

# DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY

## PROMISSORY NOTE

**Date: July 17 2014**  
**Maturity Date: July 16 2034**

FOR VALUE RECEIVED, the undersigned, Village Square Elderly, Ltd., a Florida limited partnership ("Borrower") promise(s) to pay to the order of the Delray Beach Community Redevelopment Agency ("CRA"), at it's office located at 20 North Swinton Avenue, Delray Beach, Florida 33444, or at such other place or places as the holder of this Note from time to time may designate in writing, the principal sum of TWO MILLION SEVEN HUNDRED THOUSAND 00/100 (\$2,700,000.00) DOLLARS in lawful money of the United States (the "Loan"), together with interest in like lawful money from the date funds are advanced under this Note at the applicable annual rate set forth below, to be computed on the basis of the actual number of days elapsed and a year of 360 days. Borrower and all endorsers, sureties, guarantors and any other persons liable or to become liable with respect to the Loan are each included in the term "Obligor" as used in this Note.

1. **PAYMENTS.** Borrower shall pay the interest and principal of this Note as follows:

The loan shall not accrue any interest during the construction period and for the first ten (10) years of the twenty (20) year term (which term shall commence ninety (90) days subsequent to the date of issuance of the first certificate of occupancy by the City of Delray Beach, Florida). Payments of principal only shall commence on the first anniversary date of the commencement of the term of the loan and shall be paid on each consecutive anniversary date of the loan until the tenth (10<sup>th</sup>) anniversary date. Commencing upon the tenth (10<sup>th</sup>) anniversary date and each consecutive anniversary date thereafter until the twentieth (20<sup>th</sup>) anniversary date, payments of principal and interest shall be due on the then outstanding principal. Payments shall equal the remaining cash flow from the Property after payment of the required payments on the first mortgage and payment of the deferred developer fee but in any event payments shall not be less than \$25,000.00 per annum. Notwithstanding the total amount of payments of principal and interest paid by Borrower during the term of the Loan, upon the twentieth (20<sup>th</sup>) anniversary date ("Maturity Date") the full amount of all outstanding principal plus all accrued interest shall be due and payable and shall be paid in full unless the loan is modified by a majority vote of the CRA Board.

Borrower shall pay all amounts owing under this Note in full when due without set-off, counterclaim, deduction or withholding for any reasons whatsoever. If any payment falls due on a day other than a day on which CRA is open for business (a "Business Day"), then such payment shall instead be made on the next succeeding Business Day, and interest shall accrue accordingly. Any payment received by the CRA after 2:00 p.m. shall not be credited against the indebtedness under this Note until the next succeeding Business Day.

The CRA shall not disburse any funds as described in the Note until such time as the Borrower has received all moneys from the Tax-Exempt Bonds Account and the Equity Account of the Project Fund for the acquisition and construction of the Project.

2. **INTEREST RATE.** Commencing on the tenth (10<sup>th</sup>) Anniversary date of the loan, interest at the rate of three percent (3%) per annum shall begin to accrue on the outstanding unpaid balance principal.

3. SECURITY INTEREST. As security for the payment of this Note, and any renewals, extensions or modifications hereof, and any other liabilities, indebtedness or obligations of Borrower to CRA, arising out of this obligation, Borrower hereby grants to the CRA a security interest in any and all collateral pledged to the CRA as set forth below and any and all other collateral now or hereafter pledged to the CRA pursuant to a security agreement which provides for such security interest:

(a) Second Mortgage Deed, (the "Mortgage") of even date herewith executed by Borrower in favor of CRA encumbering the following described property situate in Palm Beach County, Florida, more particularly described as follows:

The Building(s) containing eighty-four (84) rental units and a clubhouse to be built by the Borrower.

(b) UCC-1 Financing Statement (the "UCC-1") on Village Square Elderly, Ltd., a Florida limited partnership, for improvements located at the mortgaged property;

The Mortgage and UCC-1 are hereinafter referred to as the "Collateral Documents")

The CRA shall have, without limitation, the following rights, each of which may be exercised at CRA's sole discretion at any time whether or not this Note is due: (i) to pledge, assign, sell, transfer or otherwise dispose of this Note and the Collateral, whereupon CRA shall be relieved of all duties and responsibilities and relieved from any and all liability with respect to any Collateral so pledged or transferred, and any pledgee or transferee shall for all purposes stand in the place of CRA hereunder and have all the rights of CRA hereunder; (ii) to transfer the whole or any part of the Collateral Documents into the name of itself or its nominee; (iii) to notify the Borrowers on any Collateral Documents to make payment to CRA of any amounts due or to become due on any Collateral Documents and hold same as additional collateral and upon the continuance of an Event of Default (as defined in Section 4 of this Note) apply it to the principal or interest hereon or to any liabilities secured hereby; (iv) to demand, sue for, collect, or make any compromise or settlement it deems desirable with respect to the Collateral Documents; and (v) upon the continuance of an Event of Default to take possession or control of any proceeds of the collateral secured by the Collateral Documents.

