Lender, and all policies shall be in such form and shall have attached thereto loss payable clauses in favor of Lender and any other parties as shall be reasonably satisfactory to Lender. All such policies and attachments thereto shall be delivered promptly to Lender, unless they are required to be delivered to the holder of a lien or a mortgage or similar instrument to which this Mortgage is expressly subject, in which latter event certificates thereof, satisfactory to Lender, shall be delivered promptly to Lender. Borrower will pay promptly when due, as hereinafter provided, any and all premiums on such insurance. The Lender shall be listed as an additional insured on all such insurance policies.

b. In the event of loss or damage to the Mortgaged Property, Borrower will give to Lender immediate notice thereof by mail, at the address herein above stated and Lender may make and file proof of loss if not made otherwise promptly by or on behalf of Borrower. Unless Borrower and Lender otherwise agree in writing, insurance proceeds shall be applied to restoration or repair, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, for more than thirty (30) days unless due to events described in Paragraph 3, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage. Usage of condemnation proceeds shall be subject to the same provisions of this Section 7(b).

c. At least thirty (30) days prior to the expiration of each policy, the Borrower will furnish the Lender with evidence satisfactory to the Lender of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. All policies, including policies for any amounts carried in excess of the required minimum and policies not specifically required by the Lender,

will be in a form satisfactory to the Lender, and will be maintained in full force and effect. All policies will contain a provision that the policies will not be cancelled or materially amended (including any reduction in the scope or limits of coverage), without at least ten (10) days prior written notice to the Lender. If all or any part of the insurance will expire, or be withdrawn, or become void or unsafe, by reason of the Borrower's breach of any condition, or if for any reason whatsoever the insurance will be unsatisfactory to the Lender, the Borrower will place new insurance on the premises, satisfactory to the Lender. Notwithstanding anything to the contrary herein, Borrower's compliance with the insurance requirements of the Prior Mortgage shall be deemed compliance with the terms of this Section 7.

**8. TAXES.**

In order to protect more fully the security of this Mortgage, Borrower shall promptly submit to Lender upon request, or Lender's designated agent, the Palm Beach County Tax Invoice for the Mortgaged Property. Such invoice shall show either that no taxes are due or be accompanied by a receipt showing taxes have been paid in full.

**9. LOCAL ORDINANCES.**

The Improvements and all plans and specifications shall comply with all applicable local ordinances, regulations and rules made or promulgated with lawful authority, including without limitation the Palm Beach County Construction Code and the Palm Beach County Property Maintenance Code.

**10. PROTECTION OF LENDER'S SECURITY.**

If Borrower fails to perform the covenants and agreements contained in this Mortgage or the Agreement, excluding any lien to which this Mortgage is expressly subject, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees.

Any amounts disbursed by Lender pursuant to this Paragraph with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payments, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such time would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph shall require Lender to incur any expense or take any action hereunder.

**11. LENDER INSPECTIONS.**

Lender, or any of its Agents or Representatives, shall have the right to inspect the Mortgaged Property upon reasonable notice, which shall not be less than 3 business days. Should the Mortgaged Property, or any part thereof, require repair, care or attention, then, after written notice as provided herein (Paragraph 16) to Borrower, and Borrower's failure to so perform, Lender may enter or cause entry to be made upon the Mortgaged Property and repair, protect and maintain the property as Lender may deem necessary. Any and all money that Lender must pay to accomplish the proper maintenance on the mortgaged property shall become due and payable under the provision of Paragraph 10.

**12. EVENT OF DEFAULT.**

An Event of Default will be the occurrence of any one of the following events and expiration of the applicable cure period set forth in Paragraph 13 below, and upon that occurrence Lender may, at Lender's option, declare all sums secured by this Mortgage to be immediately due and payable.

a. Failure to pay the amount of any installment of principal and interest, or other charges payable on the Note, which shall have become due, prior to the due date of the next such installment;

b. Nonperformance by Borrower of any covenant, agreement, term, or condition of this Mortgage, the Note, the Agreement, or of any other agreement made by Borrower with Lender in connection with such indebtedness, after Borrower has been given due notice in accordance with Paragraph 13 below by Lender to cure such nonperformance and thirty (30) days to cure;

c. Failure of Borrower to perform any covenant, agreement, term or condition in any instrument creating a lien upon the Mortgaged Property, or any part thereof, which shall have priority over the lien of this Mortgage which continues beyond any applicable grace or cure period and for which a default has been declared;

d. Lender's discovery of Borrower's failure in any application of Borrower to Lender to disclose any fact deemed by Lender to be material, or the making herein, or in any of the agreements entered into by Borrower with Lender (including, but not limited to, the Note and this Mortgage) of any misrepresentation by, on behalf of, or for the benefit of Borrower;

e. Failure by the Borrower to submit promptly to the Lender or Lender's designated agent proof of payment of all insurance and taxes, as required herein;

f. If the construction or installation of the Improvements shall not be carried out with reasonable diligence, or shall be discontinued at any time for a period of thirty (30) consecutive days for any reason other than strikes, lock-outs, acts of God, fires, floods or other similar catastrophes, such as riots, war or insurrection, or other events beyond the control of Borrower; or

**g. IF BORROWER DOES NOT REMAIN OWNER, OR IF ALL OR ANY PART OF THE PROPERTY OR AN INTEREST THEREIN IS RENTED, LEASED OR SOLD BY BORROWER, EXCEPT IN THE ORDINARY COURSE OF BUSINESS AS AN AFFORDABLE HOUSING RENTAL DEVELOPMENT, WITHOUT LENDER'S PRIOR WRITTEN CONSENT.**

### **13. OPTION OF MORTGAGEE UPON EVENT OF DEFAULT.**

Upon the occurrence of An Event of Default, Lender, prior to acceleration, shall mail notice to Borrower and its Investor Member as is provided in Paragraph 16 hereof, specifying:

a. The breach;

b. The action required to cure such breach;

c. A date not less than ten (10) days from the date the notice is mailed to Borrower by which such breach must be cured if the default is a monetary default, and a date not less than thirty (30) days from the date the notice is mailed to Borrower by which such breach must be cured if the default is a non-monetary default; and

d. That failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceedings, and sale of the property. The notice shall further inform Borrower of the right to assert in the foreclosure proceedings the non-existence of a default, or any other defense of Borrower to acceleration and foreclosure.

If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without

further demand and may foreclose this Mortgage by judicial proceedings. Lender shall be entitled to collect in such proceedings all expenses of foreclosure, including, but not limited to, reasonable attorney's fees and costs of documentary evidence, abstract, title reports and court costs.

Notwithstanding anything herein to the contrary, Borrower's investor member shall have the right, but not the obligation, to cure a default hereunder within the same cure period as the Borrower.

**14. APPOINTMENT OF RECEIVER.**

Lender in any action to foreclose this Mortgage may be entitled to have a receiver appointed by a Court of Law as a matter of right and without regard to the value of the Mortgaged Property or the solvency of Borrower or other parties liable for the payment of the Note and other indebtedness secured by this Mortgage. Said receiver shall enter upon, take possession of and manage the Property, and will collect rents of the Property, including those past due. All rents collected by the receiver shall be applied first to payments of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds, and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

**15. FORBEARANCE BY LENDER NOT A WAIVER.**

Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of indebtedness secured by this Mortgage.

**16. NOTICE.**

Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Borrower at the property address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address below, or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

LENDER:                   The City of Boynton Beach  
3301 Quantum Blvd, Suite 101  
Boynton Beach, FL 33426

WITH A COPY TO:       Lewis Longman Walker  
515 North Flagler Drive, Suite 1500  
West Palm Beach, FL 33401  
Attn: Kenneth W. Dodge, Esq.

BORROWER:             Ocean Breeze East Apartments LLC  
7735 NW 146 Street, Suite 306  
Miami Lakes, FL 33016  
Attn: Lewis V. Swezy

WITH A COPY TO:       Nelson Mullins Broad and Cassel  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801

Attn: Randal M. Alligood, Esq.

