

**DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY  
FUNDING ASSISTANCE AGREEMENT**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **DELRAY BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, duly created and operated pursuant to Chapter 163, *Florida Statutes*, hereinafter referred to as "CRA", and the **DELRAY BEACH HOUSING AUTHORITY**, hereinafter referred to as "DBHA."

**WITNESSETH:**

**WHEREAS**, it is the policy of the CRA to stimulate and encourage economic growth within the CRA's Community Redevelopment Area ("Area"), pursuant to carrying out its purposes as provided for under Chapter 163, *Florida Statutes*; and

**WHEREAS**, DBHA, through its corporate affiliate with Delray Housing Group, Inc. has formed a limited liability company with SHAG Island Cove, LLC, known as Island Cove, LLC, to develop an affordable housing project known as the Island Cove Apartments ("Island Cove Apartments") located at 900 SW 12<sup>th</sup> Street, Delray Beach, Florida, which is owned by the DBHA; and

**WHEREAS**, in order to finance and construct the Island Cove Apartments, the CRA has agreed to provide funding to DBHA in consideration of DBHA constructing affordable or workforce housing pursuant to this Agreement, and the DBHA will utilize the funds provided by the CRA as a loan to Island Cove, LLC; and

**WHEREAS**, pursuant to this Agreement, the DBHA agrees to utilize any funds received from Island Cove, LLC pursuant to the mortgage and promissory note, to be executed by Island Cove, LLC, which will be in the form of principal and interest payments to the DBHA, for affordable or workforce housing and subject to the City of Delray Beach Land Development Regulations Workforce Housing provisions; and

**WHEREAS**, the CRA Board finds that the Island Cove Apartments affordable housing project to be developed by Island Cove, LLC furthers the goals and objectives of the CRA as contained in the Community Redevelopment Plan, and are in the best interest of the CRA; and

**WHEREAS**, the CRA will provide funding to the DBHA, pursuant to the terms and conditions of this Agreement, in order to assist the DBHA, and its development partners, with funding the development of the Island Cove Apartments affordable housing project which furthers the goals and objectives contained in the CRA's Community Redevelopment Plan; and

**WHEREAS**, the CRA finds that this Agreement is consistent with its Community Redevelopment Plan, and conforms with the requirements of Florida law; and

**WHEREAS**, the CRA has determined it is in the public's best interest, pursuant to the CRA's Community Redevelopment Plan to award funds to the DBHA pursuant to the terms of this Agreement; and

**WHEREAS**, pursuant to the administration of the affordable housing program, the CRA agrees to provide funding to the DBHA in the amount not to exceed **ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS**.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

#### **ARTICLE 1. DEFINITIONS.**

1.01. Definitions. The terms defined in this Section 1.01 shall have the following meanings, except as herein otherwise expressly provided:

(a) "City" means the City of Delray Beach, Florida, a Florida municipal corporation, and any successors or assigns thereto.

(b) "Plan" means the community redevelopment plan for the Area, as approved by the City Commission, and any amendments to the Plan.

(d) "Project" means the development and construction of the Island Cove Apartments which shall consist of 60 affordable housing rental units reserved for households making 30%-80% or less of the area median income as set forth in the Funding Request.

(e) "Property" and means the tract of land located where the Project will be located, as more particularly described in Exhibit "A", attached hereto and incorporated herein.

#### **ARTICLE 2. PURPOSE; FINDINGS; INTENT.**

2.01. Findings.

(a) The recitals set forth above in the "Whereas" clauses are hereby approved by the parties and incorporated herein.

(b) The CRA shall provide funding to the DBHA in an amount not to exceed **One Million and 00/100 Dollars (\$1,000,000.00)** (the "Funding Amount"). The funds shall be used solely for the Project, pursuant to section 2.01(c) below, to further the development of the Project on the Property solely limited to development costs, construction costs, redesigning the project and infrastructure costs that are associated with the construction of the Project. The Funding Amount shall be disbursed according to Article 4. The CRA shall, in its sole discretion, have the right to withhold the Funding Amount until receipt of all required documentation from the DBHA that may be required by the CRA, from time to time, to confirm that the DBHA and its development partners will close on the financing for the Project and until the CRA receives any and all additional information from the DBHA that the CRA deems necessary, in its sole and absolute discretion, to analyze the DBHA's financial position or related to the Project.

(c) The DBHA represents and warrants that it intends to develop the Project on the Property in accordance with the Funding Request to the CRA dated August 14, 2020 (“Funding Request”), herein attached as Exhibit “B” and incorporated by reference.

(d) The parties hereto recognize and acknowledge and do mutually find that the financial assistance provided pursuant to this Agreement is an important inducement to the DBHA developing the Project.

#### 2.02. Intent; Cooperation.

(a) The parties mutually recognize and acknowledge that the DBHA desires CRA's financial assistance in the form of the Funding Amount provided by the CRA pursuant to this Agreement, and the CRA's obligation to make the payment, as provided herein, is based on the DBHA representation to develop and complete construction of the Project on the Property pursuant to the terms of this Agreement.

(b) The parties hereto recognize and acknowledge that the successful development of the Project is dependent upon continued cooperation of the parties hereto, and each party agrees that it shall: (i) act in a reasonable manner hereunder, (ii) provide the other party with complete and updated information from time to time, (iii) make its good faith reasonable efforts to ensure that such cooperation is continuous, (iv) the purposes of this Agreement are carried out to the full extent contemplated hereby and (v) the Project is designed, constructed, equipped, completed and operated as provided herein.

### ARTICLE 3. TERM

3.01 TERM. The term of this Agreement shall commence on the Effective Date (defined as the date the last party to this Agreement executes the document) written above and shall terminate upon the earlier of receipt of the certificate of occupancy for the Project or earlier as provided for herein; provided, however, that the following rights of the CRA shall survive the expiration or early termination of this Agreement: marketing requirements set forth in Section 5.08, to audit or inspect; to require reversion of assets; to enforce representations, warranties and certifications; to exercise entitlement to remedies, limitation of liability, indemnification, and recovery of fees and costs, all in accordance with the terms and conditions of this Agreement.