4. EVENTS OF DEFAULT. The entire unpaid principal balance of the Loan, together with all unpaid interest accrued thereon and all other sums owing under this Note or any other instrument or document executed by Borrower in connection with the Loan (this Note and all such instruments and documents, including, without limitation, any guaranties, agreements, undertakings, contracts, mortgages, security agreements, assignments and other documents executed to secure the Loan being referred to in this Note as the "Loan Documents"), shall at the option of Bank become immediately due and payable without notice or demand upon the occurrence of any one or more of the following events ("Events of Default"), regardless of the cause thereof and whether within or beyond the control of Borrower: (a) the failure of the Borrower to pay any sum within 15 days of its due date under this Note, or the failure of Borrower to pay within 15 days of its due date any other sum when due under any other Loan Document (and the expiration of any applicable grace period provided in such Loan Document for that payment); (b) the failure of Borrower to observe or perform any covenant or agreement in any Loan Document, or the occurrence of any other default under any Loan Document after receipt of written notice and a thirty (30) day opportunity to cure and so long as Borrower is acting in good faith toward the resolution of the non-monetary default, this Note shall not be considered in default, and the expiration of any applicable grace period provided in such Loan Document for the cure of that failure or default; (c) the failure to pay any sum due under the terms and provisions of the Promissory Note held by Housing Finance Authority of Palm Beach County, Florida and any other loan document related in any way to the First

Mortgage held by Housing Finance Authority of Palm Beach County, Florida following the expiration of any notice and cure periods; (d) if any representation, warranty, affidavit, certificate or statement made or delivered to CRA by Borrower from time to time in connection with the Loan shall be deemed by CRA to be false, incorrect or misleading in any material respect; (e) the disposition, sale, transfer or exchange of all or a substantial part of Borrower's or Obligor's assets, without CRA's consent which will not be unreasonably withheld or the entry of any judgment in excess of \$200,000.00 against Borrower, which is not satisfied or bonded off within thirty (30) days of the date of the Judgment, or the issuance of any levy, attachment, charging order, garnishment or other process against any property of Borrower or the filing of any lien against any such property (and the expiration of any grace period provided in any Loan Document for the discharge of such lien); (f) if Borrower shall make an assignment for the benefit of creditors, file a petition in bankruptcy, apply to or petition any tribunal for the appointment of a custodian, receiver, intervener or trustee for such Obligor or a substantial part of such Borrower's assets, which is not discharged, withdrawn within 60 days (g) the failure to obtain any permit, license, approval or consent from, or to make any filing with, any federal, state or municipal governmental authority (or the lapse or revocation or rescission thereof once obtained or made) which is necessary in connection with the execution or delivery of any Loan Document, the making of the Loan, the performance of Borrower's obligations under any Loan Document, or the enforcement of any Loan Document; (h) if any governmental authority (or any person acting or purporting to act under government authority) shall take any action to condemn, assume custody or control of, seize or appropriate all or any part of Borrower's property in which the value taken is equal to or greater than ten percent (10%) of the fair market value of the property, (i) the failure to pay all taxes before the same become delinquent (provided Borrower shall not be in default hereunder if Borrower is contesting the taxes in good faith) and pay premiums on policies of insurance on the due date without benefit of the grace period.

5. LATE PENALTY AND DEFAULT RATE OF INTEREST. Notwithstanding anything to the contrary contained herein, Borrower's Investor Limited Partner shall have the right, but not the obligation, to cure an event of Default hereunder, and CRA agrees to accept such cure as if provided by Borrower itself. Borrower shall pay to CRA a late charge of five percent (5 %) of any payment not received by CRA within fifteen (15) days of its due date; provided, however, if said fifteen (15) day period ends on a day other than a Business Day, then the aforescribed late charge shall be payable if the payment is not received by the last Business Day within said fifteen (15) day period. At CRA's sole option the entire unpaid principal balance of the Loan and any other sums owing under any Loan Document shall bear interest until paid at an augmented annual rate (the "Default Rate") from and after the occurrence and during the continuation of any Event of Default, regardless of whether CRA also elects to accelerate the maturity of the Loan; provided, however, that after judgment all such sums shall bear interest at the greater of the Default Rate or the rate prescribed by applicable law for judgments. At CRA's sole option, all interest which accrues at the Default Rate shall be due and payable on CRA's demand from time to time, but absent such demand shall be due and payable on the regularly scheduled dates for interest payments under this Note. The Default Rate shall equal the lesser of (i) twelve percent (12 %) per annum or (ii) the maximum interest rate permitted by applicable law, if any.