**INVESTOR:**

c/o Raymond James Tax Credit Funds, Inc.  
880 Carillon Parkway  
St. Petersburg, Florida 33716  
Facsimile No.: 727-567-8455  
Attention: Steven J. Kropf, President

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Nathan A. Bernard  
Facsimile No.: 617-345-1000

**17. ONE PARCEL.**

In case of a foreclosure sale of the Mortgaged Property, it may be sold as one parcel.

**18. BORROWER'S COPY.**

Borrower shall be furnished a conformed copy of the Note and of this Mortgage at the time of execution or after recordation thereof.

**19. LAWFULLY SEIZED.**

Borrower is lawfully seized of the Mortgaged Property and has good right, full power, and lawful authority to sell and convey the same in the manner above provided, and will warrant and defend the same to Lender forever against the lawful claims and demands of any and all parties whatsoever.

**20. BORROWER NOT RELEASED.**

Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release in any manner the liability of the original Borrower and Borrower's successor in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

**21. CAPTIONS.**

The captions of this Mortgage are for convenience only and shall not be construed as defining or limiting the scope or intent of the provisions hereof.

**22. SUCCESSORS AND ASSIGNS.**

This Mortgage and all covenants, agreements, terms, and conditions herein contained shall be binding upon and inure to the benefit of Borrower, and, to the extent permitted by law, every subsequent owner of the Mortgaged Property and shall be binding upon and inure to the benefit of Lender and its assigns. The word "Lender" shall include any person, corporation, or other party who may from time to time be the holder of this Mortgage. Whenever used herein, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall be applicable to all genders wherever the sense requires.

**23. VENUE AND APPLICABLE LAW**

Each party covenants and agrees that any and all legal actions arising out of or connected with this Mortgage shall be instituted in the state courts located in and for Palm Beach County, Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This Mortgage is entered into within, and with reference to the internal laws of, the State of Florida, and shall be governed, construed and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

#### **24. SURVIVABILITY AND SEVERABILITY**

a. Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Mortgage shall remain enforceable against such party subsequent to such termination.

b. In the event any section, sentence, clause or provision of this Mortgage is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of this Mortgage shall not be affected by such determination and shall remain in full force and effect.

#### **25. RELEASE**

Upon payment of all sums secured by this Mortgage and the Note, the Lender shall release this Mortgage and the Note. The Borrower shall pay all recordation costs.

#### **26. NONRECOURSE**

The Borrower, its members and successors and assigns shall only be liable upon the indebtedness evidenced by the Agreement, and sums or amounts to accrue or to become payable thereunder or under this Mortgage or either of them, to the extent of the nonrecourse security granted under the Agreement or the Mortgage. If a default occurs, any judicial proceedings or enforcement of the remedies under the Agreement and this Mortgage against the Borrower, its members and successors and assigns shall be limited to the preservation, enforcement and foreclosure of the liens, estates, assignments, titles, rights and security interests now or at any time hereafter acquired in such security and no judgment, attachment, execution or other writ of process shall be sought, issued or levied upon the assets, property or funds of the Borrower, its members or successors and assigns other than the properties, rights, estates and interests of the Borrower as are identified as security in this Mortgage. In the event of a foreclosure or other disposition as provided for in this Mortgage of such liens, estates, assignments, titles, rights and security interests, whether by judicial proceedings or the exercise of the power of sale, no judgment for the deficiency of such indebtedness, sums and amounts shall be sought or obtained against the Borrower and/or its successors and assigns.

#### **27. MERGER AND MODIFICATIONS**

This Mortgage will not be modified or amended except by agreement in writing signed by both parties. This Mortgage embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby.

**[Signatures on the following page]**

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, this Mortgage has been duly signed and sealed by the Borrower on or as of the day and year first above written.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

**OCEAN BREEZE EAST APARTMENTS  
LLC**, a Florida limited liability company

By: Ocean Breeze Manager LLC, a Florida  
limited liability company, its manager

By: \_\_\_\_\_  
Lewis V. Swezy, Manager

**STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Lewis V. Swezy, as manager of Ocean Breeze Manager LLC, a Florida limited liability company, the manager of Ocean Breeze East Apartments LLC, a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Witness my hand and official seal the date aforesaid,

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Notary: Print or Type Name

My Commission Expires

**MORTGAGE**  
**Ocean Breeze East Apartments**  
**Exhibit "A"**

**Legal Description**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and described as follows:

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard as shown on Road Plat Book 5, at Page 182 AND LESS a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South 1/2 of the East 1/2 of Lot 2 of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, and LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

**End of Exhibit "A"**

## **PROMISSORY NOTE AND LOAN AGREEMENT**

Folio Number and Property Address: See Exhibit "A":

Date: \_\_\_\_\_

Amount: \$567,500.00

**FOR VALUE RECEIVED**, the undersigned, hereinafter referred to as "Borrower," promises to pay to the order of THE CITY OF BOYNTON BEACH, a political subdivision of the State of Florida, hereinafter referred to as "Lender", or its successors, the sum Five Hundred Sixty-Seven Thousand Five Hundred and NO/100 Dollars (\$567,500.00) (the "Loan Sum") to the extent such amount has been disbursed by Lender to Borrower.

**LOAN AGREEMENT:** Lender shall loan to Borrower on or after the date hereof, the Loan Sum in one or more draws upon written request of Borrower for the purpose of developing and constructing a 123 unit multifamily apartment complex to be owned, used and operated as low income housing under IRC Section 42 (the "Project"). Such request shall be accompanied by a draw request approved by the first mortgage construction lender showing the specific uses of the requested draw from the Lender for hard and soft costs of the Project and also showing disbursement of first mortgage loan proceeds to the Borrower. Borrower shall not use the Loan Sum proceeds for any purpose other than the hard and soft costs associated with the Project. Subject to the foregoing, the funding will occur upon commencement or during construction, but no later than twelve (12) months after the date of closing.

**LOAN PAYMENT:** Borrower shall promptly pay the principal of the indebtedness evidenced by this Note, and all other charges and indebtedness provided herein and in that certain Mortgage to be entered into on date even herewith and recorded in the Public Records of Palm Beach County, Florida (the "Mortgage"), at the times and in the manner provided in this Note and in the Mortgage. The interest rate on the loan shall be **zero percent (0%) interest**.

Payment of any principal shall be due in full on the twentieth annual anniversary of the date hereof (hereinafter referred to as the "Loan Term"). This Note may be forgiven any time after the end of the Compliance Period (as defined in the Borrower's Amended and Restated Operating Agreement) in the sole and absolute discretion of the Lender.

Loan payment hereunder is secured by the terms of that certain Mortgage by and between Borrower and Lender dated of even date herewith (the "Mortgage").

**DEFAULT & ACCELERATION:** Lender shall have the optional right to declare the amount of the total unpaid balance hereof to be due and forthwith payable in advance of the maturity date of any sum due or installment, as fixed herein, after notice has been given in accordance with the terms and conditions in the Mortgage securing this Note, upon the occurrence of any event or failure to perform in accordance with any of the terms and conditions in the Mortgage or this Note. Notwithstanding anything herein to the contrary, Borrower's investor member shall have the right, but not the obligation, to cure a default hereunder within the same cure period as Borrower.

**ESTOPPEL/WAIVER:** Failure of Lender to declare a default shall not constitute a waiver of such default. Upon default, this Note will accrue interest at the highest rate permissible under applicable law, or, if this Note be reduced to judgment, such judgment should bear interest at the highest rate permissible under applicable law.

**PREPAYMENT:** Borrower reserves the right to prepay at any time all or part of the principal amount of this Note without the payment of penalties or premiums. All payments of this Note, prior to default, shall be first applied to reduce the principal amount of this Note and second to the payment of interest, if any.

**COLLECTION COSTS:** If suit is instituted by Lender to recover this Note, Borrower agree(s) to pay all reasonable out of pocket costs of such collection including reasonable attorney's fees and court costs.