### ARTICLE 4. DISBURSEMENT OF FUNDING AMOUNT

4.01. GENERALLY. Subject to the terms and conditions contained in this Agreement, the CRA shall make available to DBHA up to **One Million and 00/100 Dollars (\$1,000,000.00)**. In no event shall payments to DBHA under this Agreement exceed **One Million and 00/100 Dollars (\$1,000,000.00)**. Payments shall be made to DBHA only after receipt and approval of requests for disbursements.

4.02 REQUEST FOR DISBURSEMENT. Upon receipt of the written request for disbursement from the DBHA, the CRA shall provide the Funding Amount to the DBHA within ten (10) calendar days. The written request for disbursement shall include a guaranty and warranty that the DBHA shall use the funds solely in conjunction with the financial closing of the financing for the Project (“Financial Closing”). The DBHA shall include a copy of the closing memo (“Closing Memo”) for the Financial Closing of the Project along with a copy of the mortgage and promissory note that the DBHA will receive from Island Cove, LLC evidencing the loan of the funds to Island Cove, LLC to develop the Project.

4.03 The Funding Amount shall strictly be utilized in a manner consistent with the Closing Draw which is attached hereto as Exhibit “C,” and incorporated herein by reference, the Funding Request and this Agreement. More specifically, as outlined under the column heading titled “Housing Authority Loan” in the Closing Draw. Failure to comply with this section is a material breach of this Agreement.

4.04. REMEDIES FOR NON-COMPLIANCE. If DBHA fails to perform any of its obligations or covenants hereunder, defaults, or materially breaches any of the terms contained in this Agreement, the CRA shall have the right to take one or more of the following actions:

- a. Withhold funds, pending correction of the deficiency by DBHA;
- b. Recover payments made to DBHA in which the DBHA shall promptly refund the full amount of funding received under this Agreement to the CRA upon written notice by the CRA; or
- c. Take such other remedies that may be legal permitted.

## **ARTICLE 5. DBHA’S PERFORMANCE OBLIGATIONS**

5.01 The DBHA does affirmatively represent and warrant that it shall take all necessary steps to develop the Project on the Property in accordance with the Funding Request provided to the CRA. DBHA agrees that it is solely liable to the CRA for performance under this Agreement. The DBHA hereby certifies that it is authorized by law to be so bound. Failure to complete the Project and obtain a certificate of occupancy from the governing authority within thirty (30) months after the Financial Closing is deemed a material breach of this Agreement.

5.02 DBHA hereby certifies that it has or will retain adequate staff to oversee execution of its performance obligations under this Agreement, and that execution of each of these performance obligations is consistent with the DBHA's mission.

5.03 In the event the DBHA fails to expend funds in strict accordance with this Agreement or the Funding Request, or if the DBHA fails to complete the Project at the Property, the CRA shall provide written notice to the DBHA of such deficiency(ies), and the DBHA shall have fourteen (14) calendar days from receipt of the notice to cure the deficiency(ies) to the satisfaction of the CRA. Should the DBHA fail to cure such deficiency(ies) to the satisfaction of the CRA, the CRA shall be entitled to recover and receive the portion of the Funding Amount allocated and/or already disbursed to the DBHA, under the terms of this Agreement and have the right to withhold any further funding. The CRA shall have sole and absolute discretion with respect to the determination as to whether DBHA is expending funds in accordance with its Funding Request and this Agreement.

5.04 Both the CRA and the DBHA agree that the DBHA shall at all times act as an independent contractor in the performance of its duties under this Agreement.

5.05 The DBHA shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by the CRA or its designees, for seven (7) years following full expenditure of the Funding Amount in compliance with this Agreement and the Funding Request, or seven (7) years following the termination or expiration of this Agreement, whichever is later. The DBHA shall obtain any records, books, documents and other materials relevant to the Project from Island Cove, LLC or its development partners, upon request by the CRA, which shall be subject to the CRA's inspection, review and audit by the CRA or its designees, for seven (7) years following the expenditure of the Funding Amount. If it is determined, in the CRA's sole and absolute discretion, during the course of the inspection, review or audit that the funding under this Agreement was utilized for unallowable costs, the DBHA agrees to promptly reimburse the CRA for such unallowable payments upon request.

5.06 AUDIT RIGHTS. The CRA shall have the right at any time to conduct audits of the DBHA's records pertaining to the Project, the Funding Amount, and to visit the Project, in order to conduct its monitoring and evaluation activities. The DBHA agrees to cooperate with the CRA in the performance of these activities. The DHBA also agrees to promptly obtain any records pertaining to the Project from Island Cove, LLC or its development partners, upon request by the CRA, to assist the CRA in performance of these activities. Such audits shall take place at a mutually agreeable date and time. If it is determined, in the CRA's sole and absolute discretion, during the course of the audit that the funding under this Agreement was used for unallowable costs, the DBHA agrees to promptly reimburse the CRA for such unallowable payments upon request. The right of the CRA to conduct audits pursuant to this Agreement shall exist for seven (7) years as provided in Section 5.05 herein.

5.07 In order to ensure compliance with this Agreement and the Funding Request, the DBHA shall provide to the CRA with a copy of all documents associated with the financial closing of the Project, a comprehensive and detailed list of all expenditures and shall also provide any backup documentation to support such expenditures, on a quarterly basis. Said invoices must include a statement, signed by the DBHA, indicating that all expenditures therein comport with the guidelines of this Agreement and the Funding Request. At any time, if it is determined, in the CRA's sole and absolute discretion, during the course of the review of the documentation provided that the funding under this Agreement was used for unallowable costs, the DBHA agrees to promptly reimburse the CRA for such unallowable payments upon request. The DBHA shall provide on a timely basis any additional information or documentation requested by the CRA, that the CRA deems necessary to evaluate the Project, and failure of the DBHA to comply with the CRA's request within a five (5) days, or within a time frame agreed to by the CRA, in its sole and absolute discretion, is a material breach of this Agreement and the CRA shall be entitled to recoup the portion of the Funding Amount allocated and/or already disbursed to the DBHA, under the terms of this Agreement and withhold any further

funding. The DBHA also agrees to promptly obtain any records pertaining to the Project from Island Cove, LLC or its development partners, upon request by the CRA. In addition, the DBHA will be required to present the Project status updates to the CRA Board upon request by the CRA.