6. REPORTING REQUIREMENTS. Annual operating statement to be received from the Borrower no later than 90 days from fiscal year's end. Annual limited liability partnership tax returns to be received from the Borrower no later than 300 days (October 31) from fiscal year's end. The CRA shall have the right at any time to require the Borrower to have prepared and submitted on an annual basis, annual independent audits (provided Borrower shall have until ninety (90) days after fiscal year end to provide draft, and one hundred twenty (120) days after fiscal end to provide final) reflecting the total amount of operating expenses and remaining cash flow.

7. RIGHTS AND REMEDIES OF BANK. The CRA shall be entitled to pursue any and all rights and remedies provided by applicable law and/or under the terms of this Note or any other Loan Document, all of which shall be cumulative and may be exercised successively or concurrently. Upon the occurrence and during the

continuation of any Event of Default, (and after the expiration of all applicable grace periods) CRA, at its option, may at any time declare any or all other liabilities of Borrower to CRA immediately due and payable (notwithstanding any contrary provisions thereof) without demand or notice of any kind. CRA's delay in exercising or failure to exercise any rights or remedies to which CRA may be entitled if any Event of Default shall not constitute a waiver of any rights or remedies of CRA with respect to that or any subsequent Event of Default, whether of the same or a different nature, nor shall any single or partial exercise of any right or remedy by CRA preclude any other or future exercise of that or any other right or remedy. No waiver of any right or remedy by CRA shall be effective unless made in writing and signed by CRA nor shall any waiver on one occasion apply to any future occasion, but shall be effective only with respect to the specific occasion addressed in that signed writing.

8. **WAIVER AND CONSENT.** The Borrower hereby: (a) waives demands, presentment, protest, notice of dishonor, suit against or joinder of any other person, and all other requirements necessary to charge or hold it liable with respect to the Loan; (b) waives any right to immunity from any such action or proceeding and waives any immunity or exemption of any property, wherever located, from garnishment, levy, execution, seizure or attachment prior to or in execution of judgment, or sale under execution or other process for the collection of debts; (c) waives any right to interpose any set-off or non-compulsory counterclaim or to plead laches or any statute of limitations as a defense in any such action or proceeding, and waive (to the extent lawfully waivable) all provisions and requirements of law for the benefit of the Borrower now or hereafter in force; (d) submit to the jurisdiction of the state and federal courts in the State of Florida for purposes of any such action or proceeding, and (e) agrees that the venue of any such action or proceeding may be laid in Palm Beach County (in addition to any county in which any collateral for the Loan is located) and waive any claim that the same is an inconvenient forum. No provision of this Note shall limit CRA's right to serve legal process in any manner permitted by law or to bring any such action or proceeding in any other competent jurisdiction.

9. **COSTS, INDEMNITIES AND EXPENSES.** The Borrower agrees to pay all filing fees and similar charges and all costs incurred by CRA in collecting or securing or attempting to collect or secure the Loan and such right shall extend beyond the entry of a Final Judgment including attorneys' fees, whether or not involving litigation and/or appellate, administrative or bankruptcy proceedings. Such entitlement or attorneys' fees shall not merge with the entry of a Final Judgment and shall continue postjudgment unless and/or until any and all indebtedness due CRA is fully satisfied. The Borrower agrees to pay any documentary stamp taxes, intangible taxes or other taxes which may now or hereafter apply to this Note or the Loan or any security therefor, and the Borrower agrees to indemnify and hold CRA harmless from and against any liability, costs, attorneys' fees, penalties, interest or expenses relating to any such taxes, as and when the same may be incurred. The Borrower agrees to pay on demand, and to indemnify and hold CRA harmless from and against, any and all present or future taxes, levies, imposts, deductions, charges and withholdings imposed in connection with the Loan by the laws or governmental authorities of any jurisdiction other than the State of Florida or the United States of America, and all payments to CRA under this Note shall be made free and clear thereof and without deduction therefor.