**PARTIES:** The words "Borrower" and "Lender" in this Note shall be construed to include the respective heirs, personal representatives, successors, and assigns of the Borrower and the Lender.

**CONSTRUCTION AND VENUE:** Each party covenants and agrees that any and all legal actions arising out of or connected with this Note shall be instituted in the state courts located in and for Palm Beach County, Florida, as the exclusive forums and venues for any such action, subject to any right of either party to removal from state court to federal court, which is hereby reserved, and each party further covenants and agrees that it will not institute any action in any other forum or venue and hereby consents to immediate dismissal or transfer of any such action instituted in any other forum or venue. This Note is entered into within, and with reference to the internal laws of, the State of Florida, and shall be governed, construed and applied in accordance with the internal laws (excluding conflicts of law) of the State of Florida.

**NONRECOURSE:** The nonrecourse terms of the Mortgage are incorporated herein by reference and shall survive regardless of whether the mortgage is satisfied or amended.

**THIS NOTE ARISES OUT OF OR IS GIVEN TO SECURE THE REPAYMENT OF A LOAN ISSUED IN CONNECTION WITH THE FINANCING OF AFFORDABLE HOUSING AND IS EXEMPT FROM DOCUMENTARY AND INTANGIBLE TAXES PURSUANT TO SECTION 420.513(1), FLORIDA STATUTES.**

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**

**IN WITNESS WHEREOF**, this Note has been duly executed by Borrower as of the day and year first written above.

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

**OCEAN BREEZE EAST APARTMENTS LLC**, a  
Florida limited liability company

By: Ocean Breeze Manager LLC, a Florida  
limited liability company, its manager

By: \_\_\_\_\_  
Lewis V. Swezy, Manager

**STATE OF FLORIDA**  
**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Lewis V. Swezy, as manager of Ocean Breeze Manager LLC, a Florida limited liability company, the manager of Ocean Breeze East Apartments LLC, a Florida limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Witness my hand and official seal the date aforesaid,

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Notary: Print or Type Name

My Commission Expires

**IN WITNESS WHEREOF**, this Note has been duly executed by Lender as of the day and year first written above.

**THE CITY OF BOYNTON BEACH**, a political subdivision of the State of Florida

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**STATE OF FLORIDA**

**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

Witness my hand and official seal the date aforesaid,

\_\_\_\_\_  
Notary Public, State of Florida at Large

\_\_\_\_\_  
Notary: Print or Type Name

My Commission Expires

**PROMISSORY NOTE AND LOAN AGREEMENT**  
**Ocean Breeze East Apartments**  
**Exhibit "A"**

**Legal Description**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and described as follows:

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard as shown on Road Plat Book 5, at Page 182 AND LESS a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South 1/2 of the East 1/2 of Lot 2 of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, and LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

**End of Exhibit "A"**

**EXHIBIT B**

## **GUARANTY OF COMPLETION**

**THIS GUARANTY OF COMPLETION** (this “Guaranty”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 2019, notwithstanding the date of execution, by Lewis V. Swezy, an individual resident of the State of Florida (the “Guarantor”), in favor of BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY, a public agency created pursuant to Chapter 163, Part III, of the Florida Statutes, whose principal address is 3301 Quantum Blvd, Suite 101, Boynton Beach, FL 33426 (the “CRA”).

### **RECITALS:**

**WHEREAS**, Ocean Breeze East Apartments LLC, a Florida limited liability company (the “Company”) and the CRA entered into that certain Purchase and Development Agreement dated effective as of December 15, 2017 (the “PDA”);

**WHEREAS**, the Company has requested an amendment to the PDA;

**WHEREAS**, the CRA requires, as a condition to making the amendment, that Guarantor execute and deliver this Guaranty for the benefit of the CRA.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce the CRA to make the amendment to the PDA, Guarantor hereby represents, warrants and covenants to the CRA as follows:

1. **Obligations Guaranteed.** Guarantor unconditionally guarantees to the CRA, (a) the final completion of the improvements by the Company (the “Project”) on the land described on **Exhibit A** attached hereto, free and clear of all liens (other than liens described in that certain First American Title Company Title Insurance Commitment No. 2037-4488741 dated October 2, 2019), substantially in accordance with the description of such improvements set forth on **Exhibit B** attached hereto (“Final Completion”); (b) the Company’s obligation to pay all sewer and water rents, impact fees, permitting fees, any other fees levied by any governmental authority having jurisdiction over the Project in connection with the development or construction of the Project, real estate taxes and assessments and payments in lieu of the foregoing, assessed or levied against the Project during the period of construction until Final Completion; and (c) payment in full of any and all reasonable expenses that may be paid or incurred by the CRA in the collection of all or any portion of Guarantor’s obligations hereunder or the exercise or enforcement of any one or more of the other rights, powers, privileges, remedies and interests of the CRA hereunder, including, without limitation, reasonable attorneys’ and paralegals’ fees, irrespective of the manner or success of any such collection, exercise or enforcement, at trial, on appeal, in any bankruptcy proceedings or whether suit be brought or not, and whether or not such expenses constitute part of the Company’s obligations.

2. **Unconditional Guaranty.** This Guaranty is an absolute, unconditional, primary, present and continuing guaranty of payment and performance and not of collection and is in no way conditioned or contingent upon any attempt to enforce the CRA’s rights against the Company or any other guarantor or to collect from the Company or any other Guarantor or upon any other condition or contingency. Guarantor hereby waives and releases any claim (within the meaning of 11 U.S.C. § 101) which such Guarantor may have against the Company arising from a payment made by such Guarantor under this Guaranty and agrees not to assert or take advantage of any subrogation rights of such Guarantor or any right of such Guarantor to proceed against the Company for reimbursement, unless and until the Guaranteed Obligations are indefeasibly paid in full in cash.

3. Liability Unimpaired. To the fullest extent permitted by law, Guarantor's liability hereunder shall in no way be limited or impaired by any act or inaction of the CRA or the City of Boynton Beach (the "City") in connection with that certain Promissory Note and Loan Agreement by the Company to the order of the City, dated of even date herewith (the "Loan Agreement") or that certain Mortgage by and between the Company and the City dated of even date herewith (the "Mortgage").

4. Reinstatement. This Guaranty shall continue to be effective, or be reinstated automatically, as the case may be, if at any time payment, in whole or in part, of any of the obligations guaranteed hereby is rescinded or otherwise must be restored or returned by the CRA (whether as a preference, fraudulent conveyance or otherwise) upon or in connection with the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Company, Guarantor or any other Person, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Company, Guarantor or any other Person or for a substantial part of the Company's, Guarantor's or any of such other Person's property, as the case may be, or otherwise, all as though such payment had not been made. Guarantor further agrees that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including, without limitation, reasonable legal fees and expenses) incurred by or on behalf of the CRA in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, the payment of which is guaranteed by Guarantor pursuant to Paragraph 1 above.

5. Litigation, Compliance with Judgments. Guarantor represents and warrants that there are no actions, suits or proceedings pending or threatened against or affecting such Guarantor, at law, in equity or before or by any governmental authorities which would have a material effect on such Guarantor's ability to perform its obligations hereunder. To the best of Guarantor's knowledge, Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or governmental authorities.

6. Authorization and Enforceability; No Conflicts. Guarantor represents and warrants that it has the full power and authority to enter into and perform its obligations under this Guaranty and this Guaranty is a legal, valid and binding instrument, enforceable against Guarantor in accordance with its terms. The execution, delivery and performance of this Guaranty has been authorized by all proper and necessary actions of Guarantor. Guarantor represents and warrants that the consummation of the transactions contemplated hereby and the performance of this Guaranty have not resulted and will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, by-laws, partnership agreement, trust agreement or other instrument to which such Guarantor is a party or by which such Guarantor may be bound or affected.

