

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**
AGENDA ITEM SUMMARY

Meeting Date:	November 17, 2020	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Housing and Economic Sustainability		

I. EXECUTIVE BRIEF


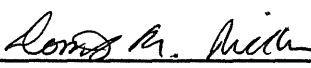
Motion and Title: **Staff recommends motion to Receive and File:** the following four (4) documents:

- A)** Standard Subordination Agreement with Popular Bank under the State Housing Initiative Partnership (SHIP) Program;
- B)** Assumption and Consent Agreement with Malibu Bay Preservation, Ltd., and Executive Trust, Ltd., under the (SHIP) Program;
- C)** Subordination and Intercreditor Agreement with Malibu Bay Preservation, Ltd., and Citibank, N.A., under the SHIP Program; and
- D)** Second Global Modification and Amendment of Mortgage and Security Agreement and Other Loan Documents and its attached Loan Rider with Malibu Bay Preservation, Ltd., under the SHIP Program.

Summary: The attached documents have been executed on behalf of the Board of County Commissioners (BCC) by the Director of the Department of Housing and Economic Sustainability in accordance with Agenda Item 5B-2 and 3I-5, as approved by the BCC on November 2, 1999, and August 25, 2020, respectively. The Standard Subordination Agreement with Popular Bank subordinated the County's mortgage which secured a SHIP loan of \$230,000 to Creative Choice Homes X, Ltd., for the construction of Mystic Woods II, a 92 unit affordable rental project. Popular Bank is refinancing a \$4,350,000 first mortgage loan to Creative Choice Homes X, Ltd. The Assumption and Consent Agreement, the Subordination and Intercreditor Agreement and the Second Global Modification and Amendment of Mortgage and Security Agreement and Other Loan Documents and its attached Loan Rider were executed in connection with the Malibu Bay project where the County provided Executive Trust, Ltd., a \$262,000 loan from the SHIP Program for the construction of 262 affordable rental housing units which must be occupied by tenants having incomes at or below 60% of area median income. In this transaction the County agreed to the assumption of the SHIP loan by Malibu Bay Preservation, Ltd., who purchased the Malibu Bay property from Executive Trust, Ltd., and the County subordinated its mortgage which secured the \$262,000 loan to a first mortgage of \$40,000,000 from Citibank, N.A. In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. **SHIP funds are State funds which require no local match. Districts 1 and 7 (HJF)**

Background and Justification: State SHIP funds are used to facilitate the acquisition and construction of affordable single-family and multi-family/rental housing and to fund utility connection and impact fee payments, emergency repairs, foreclosure prevention, homeownership development, and first and second mortgages.

Attachment(s): Documents as listed in A through D above

Recommended By:	 Department Director	<u>10/5/2020</u> Date
Approved By:	 Assistant County Administrator	<u>10/20/2020</u> Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT					


# ADDITIONAL FTE POSITIONS (Cumulative)					
---	--	--	--	--	--

Is Item Included In Current Budget? Yes X No
Does this Item include the use of Federal funds? Yes No X

Fund _____ Dept _____ Unit _____ Object _____ Program Code/Period _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

No additional fiscal impact

C. Departmental Fiscal Review: 
Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

10/18/2020
 10/17
 OFMBC
 10/18

Mr. S. Jawlent 10/14/2020
Contract Development and Control
10-14-20 TW

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

STANDARD
SUBORDINATION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

Palm Beach County as present legal holder and owner of that certain Mortgage and Security Agreement dated September 29, 1997, and executed by Creative Choice Homes X, Ltd., as Mortgagor, to Palm Beach County, as Mortgagee, said being recorded on in Official Record Book 10032, at Page 1136, in the Public Records of Palm Beach County, Florida, encumbering the real property situate, lying and being in Palm Beach County, Florida, described as follows:

MYSTIC WOODS II LEGAL DESCRIPTION:

All of the plat of Mystic Woods II, according to the plat thereof, as recorded in Plat Book 78, Page 175, of the Public Records of Palm Beach County, Florida.

For good and valuable consideration, to wit: Palm Beach County has and by these presents does waive the priority of the lien of the above described Mortgage and Security Agreement insofar as the following described Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing is concerned, but not otherwise:

That certain Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing dated 7/31/2020, and recorded on 8/10/2020, in Official Record Book 31638, Page 594 of the Public Records of Palm Beach County, Florida, from Creative Choice Homes X, Ltd., as mortgagor, to Popular Bank, a New York state chartered commercial bank, as mortgagee, securing payment of a Note in the original principal amount which shall not exceed \$4,350,000.

The undersigned Palm Beach County hereby consenting that the lien of its Mortgage and Security Agreement and the promissory note secured thereby, first above described be taken as subordinate and inferior in all respects to the Mortgage, Assignment of Leases and Rents, Security Agreement, Financing Statement and Fixture Filing last above described and given by Creative Choice Homes X, Ltd., to Popular Bank, as if it had been executed and recorded prior to the date of recording the undersigned Mortgage and Security Agreement.

Remainder of page left blank


AUG 04 2020


WITNESS hand and seal this day of _____.

