



## Legislation Text

File #: 18-1087 CRA, Version: 1

**TO:** CRA Board of Commissioners  
**FROM:** Kim N. Phan, Legal Advisor  
**THROUGH:** Renée A. Jadusingh, Executive Director  
**DATE:** June 8, 2022

**FUNDING AGREEMENT - DELRAY BEACH HOUSING AUTHORITY FOR ISLAND COVE APARTMENTS - SW 8<sup>th</sup> STREET AND SW 12<sup>th</sup> AVENUE - FOR AN AMOUNT NOT TO EXCEED \$1,000,000.**

### **Recommended Action:**

Approve the Funding Agreement with Delray Beach Housing Authority for Island Cove Apartments for an amount not to exceed \$1,000,000, in substantially the attached form, subject to verification of legal entities.

### **Background:**

***DELRAY BEACH HOUSING AUTHORITY - ISLAND COVE APARTMENTS - 60 AFFORDABLE HOUSING RENTAL UNITS:***

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 Project" on a site that is currently owned by DBHA and is located to the southwest of the intersection of SW 8th Street and SW 12<sup>th</sup> Avenue in Delray Beach, FL. This project consists of 60 mixed-income affordable housing rental units reserved for households making 30%-80% or less of the area median income (see Exhibit "A") as follows:

| <u>Distribution of Total Units:</u> | <u>Total</u> | <u>% of Total</u> |
|-------------------------------------|--------------|-------------------|
| 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>     |

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

### ***REQUEST TO THE CRA:***

To bring Island Cove Apartments to fruition, the DBHA applied to Florida Housing Finance Corporation ("FHFC") for low-income housing tax credits in the 4th quarter of 2020. As part of the application, the DBHA must show support from the local government to satisfy the "Local Government Area of Opportunity Funding Goal" via a monetary local government contribution ("Local Contribution"). On August 14, 2020, the DBHA submitted a grant request to the CRA in an amount not to exceed One Million and 00/100 Dollars (\$1,000,000.00) to satisfy the Local Contribution (see Exhibit "B"). CRA funds would be used to cover construction costs, as well as costs related to redesigning the project and infrastructure costs that are required to build new construction. On September 29, 2020, the CRA Board approved the letter of support for the Island Cove Apartments Project. On October 6, 2020, the City of Delray Beach provided a letter of support to the DBHA with funding being provided by the CRA in an amount not to exceed One Million and 00/100 Dollars (\$1,000,000.00). See Exhibit C. Around February 2021, the FHFC approved the DBHA's application for 4% SAIL Low Income Housing Tax Credit for the DBHA Island Cove Apartments Project.

In past years, the CRA has partnered with the DBHA to provide affordable housing by supporting Village Square and Village Square Elderly. Similar to the structure of this request, the DBHA partnered with a private tax credit developer to plan, develop and finance a new 253-unit mixed income development over the entire 18 acres of a Housing Authority owned property. The CRA committed funding to redevelop the property in the form of a \$100,000 grant for the mixed income rental phase of the development and a \$2.7 million loan for the elderly housing phase.

Chapter 163.340(9) states that "[c]ommunity redevelopment' ... means undertakings, activities, or projects of a ... community redevelopment agency in a community redevelopment area ... for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly[.]" Furthermore, leveraging CRA funds to provide 60 mixed-income affordable housing rental units is also in line with our Redevelopment Plan that states that one of the objectives of the CRA's Affordable/Workforce Housing Program is to "[p]rovide decent, affordable/workforce housing for residents who are of very low to moderate income level."

### ***Funding Agreement:***

Island Cove, LLC is a Florida Limited Liability Company in which the DBHA and Smith and Henzy formed, in 2019, to develop the Island Cove Apartments Project. The DBHA shall provide a construction loan, with the CRA funds, to Island Cove, LLC to develop the Island Cove Apartment Project. The CRA funds shall be used only pursuant to the Closing Draw spreadsheet. See Exhibit E Closing Draw. CRA staff is pending verification of the legal affiliation between Island Cove, LLC and DBHA.

At the May 24, 2022 CRA Board meeting, Smith and Henzy and the DBHA gave a presentation to the CRA Board on the status of the Island Cove Apartments Project and the Project timeline.

Since the May 24, 2022 Board Meeting, CRA Staff and Counsel have been in negotiations with DBHA and the terms from the draft Funding Agreement include:

Summary of Key Points

|                         |  |
|-------------------------|--|
| Funds Restriction       | Section 2.01(b) - The funds shall be used solely for the Project, to further the development of the Project to cover construction costs, redesigning the project and infrastructure costs that are required to build new construction.   |
| Term                    | Section 3.01 - The agreement shall terminate upon receipt of the certificate of occupancy.   |
| Disbursement            | Section 4.02 - Upon receipt of the written request for disbursement from the DBHA, the CRA shall provide the Funding Amount to the DBHA within ten (10) days. Section 4.03 - The Funding Amount shall strictly be utilized in a manner consistent with the Closing Draw, Funding Request and Funding Agreement.  |
| Performance Obligations | Section 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. Section 5.06 - Audit Rights - The CRA shall have the right 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 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, 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. |

|                             |   |
|-----------------------------|---|
| Marketing                   | Section 5.08 - During construction and the lease up phase - DBHA shall acknowledge the CRA's contribution in marketing materials.   |
| Termination for Convenience | Section 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.  |
| Attorney's Fees             | Article 12 - 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. |

At this time, the Funding Agreement is before the CRA Board for approval, in substantially the attached form, subject to the verification of the affiliation between Island Cove, LLC and Delray Beach Housing Authority. Once the CRA staff has the appropriate verification, CRA staff will present the Funding Agreement, in substantially the attached form, for the Chair's signature.

Attachments: Exhibit A - AMI and Rent Amounts; Exhibit B - Request Letter from Delray Beach Housing Authority; Exhibit C - Florida Housing Finance Corporation Local Government Verification of Contribution Grant Form; Exhibit D - Funding Agreement; Exhibit E - Closing Draw

### **CRA Attorney Review:**

The CRA Attorney has reviewed the attached Funding Agreement as to form and determined it to be acceptable.

### **Funding Source/Financial Impact:**

Funding has been allocated from General Ledger #6512 - Support for Affordable Housing Initiatives.

### **Overall need within the Community Redevelopment Area:**

Removal of Slum And Blight

Land Use

Economic Development

**Affordable Housing**

Downtown Housing

**Infrastructure**

Recreation and Cultural Facilities