7. Compliance with Laws. Guarantor represents and warrants that Guarantor is in compliance with, and the transactions contemplated by this Guaranty do not and will not violate any provision of, or require any filing, registration, consent or approval under, any federal, state or local law, rule, regulation, ordinance, order, writ, judgment, injunction, decree, determination or award (hereinafter, "Laws") presently in effect having applicability to such Guarantor. Guarantor will comply promptly with all Laws now or hereafter in effect having applicability to Guarantor.

8. Accuracy of Information; Full Disclosure. Guarantor represents and warrants that neither this Guaranty nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of Guarantor to the CRA in connection with the negotiation of the amendment to the PDA or the consummation of the transactions contemplated thereby, or required herein to be furnished by or on behalf of Guarantor, contains any untrue or misleading statement of a material fact as of the date thereof ; to Guarantor's knowledge, there is no fact which Guarantor has not

disclosed to the CRA in writing which materially affects adversely any of the Project or the business affairs or financial condition of Guarantor, or the ability of Guarantor to perform this Guaranty.

9. Mechanics' Liens. If the Company and/or Guarantor shall have completed or caused the completion of the construction of the Project, so as to achieve Final Completion, then upon the expiration of any time period beyond the date in which the Company or Guarantor has achieved Final Completion, within which mechanics, materialmen or other Persons (collectively, "**Mechanics**") are entitled to file liens against the Project for development, construction, materials or related work claims (such completion and the expiration of such time period, is herein referred to as the "**Completion of the Project**"), Guarantor shall be released of any further obligations under this Guaranty; provided, however, if the CRA shall have received after Completion of the Project, duly executed lien waivers from all Mechanics entitled to file liens against the Project evidencing the payment in full for all of their work relating to the Project, this Guaranty shall terminate upon receipt of such lien waivers. The CRA agrees that upon the CRA's receipt of evidence satisfactory to the CRA of the Completion of the Project, and, provided, that no undischarged liens which have not been bonded over shall have been filed against the Project by Mechanics, CRA shall deliver a written confirmation that this Guaranty is limited only to a guaranty against the filing of subsequent liens against the Project by Mechanics with respect to which such duly executed lien waivers have not been received by the CRA. Thereafter, this Guaranty shall continue as a guaranty against claims and liens by Mechanics that have not been waived until Mechanics are no longer legally entitled to file any such claims or liens against the Project, whereupon the CRA, upon receipt of written request from Guarantor, shall deliver to Guarantor the CRA's final written confirmation of termination of this Guaranty in full, provided that no undischarged Mechanics' liens have been filed against the Project.

10. Non-Waiver Remedies Cumulative. No failure or delay on the CRA's part in exercising any right, power or privilege under this Guaranty shall operate as a waiver of any such privilege, power or right or shall be deemed to constitute the CRA's acquiescence in any default by Guarantor. A waiver by the CRA of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the CRA otherwise would have on any future occasion. The rights and remedies provided herein are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

11. Severability. Any provision of this Guaranty, or the application thereof to any Person or circumstance, which, for any reason, in whole or in part, is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Guaranty (or the remaining portions of such provision) or the application thereof to any other Person or circumstance, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision (or portion thereof) or the application thereof to any Person or circumstance in any other jurisdiction.

12. Entire Agreement; Amendments. This Guaranty contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to such subject matter, and none of the terms and provisions hereof may be waived, amended or terminated except by a written instrument signed by the Person against whom enforcement of the waiver, amendment or termination is sought.

13. Successors and Assigns. This Guaranty shall be binding upon and shall inure to the benefit of the CRA and Guarantor and their respective heirs, personal representatives, successors and assigns. This Guaranty may be assigned by the CRA with respect to all or any portion of the obligations guaranteed hereby, and when so assigned Guarantor shall be liable under this Guaranty to the assignee(s) of the portion(s) of the obligations guaranteed hereby so assigned without in any manner affecting the

liability of Guarantor hereunder to the CRA with respect to any portion of the obligations guaranteed hereby retained by the CRA.

14. WAIVER OF TRIAL BY JURY. GUARANTOR, AND BY ITS ACCEPTANCE HEREOF, THE CRA, EACH HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE GUARANTY, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY GUARANTOR AND THE CRA, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. GUARANTOR AND THE CRA ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

15. ADDITIONAL WAIVERS IN THE EVENT OF ENFORCEMENT. GUARANTOR HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF THE CRA ON THIS GUARANTY, ANY AND EVERY RIGHT GUARANTOR MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT GUARANTOR FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST THE CRA WITH RESPECT TO ANY ASSERTED CLAIM.

16. Governing Law; Submission To Jurisdiction. This Guaranty and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Florida (without giving effect to Florida's principles of conflicts of law). Guarantor hereby irrevocably submits to the exclusive jurisdiction of the state courts located in and for Palm Beach County over any suit, action or proceeding arising out of or relating to this Guaranty, and Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any Florida State or Federal court sitting in the County of Palm Beach may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address indicated below, and service so made shall be complete ten (10) days after the same shall have been so mailed.

17. Paragraph Headings. Any paragraph headings and captions in this Guaranty are for convenience only and shall not affect the interpretation or construction hereof.

18. Notices. Notices shall be given with respect to Guarantor at the address set forth below:

GUARANTOR: Lewis V. Swezy  
c/o Centennial Management Co.  
7735 NW 146 Street, Suite 306  
Miami Lakes, FL 33016

WITH A COPY TO:  
Nelson Mullins Broad and Cassel  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801  
Attn: Randal M. Alligood, Esq.

19. Counterparts. This Guaranty may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute together but one and the same agreement.

*[EXECUTION PAGE FOLLOWS]*

*[SIGNATURE PAGE TO GUARANTY OF COMPLETION]*

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized official as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

**GUARANTOR:**

\_\_\_\_\_  
LEWIS V. SWEZY

## **EXHIBIT A**

### **Legal Description**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and described as follows:

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard as shown on Road Plat Book 5, at Page 182 AND LESS a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South 1/2 of the East 1/2 of Lot 2 of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, and LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

## **EXHIBIT B**

### **Description of Improvements**

1. If requested or required by the CRA, the Project will be designed to be a gated community to enhance the value of the Property. A decorative fence may be installed around the buildings comprising the Project to create an enclosed space. If requested or required by the CRA, a mechanical gate will be installed at the entry and exit of the Project requiring proof of residency for entry. Gates shall not be required if space required for gates (including stacking and turn-around requirements) is impractical or would negatively impact other elements of the site plan including the unit count.
2. The Project will have a minimum of a 6' sidewalk constructed around the entirety of the Project.
3. The Project will include street lights installed along the entire perimeter of the Project that are complimentary to those existing along the east side of N. Seacrest Boulevard adjacent to the Property.
4. The Project will include on-street parking spaces, where feasible.
5. The Project will include street and site trees that exceed the size and caliper requirement of the City's Land Development Regulations which will be installed along the entire perimeter of the Project.
6. The Project will include enhanced resident amenities within the proposed project boundaries.
7. The Project will include plaza style open space that exceeds the requirement of the City's Land Development Regulations with landscape, hardscape and accent lighting features preferably located on N. Seacrest Boulevard or at the corner of N. Seacrest Boulevard and NE 7th Avenue.
8. The Project will include construction of a three (3) story, 100-123 unit affordable multi-family rental housing development, approximately 2,500 sq.ft. of flex space for a new Neighborhood Officer Program office and community space, which shall be provided to the CRA for said use rent free.

**EXHIBIT C**

This instrument prepared by and return to:  
Randal M. Alligood, Esq.  
Nelson Mullins Broad and Cassel  
390 North Orange Avenue, Suite 1400  
Orlando, Florida 32801

**TERMINATION OF  
REVERTER AGREEMENT**

**THIS TERMINATION OF REVERTER AGREEMENT** (this “**Termination**”) is executed this \_\_\_\_ day of \_\_\_\_\_, 2019 by **OCEAN BREEZE EAST APARTMENTS LLC**, a Florida limited liability company (“Ocean Breeze”), whose address is 7735 NW 146<sup>th</sup> Street, Suite 306, Miami Lakes, Florida 33016 and **BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public agency created pursuant to Chapter 163, Part III, of the Florida Statutes (“Seller”).