5.08. Marketing Requirements (During construction and lease-up phase):

a. Publication. In the event the DBHA wishes to engage in any marketing efforts, the DBHA shall, produce, publish, advertise, disclose, or exhibit the CRA's name and/or logo, in acknowledgement of the CRA's contribution to the Project, in all forms of media and communications created by the DBHA for the purpose of publication, promotion, illustration, advertising, trade or any other lawful purpose, including but not limited to stationary, newspapers, periodicals, billboards, posters, email, direct mail, flyers, telephone, public events, and television, radio, or internet advertisements or interviews.

b. Approval. The CRA shall have the right to approve the form and placement of all acknowledgements.

c. Limited Use. The DBHA further agrees that the CRA's name and logo may not be otherwise used, copied, reproduced, altered in any manner, or sold to others for purposes other than those specified in this Agreement. Nothing in this Agreement, or in the DBHA's use of the CRA's name and logo, confers or may be construed as conferring upon the DBHA any right, title, or interest whatsoever in the CRA's name and logo beyond the right granted in this Agreement.

d. CRA Construction Sign. Upon request by the CRA, the DBHA shall display, and cause to be displayed, at the Property, in a prominent, most visible area to the public, a sign displaying the CRA logo, and the CRA's monetary contribution to the Project ("Construction Signage"). The DBHA shall display, and cause to be displayed, the Construction Signage until the Project is complete. The Construction Signage shall be paid for by the DBHA and the Construction Sign specifications will be provided by the CRA. The CRA shall approve the location of the Construction Sign prior to its installation.

e. Commemoration. The DBHA shall host an event, such as a ribbon cutting or celebration, in partnership with the CRA, to commemorate the CRA's funding of DBHA's Project ("Event"). The DBHA must coordinate and collaborate with the CRA in organizing and hosting the Event. The DBHA must include the CRA's logo and acknowledge the CRA, on any form of publication or marketing relating to the Event. The CRA will have final approval regarding the setup, date and time of the Event. The Event must be open to the public and the CRA may promote and advertise the Event in any way it deems fit at its sole and absolute discretion. The CRA may also use the photos, images, or videos from or related to the Event on

social media for marketing and public relations purposes, or for similar purposes at its sole and absolute discretion.

#### 5.09 CERTIFICATE OF OCCUPANCY

Upon receipt of the Certificate of Occupancy for the Project from the applicable governing authority, the DHBA shall provide a copy of the certificate of occupancy to the CRA.

#### 5.10 FUTURE LOAN REPAYMENT RESTRICTIONS

The DBHA agrees to utilize any funds received from Island Cove, LLC pursuant to the mortgage and promissory note, to be executed by Island Cove, LLC, which will be in the form of principal and interest payments to the DBHA, for affordable or workforce housing and subject to the City of Delray Beach Land Development Regulations Workforce Housing provisions,

#### 5.11 MATERIAL CHANGES

Any proposed material change(s) greater than ten percent (10%) of the Project pursuant to the Funding Request, including but not limited to square footage, apartment unit composition, designation as workforce housing, etc., the DBHA must submit to the CRA and is subject to prior approval by the CRA. The CRA has the sole and absolute discretion to approve or deny any proposed material change greater than ten percent (10%) of the Project. The CRA may, in its sole and absolute discretion, recoup any disbursed CRA funds to the DBHA upon denial of the material change by the CRA, if the Project development proceeds with the aforementioned material change. The DBHA shall promptly refund the CRA any disbursed funds upon written notice by the CRA under this section.

### **ARTICLE 6. MAXIMUM FUNDING AMOUNT**

6.01 In no event shall the funding provided by the CRA to the DBHA pursuant to this Agreement exceed the maximum total of **ONE MILLION and 00/100 Dollars (\$1,000,000.00)**.

### **ARTICLE 7. INDEMNIFICATION**

7.01. Indemnification by the DBHA.

(a) For good and valuable consideration herein provided, the receipt of which is hereby acknowledged by the DBHA, and to the extent permitted by law, the DBHA agrees, covenants, and represents that it shall indemnify, defend and hold harmless, the CRA, its respective agents, officers, or employees from any and all liabilities, damages, penalties, judgments, claims, demands, costs, the DBHA's expenses or attorneys' fees through appellate proceedings, for personal injury, bodily injury, death or property damage arising out of, or by reason of any act or omission of the DBHA, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement, or which are alleged to have arisen out of, in connection with, or by reason of, the performance of such services. The indemnification shall survive the Agreement's termination or expiration. Nothing herein shall

constitute a waiver of the DBHA's entitlement to sovereign immunity.

(b) The DBHA's indemnity obligations under subsection shall survive the termination or expiration of this Agreement and shall apply to any and all occurrences, acts, or omissions that arise on or before the Termination Date even if any claim arising from such occurrences, acts, or omissions is asserted after such date.

(c) The DBHA's indemnity hereunder is in addition to and not limited by any insurance policy and is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, nor as a waiver of sovereign immunity for any party entitled to assert the defense of sovereign immunity.

## **ARTICLE 8. DEFAULT; TERMINATION.**

8.01. Default by the DBHA. In the event the DBHA fails to perform or comply with any material provision of this Agreement, the DBHA shall be in default. If an event of default by the DBHA shall occur, the CRA shall provide written notice to the DBHA ("Event of Default").

8.02. Termination. If, through any cause, the DBHA fails to fulfill in a timely and proper manner its obligation under this Agreement, or if the DBHA shall violate any of the covenants, agreements, or stipulations of this Agreement or fails to cure an Event of Default, the CRA shall thereupon have the right, after notice and a fourteen (14) calendar day opportunity to cure by the DBHA, to terminate this Agreement by written notice to DBHA of such termination and specifying the effective date thereof, at least five (5) days before the effective date of termination or suspension. The CRA may, in its sole and absolute discretion, cease and recover any and all payments made to the DBHA and the DBHA shall promptly refund all monies received under this Agreement to the CRA.