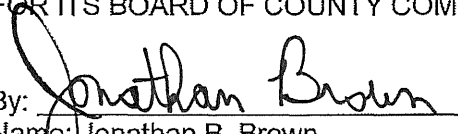
Signed, sealed and delivered
in the presence of:

PALM BEACH COUNTY, a political subdivision
of the State of Florida

FOR ITS BOARD OF COUNTY COMMISSIONERS

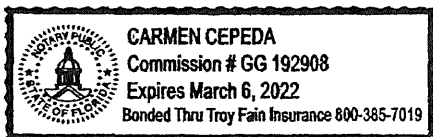

Print: JEFFREY S. BOLTON


Print: Stacey Amodio


By: 
Name: Jonathan B. Brown
Title: Director, Dept. of Housing and Economic
Sustainability

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me by means of [☒] physical presence or
[] online notarization, on August 4th, 2020, by Jonathan B. Brown as Director of Palm
Beach County Dept. of Housing and Economic Sustainability, who is personally known to me or
who has produced _____ as identification and who did not take an oath.



(NOTARY SEAL ABOVE)

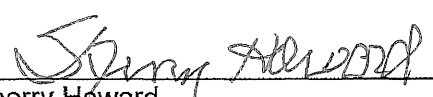
Signature: 
Notary Name: CARMEN CEPEDA
Notary Public - State of Florida

Approved as to Form and
Legal Sufficiency

By: Howard J. Falcon III
Howard J. Falcon, III
Chief Assistant County Attorney

Digitally signed by Howard J. Falcon III
DN: cn=Howard J. Falcon III, o=Palm
Beach County, ou=County Attorney's
Office, email=h.falcon@pbcgov.org, c=US
Date: 2020.07.30 15:49:43 -0400

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: 
Sherry Howard
Deputy Director

Prepared by and Return to:
Amber F. Williams
Jameson Pepple Cantu PLLC
2430 Estancia Blvd., Suite 114
Clearwater, Florida 33761

Assumption and Consent Agreement
Palm Beach County, Florida SHIP Loan

This Assumption and Consent Agreement ("**Agreement**") dated as of August 28, 2020 ("**Effective Date**") by and among Malibu Bay Preservation, Ltd., a Florida limited partnership ("**New Borrower**"), whose address is c/o Lincoln Avenue Capital LLC, 401 Wilshire Blvd., Suite 1070, Santa Monica, CA 90401, Executive Trust, Ltd., a Florida limited partnership ("**Original Borrower**"), whose address is 3225 Aviation Ave., 6th Floor, Coconut Grove, Florida 33133 and Palm Beach County, a political subdivision of the State of Florida ("**County**"), whose address is 301 North Olive Avenue, Suite 601, West Palm Beach, Florida 33401.

BACKGROUND

County entered into that certain Loan Agreement ("**Loan Agreement**") by and between the Original Borrower and County dated as of March 1, 2005 pursuant to which County made a loan to the Original Borrower in the original principal amount of \$262,000.00 (the "**Loan**"), which Loan is evidenced by a Promissory Note ("**Note**") dated March 30, 2005, which was modified by that certain Allonge to Promissory Note dated May 28, 2015, and is secured by that certain Mortgage and Security Agreement dated March 30, 2005, recorded April 6, 2005 in O.R. Book 18373, Page 865, as amended by that certain First Global Modification and Amendment of Mortgage and Security Agreement, Promissory Note and Other Loan Documents dated May 28, 2015, recorded May 28, 2015, in O.R. Book 27563, Page 1144, all in the Public Records, Palm Beach County, Florida. The Loan Agreement, Note and Mortgage are hereafter collectively referred to as the "**Loan Documents**".

The outstanding principal balance of the Note is \$262,000.00 as of the date hereof.

Original Borrower and New Borrower have requested County to consent to the transfer of the real and personal property ("**Property**") encumbered by the Mortgage from Original Borrower to New Borrower and the assumption of the Loan by New Borrower. County has agreed to the request of the Original Borrower and New Borrower on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, County, Original Borrower and New Borrower agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and incorporated herein by reference.

2. **Assumption of Loan Documents.** New Borrower hereby assumes and agrees to pay the outstanding principal balance of the Note, together with interest thereon at the rate and in accordance with the terms of the Note and hereby assumes all obligations of the Original Borrower under the Loan Documents arising or accruing after the Effective Date, and agrees to observe, comply with, and perform all of the terms, covenants and conditions of the Loan Documents to be performed by Original Borrower from and after the Effective Date. The term "Maker", "Borrower" and "Mortgagor" as used in the Loan Documents shall be deemed to refer to New Borrower.

3. **Release of Original Borrower.** Except as otherwise provided in this Section 3, Original Borrower is hereby released from, and shall have no responsibility for, any obligations or liabilities or for any defaults under the Loan Documents arising or accruing on or after the Effective Date. Original Borrower acknowledges and agrees that it shall remain liable for (i) all of its obligations under the Loan Documents which accrued on or prior to the Effective Date, (ii) all of its obligations under the Loan Documents which arise from events, actions or omissions that occurred during Original Borrower's ownership of the Property, and (iii) any obligation or liability in connection with any violation of, or misrepresentation by, Original Borrower during the period Original Borrower owned the Property or made in connection with, the Loan Documents.