**W I T N E S S E T H:**

**WHEREAS**, Seller entered into that Reverter Agreement with Ocean Breeze as of December 15, 2017 (the “**Reverter**”) with regard to the real property described in the attached **Exhibit A** (the “**Property**”);

**WHEREAS**, Ocean Breeze and Seller desire to terminate the Reverter;

**NOW, THEREFORE**, for and in consideration of the premises hereof and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by this reference. Capitalized terms not otherwise defined herein shall have the meaning as set forth in the Reverter.

2. The Reverter is terminated in its entirety and shall be of no further force or effect whatsoever, and Seller has no further rights of reversion or to a repurchase of the Property under the Reverter or under any other agreement.

3. The Reverter is the “Reverter Agreement” referred to in that certain Warranty Deed dated January 31, 2018, from Seller to Ocean Breeze as recorded in Official Records Book 29685, Page 749 of the Public Records of Palm Beach County, Florida, and for clarity, any reverter rights under such Warranty Deed are also terminated.

4. This Agreement may be recorded.

**IN WITNESS WHEREOF**, the parties have executed this Termination as of the date first written above.

Witness: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**OCEAN BREEZE EAST APARTMENTS LLC**, a  
Florida limited liability company

Witness: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: Ocean Breeze Manager LLC, a Florida  
limited liability company, its manager

By: \_\_\_\_\_  
Lewis V. Swezy, Manager

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by Lewis V. Swezy, as manager of Ocean Breeze Manager LLC, a Florida limited liability company, as  
manager of Ocean Breeze East Apartments LLC, a Florida limited liability company, who has produced  
\_\_\_\_\_ as identification or is personally known to me.

\_\_\_\_\_  
Notary Public

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

My Commission Expires: \_\_\_\_\_

Witness: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

Witness: \_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019,  
by \_\_\_\_\_, as \_\_\_\_\_ of Boynton Beach Community  
Redevelopment Agency, a public agency created pursuant to Chapter 163, Part III, of the Florida Statutes,  
who has produced \_\_\_\_\_ as identification or is personally known to me.

\_\_\_\_\_  
Notary Public

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

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and described as follows:

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard as shown on Road Plat Book 5, at Page 182 AND LESS a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South 1/2 of the East 1/2 of Lot 2 of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, and LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

## **EXHIBIT D**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and described as follows:

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard as shown on Road Plat Book 5, at Page 182 AND LESS a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South 1/2 of the East 1/2 of Lot 2 of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, and LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

Prepared By/Return To:

Carol S. Faber, Esq.  
Akerman LLP  
Three Brickell City Centre  
98 Southeast Seventh Street, Suite 1100  
Miami, Florida 33131

## SUBORDINATION AGREEMENT AND CONSENT

\_\_\_\_\_, 2019

To: **TD BANK, N.A.**, a national banking association ("**Lender**")  
21845 Powerline Road, Second Floor  
Boca Raton, Florida 33433  
Attention: Mario Facella

To induce the Lender to make available and continue, a credit facility to and for the benefit of **OCEAN BREEZE EAST APARTMENTS LLC**, a Florida limited liability company ("**Borrower**"), pursuant to the terms of that certain Construction Loan Agreement between Borrower and Lender dated on or about the date hereof (as same may hereafter be amended, supplemented, replaced or restated from time to time, collectively referred to as the "**Loan Agreement**"), the undersigned hereby agrees as follows:

1. The payment and performance of any and all Subordinated Obligations (as defined below) is expressly subordinated to the Senior Debt (as defined below) to the extent and in the manner set forth in this Subordination Agreement and Consent (this "**Agreement**"). The term "**Subordinated Obligations**" means all rights of the undersigned (including, without limitation, with respect to any and all indebtedness, liabilities, and obligations of Borrower), now existing or hereafter arising, under and in connection with that certain: (a) Purchase and Development Agreement with an Effective Date (as defined in such agreement) of December 15, 2017, entered into by and between the undersigned and Borrower, as the same may be amended from time to time, with Lender's prior written approval (the "**PDA**"); and (b) Guaranty of Completion dated as of [\_\_\_\_], given by Lewis V. Swezy, an individual, in favor of the undersigned (the "**Guaranty**"). The term "**Senior Debt**" means any and all Indebtedness (as defined in the Senior Mortgage, as such term is defined below) of Borrower to Lender under the Loan Agreement including without limitation interest accruing after the commencement of any bankruptcy, insolvency or similar proceeding with respect to Borrower, whether or not a claim for such post-commencement interest is allowed. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement or the Senior Mortgage, as applicable.

2. a. Repayment of the Senior Debt is secured by that certain Construction Loan Mortgage, Security Agreement, and Fixture Filing (the "**Senior Mortgage**") given by Borrower in favor of Lender, dated on or about the date hereof, and to be recorded in the Official Public Records of Palm Beach County, Florida, which Senior Mortgage encumbers Borrower's real property located at 700 North Seacrest Boulevard, Boynton Beach, Florida, as more fully described in **Exhibit "A"** attached hereto ("**Mortgaged Property**") and by Borrower's personal property described in the Loan Documents (together with the Mortgaged Property, collectively, "**Senior Collateral**").

b. The undersigned covenants and agrees that it shall not take or accept any liens or security interests in any property of Borrower, whether now owned or hereafter acquired, as security for the Subordinated Obligations.

c. The undersigned agrees, for Lender's benefit, that, notwithstanding anything to the contrary contained in any agreement between Borrower and undersigned, Lender's security interests, liens, mortgages or any other security arrangements with respect to the Senior Collateral (including the lien with respect to the Mortgaged Property), together with any insurance proceeds, condemnation awards and foreclosure proceeds, are senior and prior in operation and effect to any interests or liens of undersigned with respect to any collateral owned by Borrower.

d. The priority of liens and security interests set forth in this Section 2 shall apply and control, irrespective of (i) any statement to the contrary in any agreement or other document executed and delivered by any party hereto or any affiliate thereof; (ii) the time, order or method of attachment or perfection of security interests or the perfection of security interests or recordation of liens; (iii) the time or order of recording of mortgages or filings of financing statements or any other recordings of filings; or (iv) the giving of, or failure to give, notice of the acquisition or expected acquisition of purchase money or other security interests.

e. Until such time as the Senior Debt shall have been indefeasibly paid in full and any commitment to make advances under the Loan Agreement has terminated, the undersigned shall not take any action to enforce or exercise any right or remedy with respect to the Subordinated Obligations.

f. In the event Lender shall release, for purposes of restoration of all or any part of the improvements located at the Mortgaged Property, its right, title and interest in and to the proceeds under the policies of insurance thereon, and/or Lender's right, title and interest in and to any awards, or Lender's right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, the undersigned shall release for such purpose all of the undersigned's right, title and interest, if any, in and to all such insurance proceeds, awards or compensation, and the undersigned agrees that the balance of such proceeds remaining shall be applied to the reduction of the Senior Debt, and if Lender holds such proceeds, awards or compensation and/or monitor the disbursement

thereof, the undersigned agrees that Lender shall also hold and monitor the disbursement of such proceeds, awards and compensation to which the undersigned is entitled. Nothing contained in this Agreement shall be deemed to require Lender to act for, or on behalf of, the undersigned, or to hold or monitor any proceeds, awards, or compensation in trust for or on behalf of the undersigned, in any way whatsoever, and all or any of such sums so held or monitored may be commingled with any of Lender's funds.

g. The undersigned hereby waives any equitable right the undersigned may have in respect of marshaling, in connection with any release of all or any portion of the Senior Collateral by Lender from the lien of the Loan Documents, to require the separate sale of any portion of the Senior Collateral, or to require Lender to exhaust its remedies against any portion of the Senior Collateral, or any combination of any portion of the Senior Collateral, or to require Lender to proceed against any portion of the Senior Collateral, or any combination of any portion of the Senior Collateral, before proceeding against any other portion of the Senior Collateral, and further, in the event of foreclosure, or other enforcement proceeding by Lender, the undersigned hereby expressly consents and authorizes, at Lender's option, the sale, either separately or together, of all or any portion of the Mortgaged Property.