8.03. Termination For Convenience. The CRA, in its sole and absolute discretion, reserves the right to terminate this Agreement without cause immediately upon providing written notice to the DBHA. Upon receipt of such notice, the DBHA shall not expend any additional funds received from the CRA and any such funds shall be refunded to the CRA. Furthermore, upon issuing such notice, the CRA may, in its sole and absolute discretion, cease and recoup all payments to the DBHA and the DBHA shall promptly refund all funding received under this Agreement to the CRA. In no way shall the CRA be subjected to any liability or exposure for the termination of this Agreement under this Section.

8.04. The following rights of the CRA shall survive the expiration or early termination of this Agreement: marketing requirements, to audit or inspect; to require reversion of assets; to enforce representations, warranties and certifications; to exercise entitlement to remedies, limitation of liability, indemnification, and recovery of fees and costs.

## **ARTICLE 9. AVAILABILITY OF FUNDS**

9.01. The CRA's obligation to pay under this Agreement is contingent upon having received tax



increment funds pursuant to Chapter 163, Part III, Florida Statutes, and that the Funding Amount has been budgeted and appropriated by the CRA's Board of Commissioners.

**ARTICLE 10. REMEDIES**

10.01. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

**ARTICLE 11. CIVIL RIGHTS COMPLIANCE**

11.01. The DBHA warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

**ARTICLE 12. FEES, COSTS**

12.01. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled, provided, however, that this clause pertains only to the parties to this Agreement.

**ARTICLE 13. MISCELLANEOUS**

13.01. Public Purpose. The parties acknowledge and agree that this Agreement satisfies, fulfills and is pursuant to and for a public purpose and municipal purpose and is in the public interest, and is a proper exercise of the CRA's power and authority under Chapter 163, Part III, Florida Statutes.

13.02. No General Obligation. In no event shall any obligation of the CRA under this Agreement be or constitute a general obligation or indebtedness of the City or the CRA, a pledge of the ad valorem taxing power of the City or the CRA or a general obligation or indebtedness of the City or the CRA within the meaning of the Constitution of the State of Florida or any other applicable laws, but shall be payable solely from legally available revenues and funds. Neither the DBHA nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the City, the CRA or any other governmental entity or taxation in any form on any real or personal property to pay the City's or the CRA's obligations or undertakings hereunder.

13.03. Assignments. This Agreement and the entire Funding Amount provided to the DBHA is not assignable.

13.04. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

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

13.06. Notices.

(a) All notices, demands, requests for approvals or other communications given by either party to another shall be in writing, and shall be sent by registered or certified mail, postage prepaid, return receipt requested or by overnight courier service, or by hand delivery to the office for each party indicated below and addressed as follows:

For CRA: Renée A. Jadusingh, Esq., Executive Director  
Delray Beach Community Redevelopment Agency  
20 N. Swinton Avenue  
Delray Beach, FL 33444  
Telephone No. (561) 276-8640  
Facsimile No. (561) 276-8558

With Copy to: Kim Phan, Esq.  
CRA Legal Advisor  
20 N. Swinton Avenue  
Delray Beach, FL 33444  
Telephone No. (561) 276-8640

For DBHA: Shirley Erazo, President/CEO  
Delray Beach Housing Authority  
82 NW 5th Avenue  
Delray Beach, FL 33444  
Telephone No. (561) 272-6766

With Copy to: Eduardo M. Soto, Esq.  
Weiss Serota Helfman Cole & Bierman, PL  
2800 Ponce de Leon Blvd., Suite 1200  
Coral Gables, FL 33134  
Telephone No. (305) 854-0800

(b) Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the third (3rd) business day after mailing. Refusal by any person to accept delivery of any notice delivered to the office at the address indicated above (or as it

may be changed) shall be deemed to have been an effective delivery as provided in this Section. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

13.07 Public Records. The DBHA shall comply with the applicable provisions of Chapter 119, Florida Statutes. Specifically, the DBHA shall:

(a) Keep and maintain public records required by the CRA in association with the funding award.

(b) Upon request from the CRA's custodian of public records, provide the CRA with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement and following completion of the Agreement if the DBHA does not transfer the records to the CRA.

(d) Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of the DBHA or keep and maintain public records required by the public agency to perform the service. If the DBHA transfers all public records to the CRA upon completion of the Agreement, the DBHA shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the DBHA keeps and maintains public records upon completion of the Agreement, the DBHA shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the CRA's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**IF THE DBHA HAS QUESTIONS REGARDING THE  
APPLICATION OF CHAPTER 119, FLORIDA STATUTES,  
TO THE DBHA'S DUTY TO PROVIDE PUBLIC  
RECORDS RELATING TO THIS AGREEMENT,  
CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT**

**KIM N. PHAN, ESQ.  
561-276-8640  
KIMP@MYDELRAYBEACH.COM  
20 NORTH SWINTON AVENUE  
DELRAY BEACH, FLORIDA 33444**

The failure of the DBHA to comply with the provisions set forth in this Article shall constitute a

Default and Breach of this Agreement.

13.08. Captions. The article and section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

13.09. Entire Agreement. The CRA and the DBHA agree that this Agreement sets forth the entire Agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. The CRA's Executive Director may further approve and amend this Agreement by executing a written agreement signed by both parties.

13.10. Sunset of the DBCRA. Upon the sunset and expiration of the DBCRA, the rights granted under this Agreement shall run in favor of the City of Delray Beach, Florida, a Florida municipal corporation.

*[Space Left Intentionally Blank; Signature Page to Follow]*

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of the date and year set forth above.