10. **GOVERNING LAW.** This Note shall be governed by, and construed and enforced in accordance with the laws of the State of Florida.

11. **INVALIDITY.** Any provision of this Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent that the Borrower may lawfully waive any law that would otherwise invalidate any provision of this Note, each of them hereby waives the same, to the end that this Note shall be valid and binding and enforceable against each of them in accordance with all of its terms.

12. INTERPRETATION. If more than one person or entity executes this Note as "Borrower", then the term "Borrower" as used in this Note shall refer to all such persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Note are made by and shall be binding upon each and every undersigned person, jointly and severally. The term "CRA" shall be deemed to include any subsequent holder(s) of this Note. Whenever used in this Note, the term "person" means any individual, firm, corporation, trust or other organization or association or other enterprise or any governmental or political subdivision, agency, department or instrumentality thereof. Whenever used in this Note, words in the singular include the plural, words in the plural include the singular, and pronouns of any gender include the other genders, all as may be appropriate. Captions and paragraph headings in this Note are for convenience only and shall not affect its interpretation.

13. MISCELLANEOUS. Time shall be of the essence with respect to the terms of this Note. This Note cannot be changed or modified orally. CRA shall have the right unilaterally to correct patent errors or omissions in this Note or any other Loan Document. This Note may be prepaid in whole or in part at any time without penalty. Except as otherwise required by law or by the provisions of this Note or any other Loan Document, payments received by CRA hereunder shall be applied first against expenses and indemnities, next against interest accrued on the Loan, and next in reduction of the outstanding principal balance of the Loan, except that during the continuance of any Event of Default, CRA may apply such payments in any order of priority determined by CRA in its exclusive judgment. Borrower shall receive immediate credit on payments only if made in the form of either a federal wire transfer of cleared funds or a check drawn on an account maintained with CRA containing sufficient available funds. Otherwise, Borrower shall receive credit on payments after clearance, which shall be no sooner than the first Business Day after receipt of payment by CRA. For purposes of determining interest accruing under this Note, principal shall be deemed outstanding on the date payment is credited by CRA. If any payment required to be made pursuant to the Note is not received on the due date, CRA shall have the right, at its election, to charge any of Borrower's accounts at CRA with the amount of such payment. Except as otherwise required by the provisions of this Note or any other Loan Document, any notice required to be given to Borrower shall be deemed sufficient if made personally or if mailed, postage prepaid, to such Borrower's address as it appears in this Note (such). Borrower shall furnish CRA such financial information of Borrower as CRA may from time to time reasonably request and shall permit CRA to inspect its books and records during normal business hours upon reasonable advance notice. All of the terms of this Note shall inure to the benefit of CRA and its successors and assigns and shall be binding upon Borrower and its respective heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally.

14. WAIVER OF JURY TRIAL. CRA AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. BORROWER ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO THE BANK IN EXTENDING CREDIT TO THE BORROWER, THAT THE BANK WOULD NOT HAVE EXTENDED SUCH CREDIT WITHOUT THIS JURY TRIAL WAIVER, AND THAT BORROWER HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY IN CONNECTION WITH THIS JURY TRIAL WAIVER AND UNDERSTANDS THE LEGAL EFFECT OF THIS WAIVER.

15. Limitation of Liability. The Loan, together with all unpaid, accrued Interest, shall be paid to CRA at the maturity or early repayment of the Loan. This Loan is Non-Recourse to the Borrower and the CRA may not seek recourse to any personal assets of the Borrower. The Borrower does not agree to subject any of its personal assets to the payment of this debt; however, the CRA may seek to subject any and all security for this debt for foreclosure or other applicable legal or equitable remedies. The CRA shall be entitled to receive attorney's fees and other costs of collection, provided that the same shall only be collected from proceeds from foreclosure or other legal or equitable remedies related to security for this debt, if any. Such attorney's fees and collection costs shall not be a personal obligation of the Borrower and the Borrower's personal assets shall not be subject to the payment of these sums; however, any property which is specifically pledged may be subject to foreclosure or other remedy allowed by law.

**BORROWER:**

Village Square Elderly, Ltd., a Florida limited partnership

By: RST Carver Estates Elderly, LLC, a Nevada limited liability company, its managing general partner

By: Roundstone Development, LLC, a Nevada limited liability company, its sole member

  
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By: Clifton Phillips, President