h. Notwithstanding anything to the contrary contained herein, the undersigned agrees that, in the event that any Senior Collateral or other property of Borrower that is subject to any security interests or liens with respect to the Subordinated Obligations is sold, transferred, conveyed or otherwise disposed of (i) as permitted under the Loan Agreement or the other Loan Documents (including the exercise of Lender's rights and remedies thereunder or under any other Loan Document) or (ii) with respect to any sale, transfer, conveyance or other disposition to a party other than a beneficial owner of Borrower for a commercially reasonable price (as determined by Lender) in light of the circumstances at the time, that is otherwise consented to by Lender and Borrower, the undersigned shall release any and all rights to and interests in such property, and such property shall be transferred free and clear of any and all liens and security interests in favor of the undersigned; provided that if an event of default has occurred and is continuing with respect to the Subordinated Obligations, undersigned's interest (if any) shall continue with respect to the proceeds of any collateral for the Subordinated Obligations sold, transferred, conveyed or disposed to the extent that such proceeds exceed the amount of the Senior Debt. The undersigned shall execute such termination and release documents as Lender may reasonably request to effectuate the terms hereof and hereby irrevocably appoints Lender (coupled with an interest) as undersigned's attorney in fact to execute such termination and release documents.

3. The undersigned agrees that it will not make any assertion or claim in any action, suit or proceeding of any nature whatsoever in any way challenging the priority, validity or effectiveness of the liens and security interests granted to Lender or Lender's actions with respect to Lender's handling or liquidation of the Senior Collateral under and in connection with the Loan Agreement or any of the other Loan Documents, or any

amendment, extension, replacement thereof or related agreement between Lender and Borrower.

4. The undersigned will not commence any action or proceeding of any kind against Borrower to recover or enforce all or any part of the Subordinated Obligations not paid or performed when due, and shall at no time join with any creditor, in bringing any proceeding against Borrower under any liquidation, conservatorship, bankruptcy, reorganization, rearrangement, or other insolvency law now or hereafter existing, unless and until the Senior Debt shall be indefeasibly paid in full and any commitment to make advances under the Loan Agreement has terminated.

5. In the event of any liquidation, conservatorship, bankruptcy, reorganization, rearrangement, or other insolvency proceeding of Borrower, the undersigned will at Lender's request file any claims, proofs of claim, or other instruments of similar character necessary to enforce the obligations of Borrower in respect of the Subordinated Obligations and will hold in trust for Lender and pay over to Lender in the same form received, to be applied on the Senior Debt as determined by Lender, any and all money, dividends or other assets received in any such proceedings on account of the Subordinated Obligations, unless and until the Senior Debt shall be indefeasibly paid in full (and any commitment to make advances under the Loan Agreement has terminated), including without limitation interest accruing after the commencement of any bankruptcy, insolvency or similar proceeding with respect to Borrower, whether or not a claim for such post-commencement interest is allowed. Lender may, as attorney-in-fact for the undersigned, take such action on behalf of the undersigned and the undersigned hereby appoints Lender as attorney-in-fact for the undersigned to demand, sue for, collect, and receive any and all such money, dividends or other assets and give acquittance therefore and to file any claim, proof of claim or other instrument of similar character and to take such other proceedings in Lender's name or in the name of the undersigned, as Lender may deem necessary or advisable for the enforcement of this Agreement. The undersigned will execute and deliver to Lender such other and further powers of attorney or other instruments as Lender reasonably may request in order to accomplish the foregoing.

6. Lender may at any time and from time to time, without the consent of or notice to the undersigned, without incurring responsibility to the undersigned and without impairing or releasing any of Lender's rights, or any of the obligations of the undersigned hereunder:

a. Change the amount, manner, place or terms of payment or change or extend the time of payment of or renew or alter the Senior Debt (including increasing the principal amount thereof), or any part thereof, or amend, supplement or replace the Loan Agreement and/or any other Loan Document in any manner or enter into or amend, supplement or replace in any manner any other agreement relating to the Senior Debt;

b. Sell, exchange, release or otherwise deal with all or any part of the Senior Collateral securing the Senior Debt or any part thereof;

c. Release anyone liable in any manner for the payment or collection of the Senior Debt;

d. Exercise or refrain from exercising any rights against Borrower or others (including the undersigned); and

e. Apply sums paid by any party to the Senior Debt in any order or manner as determined by Lender.

7. The undersigned will advise each future holder of all or any part of the Subordinated Obligations that the Subordinated Obligations is subordinated to the Senior Debt in the manner and to the extent provided herein. The undersigned represents that no part of the Subordinated Obligations or any instrument evidencing the same has been transferred or assigned and the undersigned will not transfer or assign, except to Lender, any part of the Subordinated Obligations while any Senior Debt remains outstanding, unless such transfer or assignment is made expressly subject to this Agreement. Upon Lender's request, the undersigned will in the case of any Subordinated Obligations which are not evidenced by any instrument cause the same to be evidenced by an appropriate instrument or instruments, and place thereon and on any and all instruments evidencing the Subordinated Obligations a legend in such form as Lender may determine to the effect that the Subordinated Obligations are subordinated and subject to the prior payment in full of all Senior Debt pursuant to this Agreement, as well as deliver all such instruments to Lender.

8. The undersigned hereby agrees, but only as a separate and independent covenant of the undersigned and not as a condition to the continued effectiveness of the covenants or agreements of the Borrower and the Lender, to give prompt written notice to the Lender of any default of the Borrower under the Subordinated Obligations and the undersigned hereby grants to the Lender the right, but without the obligation, to cure any default of the Borrower within thirty (30) days after the receipt of written notice by the Lender of the Borrower's failure to do so; provided, however, except as to any default capable of being cured by the payment of money, said thirty (30) day period shall be extended so long as within said thirty (30) days the Lender has commenced to cure and is proceeding with due diligence to cure said default.

9. The undersigned hereby consents to and acknowledges the Senior Debt, the Loan Agreement, the Mortgage, and the other Loan Documents, and each and all of the terms and conditions thereof, notwithstanding any terms to the contrary in any document(s) evidencing and/or entered into in connection with the Subordinated Obligations.

10. This Agreement contains the entire agreement between the parties regarding the subject matter hereof and may be amended, supplemented or modified

only by written instrument executed by Lender and the undersigned. This Agreement, and the rights of Lender hereunder shall terminate upon indefeasible payment in full of all Senior Debt and satisfaction of all obligations under the Senior Debt and the termination of Lender's commitment to make advances under the Loan.

11. The undersigned represents and warrants that neither the execution or delivery of this Agreement nor fulfillment of nor compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms, conditions, or provisions of or constitute a default under any agreement or instrument to which the undersigned or any of the undersigned's assets is now subject.

12. Any notice of acceptance of this Agreement is hereby waived.

13. This Agreement may be assigned by Lender, in whole or in part in connection with any assignment or transfer of any portion of the Senior Debt.

14. This Agreement shall be binding upon the undersigned, and the undersigned's successors, representatives and assigns.

15. Borrower agrees that it will not make any payment on any of the Subordinated Obligations, or take any other action in contravention of the provisions of this Agreement.

16. In the event that Lender or Borrower at any time terminate the financing arrangements with respect to the Senior Debt, then the provisions hereof shall inure to the benefit of any financial institution obtained by Borrower to provide replacement financing for Borrower and, in connection with such replacement financing, the undersigned shall, if requested by such replacement lender, execute with such replacement lender a subordination agreement substantially similar to this Agreement.

17. THIS AGREEMENT, AND ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND ALL RELATED AGREEMENTS AND DOCUMENTS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF FLORIDA. THE PROVISIONS OF THIS SUBORDINATION AGREEMENT AND ALL OTHER AGREEMENTS AND DOCUMENTS REFERRED TO HEREIN ARE TO BE DEEMED SEVERABLE, AND THE INVALIDITY OR UNENFORCEABILITY OF ANY PROVISION SHALL NOT AFFECT OR IMPAIR THE REMAINING PROVISIONS WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.