ATTEST:

DELRAY BEACH COMMUNITY  
REDEVELOPMENT AGENCY

\_\_\_\_\_  
Renée A. Jadusingh, Esq.  
CRA Executive Director

By: \_\_\_\_\_  
Shirley E. Johnson  
CRA Board Chair

APPROVED AS TO FORM:

\_\_\_\_\_  
CRA Legal Advisor

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of \_\_\_ online notarization or \_\_\_ physical presence this \_\_\_ day of \_\_\_\_\_, 2022, by Shirley E. Johnson, as CRA Board Chair of the Delray Beach Community Redevelopment Agency, on behalf of the agency. She \_\_\_ is personally known to me or \_\_\_ has produced a Florida Driver’s License as identification

\_\_\_\_\_  
Notary Public – State of Florida

ATTEST:

DELRAY BEACH HOUSING AUTHORITY

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

By: \_\_\_\_\_  
Name: Shirley Erazo  
Title: President/CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
DBHA General Counsel

STATE OF FLORIDA  
COUNTY OF PALM BEACH

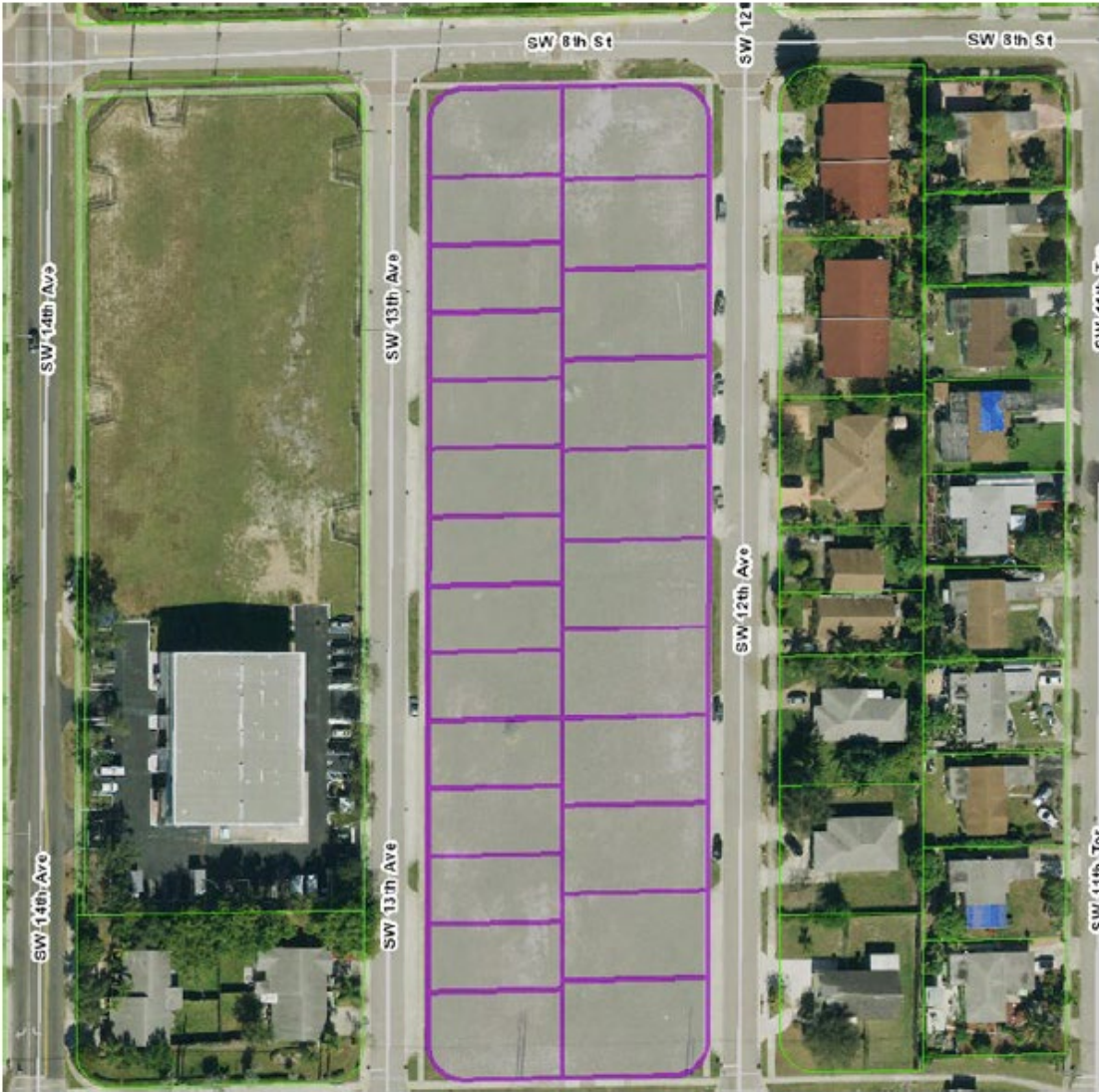
The foregoing instrument was acknowledged before me by means of \_\_\_ online notarization or \_\_\_ physical presence this \_\_\_ day of \_\_\_\_\_, 2022, by Shirley Erazo, as President/CEO of the Delray Beach Housing Authority, on behalf of the authority. She \_\_\_ is personally known to me or \_\_\_ has produced a Florida Driver’s License as identification

\_\_\_\_\_  
Notary Public – State of Florida

**EXHIBIT "A"**  
**DESCRIPTION OF THE PROPERTY**

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12A, 12B, 13A, 13B, 14A, 14B, 15A, 15B, 16A, 16B, 17A, 17B, 18A, 18B and Tract B-3, VILLAGE SQUARE AT DELRAY BEACH, according to the Plat thereof, as recorded in Plat Book 118, Page 122, of the Public Records of Palm Beach County, Florida.

*SITE AERIAL*



**EXHIBIT "B"**

# FUNDING REQUEST





August 14, 2020

Dear Delray Beach Community Redevelopment Agency Board of Commissioners:

In 2019, Smith & Henzy Advisory Group (“Smith & Henzy”) and Delray Beach Housing Authority (“DBHA”) formed a partnership to develop an affordable housing project, “Island Cove Apartments” on a site that is currently owned by DBHA and is located to the southwest of the intersection of SW 8<sup>th</sup> Street and SW 12<sup>th</sup> Avenue in Delray Beach, FL. DBHA and Smith & Henzy are requesting a Local Government Contribution from the Delray Beach Community Redevelopment Agency (“the CRA”) in support of the development Island Cove Apartments, which will provide state-of-the-art, affordable family housing to the Delray Beach community.

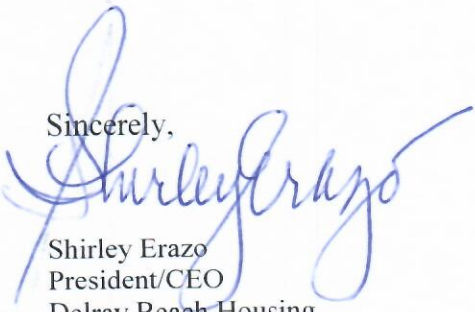
To bring Island Cove Apartments to fruition, we will apply to Florida Housing Finance Corporation (FHFC) for 9% Low-Income Housing Tax Credits (“Tax Credits”) in the 4th quarter of 2020. The funding process for 9% Tax Credits is highly competitive.