18. The undersigned hereby irrevocably consents to the non-exclusive jurisdiction of any Florida state or federal court sitting in Palm Beach County, Florida in any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking. The undersigned waives any objection which the undersigned may have based upon lack of personal jurisdiction, improper venue or forum non conveniens. Undersigned irrevocably agrees to service of process by

certified mail, return receipt requested to the address set forth on the signature page hereto.

19. THE UNDERSIGNED (AND LENDER BY ITS ACCEPTANCE HEREOF) HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO OR UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO ANY CLAIMS ARISING OUT OF ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO ANY PROPOSED RENEWAL, EXTENSION, AMENDMENT, MODIFICATION, RESTRUCTURE, FORBEARANCE, WORKOUT, OR ENFORCEMENT OF THE TRANSACTIONS CONTEMPLATED HEREUNDER OR UNDER THE LOAN DOCUMENTS.

20. The PDA and Guaranty each is and shall continue to be completely subject and subordinate to the Senior Debt in all respects. In the event that Lender, its successors, transferees, designees and/or assigns forecloses the lien of the Senior Mortgage or obtains a deed in lieu of foreclosure thereof, then immediately and without further action (including, without limitation, without the execution or delivery of any further instrument, document, or agreement), the PDA (unless the Lender chooses otherwise as to all or any part thereof in its sole discretion), and the Guaranty shall be of no further effect, the Mortgaged Property shall cease to be subject to any and all of the terms thereof, and the undersigned shall have no further rights thereunder.

[SIGNATURE PAGES FOLLOW]

**WITNESS** the due execution of this Agreement as a document under seal as of the date first written above.

**SUBORDINATING PARTY:**

**BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

**STATE OF FLORIDA** )  
 ) ss.:  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of **BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY**, on behalf of the agency, who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public, State of Florida

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

My Commission Expires: \_\_\_\_\_

(Notary Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGES]

**LENDER:**

**TD BANK, N.A.**, a national banking association

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF FLORIDA** )  
 ) ss.:  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of **TD BANK, N.A.**, a national banking association, on behalf of the banking association, who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public, State of Florida

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

My Commission Expires: \_\_\_\_\_

(Notary Seal)

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

**AGREED TO AND ACKNOWLEDGED,  
INTENDING TO BE LEGALLY BOUND:**

**BORROWER:**

**OCEAN BREEZE EAST APARTMENTS  
LLC**, a Florida limited liability company

By: Ocean Breeze Manager LLC, a  
Florida limited liability company, its  
manager

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name printed or typed

By: \_\_\_\_\_  
Lewis V. Swezy, Manager

**ACKNOWLEDGMENT**

**STATE OF FLORIDA** )  
 ) ss.:  
**COUNTY OF** \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Lewis V. Swezy, as Manager of Ocean Breeze Manager LLC, a Florida limited liability company, as Manager of **Ocean Breeze East Apartments LLC**, a Florida limited liability company, on behalf of the limited liability company, who is personally known to me or who produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary Public, State of Florida

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

My Commission Expires: \_\_\_\_\_

(Notary Seal)

**Exhibit "A"**

**(Legal Description of Mortgaged Property)**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and described as follows:

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard as shown on Road Plat Book 5, at Page 182 AND LESS a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South 1/2 of the East 1/2 of Lot 2 of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, and LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

**COLLATERAL ASSIGNMENT  
OF MUNICIPAL AGREEMENTS**

**THIS COLLATERAL ASSIGNMENT OF MUNICIPAL AGREEMENTS** (this “**Assignment**”) is dated as of \_\_\_\_\_, 2019, by **OCEAN BREEZE EAST APARTMENTS LLC**, a Florida limited liability company (“**Assignor**”), in favor of **TD BANK, N.A.**, a national banking association, for itself and as agent for any Affiliate Counterparty (as such term is defined in the Loan Agreement defined below) (“**Assignee**”).

**W I T N E S S E T H :**

**WHEREAS**, Assignor and Assignee have entered into that certain Construction Loan Agreement, dated of even date herewith, pursuant to which Assignee is making a construction loan (the “**Loan**”) to Assignor in the maximum principal amount of \$13,700.000.00 (the “**Loan Agreement**”), and in connection therewith, Assignor has executed and delivered a Construction Loan Note, dated of even date herewith, in the original principal amount of \$13,700.000.00 payable to Assignee (the “**Note**”);

**WHEREAS**, as security for the Loan and related obligations, Assignor has also executed and delivered to Assignee, among other things, that certain (a) Construction Loan Mortgage, Security Agreement, and Fixture Filing, dated of even date herewith (the “**Mortgage**”), and (b) Assignment of Leases and Rents, dated of even date herewith (the “**Assignment of Rents**”), which Mortgage and Assignment of Rents each encumber that certain parcel of real property more particularly described on **Schedule A** attached hereto and made a part hereof (the “**Property**”); and

**WHEREAS**, as additional security for Assignor’s obligations under the Note and Loan Agreement, Assignor wishes to assign its interest in, among other things, various contracts and agreements between Assignor and certain municipal and/or quasi-governmental agencies and/or authorities and/or certain public utilities, as well as its interest in certain development rights.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound hereby, Assignor agrees as follows:

Assignor hereby grants, transfers and assigns to the Assignee all of Assignor’s right, title and interest in and to the following:

- (a) All contracts and agreements described on **Schedule B** attached hereto and made a part hereof, as the same may be amended, modified and/or supplemented from time to time (collectively, the “**Contracts**”), which Contracts now affect or will in the future affect the Property; and
- (b) All proceeds of and deposits with respect to the Contracts.

Assignor represents and warrants to the best of Assignor's knowledge and belief that: (a) it has good and full right and authority to make this Assignment; (b) it has not heretofore made any assignment, pledge, alienation, or other transfer of any of the Contracts, (c) all Contracts are in full force and effect and have not been modified or amended, except as indicated on **Schedule B**, and Assignor is not in default of any of its obligations thereunder, and (d) it promptly will deliver to Assignee complete copies of any and all Contracts (and any amendments, modifications, and/or supplements thereto) subsequently entered into by Assignor.

This Assignment is made for the purpose of securing:

1. The payment of the principal sum, interest, and indebtedness evidenced by the Note, and all Hedging Obligations (as such term is defined in the Loan Agreement) which Note and any Hedging Contracts (as such term is defined in the Loan Agreement) are also secured by the Mortgage and Assignment of Rents;
2. Any other sums, together with any applicable interest thereon, due from Assignor to Assignee or any Affiliate Counterparty pursuant to the Loan Agreement, any of the other Loan Documents (as such term is defined in the Loan Agreement) or pursuant to any Hedging Contract; and
3. Performance and discharge of each and every obligation, covenant, and agreement of Assignor contained in the Loan Documents.

This Assignment is made on the following terms, covenants and conditions:

This Assignment is made solely for the purpose of securing the above-described obligations of Assignor to Assignee or any Affiliate Counterparty. So long as there shall exist no uncured default by Assignor in the payment of the principal sum, interest or other amounts due with respect to the Indebtedness (as defined in the Mortgage) and any Hedging Obligations evidenced or secured by the Loan Documents or any Hedging Contract or in the performance by Assignor of any obligation, covenant, or agreement in said Loan Documents or any Hedging Contract, Assignor shall retain and may exercise all rights with respect to all development rights and all rights in and to any and all the Contracts, subject to the terms of the Loan Documents.

In the event of any uncured default by Assignor under the Loan Documents, Assignee, at its option, may (but it shall not be obligated to) exercise its rights as assigned herein, including the exercise of all development rights of Assignor pertaining to the Property, succeed to any and all of Assignor's rights, title, and interest in and to all or any of the Contracts (subject to the terms, conditions, and limitations therein contained), and waive, amend, modify, or terminate all or any part of the Contracts as Assignee, in its sole discretion, deems advisable.

Upon payment in full of the principal sum, interest, any other indebtedness including any Hedging Obligation evidenced or secured by the Loan Documents and any Hedging Contract, this Assignment shall become and be void and of no effect.

In case of any conflict between the terms of this instrument and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

This Assignment shall inure to the benefit of Assignee and its successors and assigns.

This Assignment shall be governed, construed and enforced in accordance with the laws of the State of Florida.

[NO FURTHER TEXT ON THIS PAGE]

**IN WITNESS WHEREOF**, Assignor has executed this instrument as of the date first set forth above.

ASSIGNOR:

**OCEAN BREEZE EAST APARTMENTS LLC**,  
a Florida limited liability company

By: Ocean Breeze Manager LLC, a  
Florida limited liability company,  
its manager

By: \_\_\_\_\_  
Lewis V. Swezy, Manager

## **SCHEDULE A**

### **Legal Description**

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and described as follows:

Lots 3 through 12 inclusive, in Block 1, AND Lots 1 and 2, in Block 1, LESS all that portion of Lots 1 and 2 lying West of the East right-of-way line for Seacrest Boulevard as shown on Road Plat Book 5, at Page 182 AND LESS a 20 foot return curve area for road right-of-way, PALM BEACH COUNTRY CLUB ESTATES, according to the plat thereof, as recorded in Plat Book 11, at Page 43, of the Public Records of Palm Beach County, Florida.

AND

The South 1/2 of the East 1/2 of Lot 2 of Subdivision of the West 1/2 of the Southeast 1/4 of Section 21, Township 45 South, Range 43 East, LESS the South 125 feet thereof; LESS the parcels conveyed to the City of Boynton Beach by Official Records Book 852, Page 642, and LESS the right-of-way for Seacrest Boulevard, as shown on Road Plat Book 5, at Page 182, according to the plat thereof, as recorded in Plat Book 1, at Page 4, Public Records of Palm Beach County, Florida.

## **SCHEDULE B**

### **List of Contracts**

1. Purchase and Development Agreement with an Effective Date (as defined in such agreement) of December 15, 2017, entered into by and between Boynton Beach Community Redevelopment Agency and Assignor, as amended from time to time (collectively, the “**PDA**”).

**CONSENT TO ASSIGNMENT  
OF MUNICIPAL AGREEMENTS**

Each of the undersigned acknowledges that the execution and delivery of this Consent to Assignment of Municipal Agreements (this "**Consent**") is required by Assignee prior to making any disbursements of the Loan (as defined in the foregoing Assignment of Municipal Agreements ("**Assignment**"); all terms defined in the Assignment are used with the same meaning herein), and, without execution and delivery of this Consent, Assignee will not make the Loan. In consideration of the foregoing, each of the undersigned hereby agrees as follows:

1. Each of the undersigned hereby consents to and acknowledges the foregoing Assignment by Assignor of the PDA, and to each and all of the terms and conditions of the Assignment notwithstanding any terms to the contrary in the PDA. Each of the undersigned hereby agrees to be bound by such assignment.

2. This Consent (a) shall be binding upon each of the undersigned and their successors and assigns, (b) shall inure to the benefit of Assignee and its respective successors and assigns, and (c) may not be amended, withdrawn, canceled, modified or otherwise affected without the prior written consent of Assignee.

3. Assignee shall have the right to assign its rights pursuant to this Consent to any subsequent holder of the Loan or any interest therein, or to Assignee's nominees, successors or assigns.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY,  
SIGNATURES ON FOLLOWING PAGES]

**BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

[PLACE ON BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY LETTERHEAD]

**ESTOPPEL CERTIFICATE**

\_\_\_\_\_, 2019

TD BANK, N.A., a national banking association  
21845 Powerline Road, Second Floor  
Boca Raton, Florida 33433

Re: Purchase and Development Agreement with an Effective Date (as defined in such agreement) of December 15, 2017, entered into by and between **BOYNTON BEACH COMMUNITY REDEVELOPMENT AGENCY ("BBCRA")** and **OCEAN BREEZE EAST APARTMENTS LLC**, a Florida limited liability company ("**Borrower**"), as amended pursuant to that certain First Amendment to Purchase and Development Agreement dated as of [\_\_\_\_], 2019, by and among BBCRA, Borrower, Lewis V. Swezy, an individual, and The City of Boynton Beach, as the same may be amended from time to time (collectively, the "**Agreement**"), covering the property therein described (the "**Property**").

Ladies and Gentlemen:

The BBCRA hereby certifies to **TD BANK, N.A.**, a national banking association ("**Lender**"), who has agreed to make a loan ("**Loan**") to Borrower, which Loan is secured by the Property owned by Borrower, as follows:

1. Unless specifically indicated otherwise herein, capitalized terms in this Estoppel Certificate shall have the same respective meanings as are ascribed to them in the Agreement.

2. The Agreement as described above is unmodified and is in full force and effect. Other than the Agreement, there are no other agreements or understandings, whether written or oral, between the parties to the Agreement with respect to the matters covered by the Agreement.

3. The BBCRA approves of the development and use of the Property as a 123 unit multifamily complex with related infrastructure and improvements.

4. The BBCRA shall provide Lender notice as and when notice is required to be delivered to any party in accordance with the Agreement. Lender's address for purposes of providing notice under the Agreement is set forth at the top of this Estoppel Certificate.

5. The BBCRA's current address for notice under the Agreement is:  
[\_\_\_\_\_].

6. To the current knowledge of the BBCRA after due inquiry, as of the date hereof, no event(s) have occurred that presently, or with the passage of time, the giving of notice, or both, do or would: (a) constitute a breach or default by any party under the Agreement, or (b)

give rise to a right of termination of the Agreement by any party, or (c) give rise to any claim of reverter or right of first refusal by BBCRA.

7. There are no amounts currently due and payable under the Agreement.

8. There is no outstanding construction, maintenance or repair obligation required to be completed by any party under the Agreement, which is past due.

9. The BBCRA and Borrower understand that Lender is relying on the statements contained herein as an inducement to making its decision to make the Loan to Borrower and but for the statements made herein Lender would not make the Loan. The BBCRA and Borrower shall be estopped from denying the accuracy of any statement made herein and shall not be entitled to make any claim against Lender or the Property, which is inconsistent with the terms of this Estoppel Certificate. Lender, together with its successors and assigns, is entitled to act in reliance upon the matters herein contained without further inquiry of any kind, it being expressly acknowledged and agreed that in the event of any inconsistencies between this Estoppel Certificate and the Agreement, the terms of this Estoppel Certificate shall govern.

10. Each of the individuals executing this Estoppel Certificate on behalf of the BBCRA and Borrower, respectively, represents and warrants that he or she is duly authorized to execute and deliver this Estoppel Certificate on behalf of such entity.

11. This Estoppel Certificate shall inure to the benefit of Lender and its respective successors and assigns and shall be binding on the BBCRA and Borrower and their respective successors and assigns. Except as otherwise set forth herein, this Estoppel Certificate shall not be deemed to alter or modify any of the terms and conditions of the Agreement.

12. This Estoppel Certificate may be executed in any number of identical counterparts, any or all of which may contain the signature of fewer than all of the parties but all of which will be taken together as a single instrument. Counterparts to this Estoppel Certificate may be executed and delivered by facsimile or electronic transmission (i.e., pdf format), and for purposes of this Estoppel Certificate, signatures transmitted by facsimile or electronic transmission will be deemed to be original signatures.

*[Signature Page Attached.]*

**BBCRA:**

**BOYNTON BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and Agreed to by:

**ASSIGNOR:**

**OCEAN BREEZE EAST APARTMENTS LLC**, a  
Florida limited liability company

By: Ocean Breeze Manager LLC, a  
Florida limited liability company,  
its manager

By: \_\_\_\_\_  
Lewis V. Swezy, Manager