FHFC sets priorities and if an application meets one of these priorities, it has a better chance of being awarded 9% Tax Credits. One of the priorities is called the “Local Government Area of Opportunity Funding Goal,” and an application will qualify to meet this goal if the applicant demonstrates a high level of local government support for the project via a local government contribution. A development only qualifies for the "Local Government Area of Opportunity Goal" if it is provided a commitment. A single jurisdiction may only contribute the Local Government Contribution to one development applying for the Local Government Area of Opportunity Funding Goal.

Based on the information outlined herein, DBHA and Smith & Henzy respectfully requests a grant in the amount of \$1M from the CRA. The funding provided by the CRA will be used to cover construction costs, as well as costs related to redesigning the project (see Project Description below for more details) and infrastructure costs that are required to build new construction. By the CRA committing these funds to the development, the likelihood of the project obtaining 9% Tax Credits will increase significantly. We anticipate requiring the contribution from the CRA in the 3rd quarter of 2021. For the Island Cove Apartments application to FHFC, which will be due in the 4<sup>th</sup> quarter of 2020, we will need a commitment from the CRA to contribute the funds.

We will work tirelessly to ensure Island Cove Apartments provides the highest quality affordable housing to the residents of Delray Beach. Please find more details regarding the project attached.

Sincerely,

A handwritten signature in blue ink that reads "Shirley Erazo". The signature is fluid and cursive, with a large initial 'S' and 'E'.

Shirley Erazo  
President/CEO  
Delray Beach Housing  
Authority/Delray Housing Group, Inc.

### ***Project Description***

Island Cove Apartments will consist of 54 mixed-income, new construction units. While the project was originally conceived as a for-sale townhome development, Island Cove Apartments is currently planned as a multifamily rental property. Our intention is to utilize the architect's originally conceived townhome design (see attached renderings), while making modifications to the unit configurations in order to comply with Florida Housing Finance Corporation's ("FHFC") requirements and convert the design to a rental community. Island Cove Apartments will contain 36 two-bedroom/two-bathroom units and 18 three-bedroom/two-bathroom units. All 54 units will be reserved for households making 30%-80% or less of the area median income ("AMI"). The proposed unit mix is as follows:

<b>Distribution of Total Units:</b>	<b>Total</b>	<b>% of Total</b>
30% AMI	9	16.7%
60% AMI	27	50.0%
70% AMI	9	16.7%
80% AMI	9	16.7%
<b>Total Units</b>	<b>54</b>	<b>100.0%</b>

<b>All Units:</b>	<b>Total Units</b>	<b>Weighted Avg. Unit Size (SF)</b>
Two Bedroom/Two Bathroom	36	900
Three Bedroom/Two Bathroom	18	1,100
<b>Total Units</b>	<b>54</b>	<b>967</b>

## Financing Plan

We will apply to FHFC for 9% Tax Credits under “Request for Applications (RFA) 2020-202 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties.” As discussed in the attached cover letter, one of the goals of RFA 2020-202 will be to fund an application that qualifies for the “Local Government Area of Opportunity Funding Goal” in Palm Beach County. With a \$1M contribution from the CRA, Island Cove Apartments would qualify to win 9% Tax Credits under this goal. RFA 2020-202 is due in the 4<sup>th</sup> quarter of 2020 and the winners will be selected in the Spring of 2021. If Island Cove Apartments receives an allocation of 9% Tax Credits, we would begin construction on the project in late 2021 or early 2022.

In addition to \$10.9M of 9% Tax Credit equity and the \$1M grant from the CRA, we will utilize a \$3.9M first mortgage and \$549K of deferred developer fee as permanent sources of financing. The proposed sources and uses are as follows:

<b>Sources &amp; Uses:</b>						
<b>Sources of Funds: Construction</b>	<b>Total</b>	<b>% of Total</b>	<b>Per Net</b>		<b>Per Unit</b>	
			<b>Rentable Residential SF</b>	<b>Buildable SF</b>		
Construction Loan	\$ 10,006,802	63%	\$ 191.70	\$ 137.83	\$ 185,311	
Tax Credit Equity	\$ 3,752,545	24%	\$ 71.89	\$ 51.69	\$ 69,492	
<b>Delray CRA Grant</b>	<b>\$ 1,000,000</b>	<b>6%</b>	<b>\$ 19.16</b>	<b>\$ 13.77</b>	<b>\$ 18,519</b>	
Deferred Development Fee	\$ 1,033,723	7%	\$ 19.80	\$ 14.24	\$ 19,143	
<b>Total Sources of Funds</b>	<b>\$ 15,793,070</b>	<b>100%</b>	<b>\$ 302.55</b>	<b>\$ 217.54</b>	<b>\$ 292,464</b>	

<b>Sources of Funds: Permanent</b>	<b>Total</b>	<b>% of Total</b>	<b>Per Net</b>		<b>Per Unit</b>
			<b>Rentable Residential SF</b>	<b>Buildable SF</b>	
Permanent Loan	\$ 3,919,000	25%	\$ 75.08	\$ 53.98	\$ 72,574
Tax Credit Equity	\$ 10,780,722	68%	\$ 206.53	\$ 148.49	\$ 199,643
<b>Delray CRA Grant</b>	<b>\$ 1,000,000</b>	<b>6%</b>	<b>\$ 19.16</b>	<b>\$ 13.77</b>	<b>\$ 18,519</b>
Deferred Development Fee	\$ 93,348	1%	\$ 1.79	\$ 1.29	\$ 1,729
<b>Total Sources of Funds</b>	<b>\$ 15,793,070</b>	<b>100%</b>	<b>\$ 302.55</b>	<b>\$ 217.54</b>	<b>\$ 292,464</b>

<b>Uses of Funds:</b>	<b>Total</b>	<b>% of Total</b>	<b>Per Net</b>		<b>Per Unit</b>
			<b>Rentable Residential SF</b>	<b>Buildable SF</b>	
Land Acquisition	\$ 500,000	3%	\$ 9.58	\$ 6.89	\$ 9,259
Hard Cost	\$ 10,400,040	66%	\$ 199.23	\$ 143.25	\$ 192,593
Soft Cost	\$ 2,521,495	16%	\$ 48.30	\$ 34.73	\$ 46,694
Reserves	\$ 304,090	2%	\$ 5.83	\$ 4.19	\$ 5,631
Development Fee	\$ 2,067,445	13%	\$ 39.61	\$ 28.48	\$ 38,286
<b>Total Uses of Funds</b>	<b>\$ 15,793,070</b>	<b>100%</b>	<b>\$ 302.55</b>	<b>\$ 217.54</b>	<b>\$ 292,464</b>

### ***Community Amenities & Construction Features***

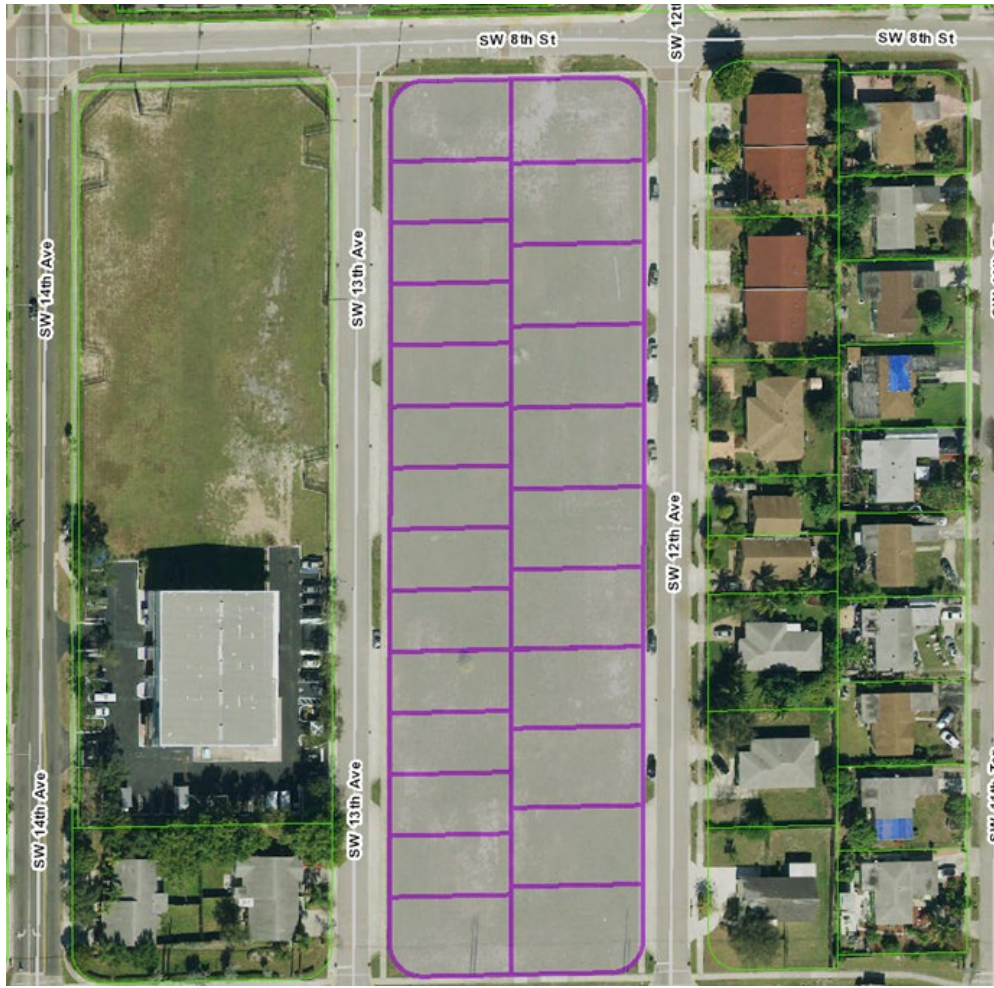
Island Cove Apartments will feature an outdoor courtyard and a clubhouse with a leasing office and community spaces, such as a gym and game room. In addition, the project will have security surveillance, as well as washers and dryers, solid surface countertops, and luxury vinyl tile throughout the units. The project will obtain a Green Building Certification and include low or No-VOC paint, low-flow water fixtures, Energy Star appliances, and energy efficient water heaters and air conditioners.

The design will also include many accessibility features, including lever door handles on primary entrance doors, interior doors, and cabinets, lever handle faucets, light switches and thermostats that are no more than 48 inches above floor level, and no more than half an inch rise on primary entrance thresholds that are on an accessible route. Of the 54-units, 5% will be fully ADA accessible and 2% will be accessible for those with audio and/or visual impairments.

We will offer Adult Literacy, Employment Assistance, and Financial Management Programs at no cost to the residents of the project. Literacy tutors will provide weekly literacy lessons to strengthen residents' reading, writing, and comprehension skills in a private space on-site. The Employment Assistance Program will consist of at least quarterly workshops offered by an employment counselor. Workshop topics include evaluation of job skills, setting job goals, development of individualized employment plans, resume assistance, interview prep, and more.

The Financial Management Program will consist of at least quarterly classes offered by qualified professionals. Class topics include financial budgeting and bill-paying including training in the use of technologies and web-based applications; tax preparation including do's and don'ts, common tips, and how and where to file, including electronically; fraud prevention including how to prevent credit card and banking fraud, identity theft, computer hacking and avoiding common consumer scams; retirement planning and savings options including preparing a will and estate planning; and homebuyer education including how to prepare to buy a home, and how to access first-time homebuyer programs in Palm Beach County, and more.

*SITE AERIAL*



## *Renderings*

The following renderings are of the originally conceived, for-sale townhome development. However, DBHA and Smith & Henzy intend to work with the architect to utilize this design for Island Cove Apartments.



SW 12<sup>th</sup> Ave view



SW 13<sup>th</sup> St view



Building façade #1



Building façade #2



**FHFC Grant Form**

**FLORIDA HOUSING FINANCE CORPORATION  
LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION – GRANT FORM**

Name of Development: \_\_\_\_\_

Development Location: \_\_\_\_\_  
(At a minimum, provide the address number, street name and city, and/or provide the street name, closest designated intersection and either the city (if located within a city) or county (if located in the unincorporated area of the county). If the Development consists of Scattered Sites, the Development Location stated above must reflect the Scattered Site where the Development Location Point is located.)

The City/County of \_\_\_\_\_ commits \$ \_\_\_\_\_ as a grant to the Applicant for its use solely for assisting the proposed Development referenced above. The City/County does not expect to be repaid or reimbursed by the Applicant, or any other entity, provided the funds are expended solely for the Development referenced above. No consideration or promise of consideration has been given with respect to the grant. For purposes of the foregoing, the promise of providing affordable housing does not constitute consideration. The commitment for this grant must be effective as of the Application Deadline for the applicable RFA, and is provided specifically with respect to the proposed Development.

The source of the grant is: \_\_\_\_\_  
(e.g., SHIP, HOME, CDBG)

**CERTIFICATION**

I certify that the foregoing information is true and correct and that this commitment is effective at least through the date required in the applicable RFA.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Title

**NOTE TO LOCAL GOVERNMENT OFFICIAL:** Additional information is set forth in the applicable Request for Application under which the Applicant is applying for funding for the above referenced Development.

This certification must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners. If the contribution is from a Land Authority organized pursuant to Chapter 380.0663, Florida Statutes, this certification must be signed by the Chair of the Land Authority. One of the authorized persons named above may sign this form for certification of state, federal or Local Government funds initially obtained by or derived from a Local Government that is directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO). Other signatories are not acceptable. The Applicant will not receive credit for this contribution if the certification is improperly signed. To be considered for points, the amount of the contribution stated on this form must be a precise dollar amount and cannot include words such as estimated, up to, maximum of, not to exceed, etc.

If the Application is not eligible for automatic points, this contribution will not be considered if the certification contains corrections or 'white-out' or if the certification is altered or retyped. The certification may be photocopied.

Please note: This form may be modified by Florida Housing Finance Corporation per Section 67-60.005, F.A.C.

**EXHIBIT "C"**  
**CLOSING DRAW**

Budget Uses at Closing	Total	Construction Loan	Tax Credit Equity	Housing Authority Loan	Total	Check
Acquisition	\$ 400,000.00	\$ 400,000.00	\$ -	\$ -	\$ 400,000.00	\$ -
Hard Cost - Residential/Clubhouse	\$ 303,292.00	\$ -	\$ -	\$ 303,292.00	\$ 303,292.00	\$ -
Hard Cost - Office/Community Room	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Washer & Dryer Appliances	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
GC, Overhead, and Profit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Site Work	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Hard Cost Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legal Fees	\$ 552,986.70	\$ -	\$ 552,986.70	\$ -	\$ 552,986.70	\$ -
Finance Fees	\$ 535,892.35	\$ -	\$ 535,892.35	\$ -	\$ 535,892.35	\$ -
LIHTC Application Fee	\$ 3,000.00	\$ -	\$ 3,000.00	\$ -	\$ 3,000.00	\$ -
LIHTC Credit Underwriting Fee	\$ 19,329.00	\$ -	\$ 19,329.00	\$ -	\$ 19,329.00	\$ -
LIHTC Compliance Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
LIHTC Admin Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Real Estate Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Architect Fee - Design & Admin	\$ 426,649.91	\$ -	\$ -	\$ 426,649.91	\$ 426,649.91	\$ -
Bank Inspections	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Builder's Risk	\$ 199,613.91	\$ -	\$ -	\$ 199,613.91	\$ 199,613.91	\$ -
Survey	\$ 2,680.00	\$ -	\$ -	\$ 2,680.00	\$ 2,680.00	\$ -
Permits & Other Related Fees	\$ 3,650.00	\$ -	\$ -	\$ 3,650.00	\$ 3,650.00	\$ -
Environmental Audits	\$ 7,700.00	\$ -	\$ -	\$ 7,700.00	\$ 7,700.00	\$ -
3rd Party Engineering Fees	\$ 3,500.00	\$ -	\$ -	\$ 3,500.00	\$ 3,500.00	\$ -
Green Certification	\$ 4,495.50	\$ -	\$ -	\$ 4,495.50	\$ 4,495.50	\$ -
Property Appraisal	\$ 12,200.00	\$ -	\$ -	\$ 12,200.00	\$ 12,200.00	\$ -
Market Study	\$ 5,500.00	\$ -	\$ -	\$ 5,500.00	\$ 5,500.00	\$ -
Title	\$ 190,000.00	\$ 128,460.72	\$ 59,393.60	\$ 2,145.68	\$ 190,000.00	\$ -
FF&E	\$ 21,500.00	\$ -	\$ -	\$ 21,500.00	\$ 21,500.00	\$ -
Cost Certification/Accounting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Soft Cost & Other Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Marketing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Plan & Cost Report	\$ 6,150.00	\$ -	\$ -	\$ 6,150.00	\$ 6,150.00	\$ -
Impact Fees & Connection Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Zoning	\$ 923.00	\$ -	\$ -	\$ 923.00	\$ 923.00	\$ -
Conversion	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating & Deficit Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Insurance Escrow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lease Up Reserve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
First Mortgage Paydown	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Developer Fee	\$ 705,023.55	\$ -	\$ 705,023.55	\$ -	\$ 705,023.55	\$ -
<b>Total Uses</b>	<b>\$ 3,404,085.92</b>	<b>\$ 528,460.72</b>	<b>\$ 1,875,625.20</b>	<b>\$ 1,000,000.00</b>	<b>\$ 3,404,085.92</b>	<b>\$ -</b>

*Construction Loan Paydown*

<b>Total Closing Draw Sources</b>	<b>\$ 3,404,085.92</b>	<b>\$ 528,460.72</b>	<b>\$ 1,875,625.20</b>	<b>\$ 1,000,000.00</b>
		\$ 528,460.72	\$ 1,875,625.20	\$ 1,000,000
Check		\$ -	\$ -	\$ -
Total Bad Costs	\$ -			
Bond Allocation	\$ 19,000,000			
	0.00%			