4. **Consent and Representation.** By executing this Agreement, County hereby consents to the transfer of the Property and the assumption of the Loan Documents as described above. County acknowledges that all conditions necessary for the approval of the transfer have been satisfied. County represents to New Borrower that County is not aware of and has not given Original Borrower any notice of default under or noncompliance with the Loan Documents that, as of the Effective Date, has not been cured and that all amounts due and owing under the Loan Documents as of the Effective Date have been paid by Original Borrower.

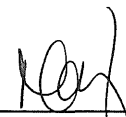
5. **Affirmation.** Except as modified hereby, all of the provisions of the Loan Documents are and shall remain in full force and effect and are binding upon and shall be performed by New Borrower.

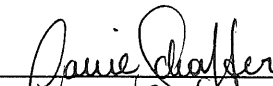
6. **Counterparts.** This Agreement may be executed in counterpart originals, no one of which needs to contain the signature of all parties, but all of which together shall constitute one and the same instrument.

7. **Binding Effect.** The terms of this Agreement bind and are for the benefit of the respective successors and assigns of the parties.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

WITNESSES:


Name: MAYLENIS ESCUDERO


Name: CARRIE SCHAFER

ORIGINAL BORROWER:

Executive Trust, Ltd.,
a Florida limited partnership

By: Executive Trust Associates, L.L.C.,
a Florida limited liability company,
its General Partner

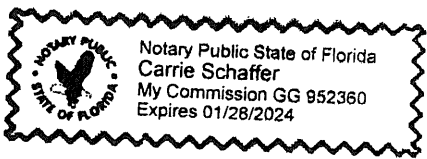
By: 
Randy Rieger, Manager

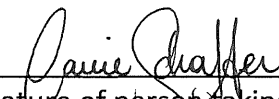
STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or
___ online notarization, this 20 day of AUGUST, 2020, by Randy Rieger, Manager of
Executive Trust Associates, L.L.C., a Florida limited liability company, General Partner of Executive
Trust, Ltd., a Florida limited partnership, on behalf of the company, who is personally known to
me or has produced _____ as identification.

[Notary Seal]




(Signature of person taking acknowledgment)

CARRIE SCHAFER
(Name typed, printed or stamped)

(Title or rank)

GG952360
(Serial number, if any)

WITNESSES:

NEW BORROWER:

Samantha Singha
Name: Samantha Singha

Malibu Bay Preservation, Ltd.,
a Florida limited partnership

By: Malibu Bay GP LLC,
a Delaware limited liability company,
its General Partner

[Signature]
Name: Oliver Fu

By: [Signature]
Jonathan A. Gruskin, Vice President

Acknowledgement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

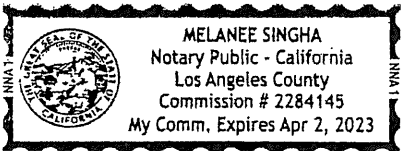
State of California
County of Los Angeles

On Aug 18th 2020, before me, Melanie Singha (notary public), personally appeared Jonathan A. Gruskin, Vice President of Malibu Bay GP LLC, a Delaware limited liability company, General Partner of Malibu Bay Preservation, Ltd., a Florida limited partnership, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

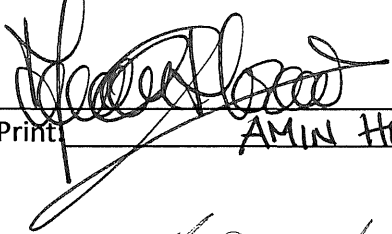
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.


WITNESS my hand and official seal.

Signature [Signature] (Seal)



WITNESSES:



Print: AMIN HOURY


Print: Jeffrey S. Bolton

JUNIOR LENDER:

PALM BEACH COUNTY, a political subdivision
of the State of Florida

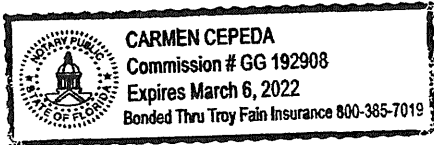
FOR ITS BOARD OF COUNTY COMMISSIONERS

By: 
Name: Jonathan B. Brown

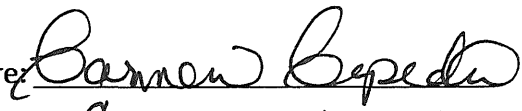
Title: Director, Dept. of Housing and Economic Sustainability

STATE OF FLORIDA
COUNTY OF PALM BEACH


The foregoing instrument was acknowledged before me by means of [☒] physical presence or []
online notarization, on August 25th, 2020, by Jonathan B. Brown as Director of Palm Beach
County Dept. of Housing and Economic Sustainability, who is personally known to me or who has
produced _____ as identification and who did not take an oath.



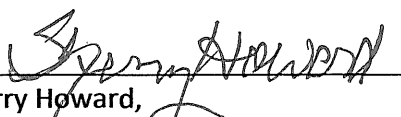
(NOTARY SEAL ABOVE)

Signature: 
Notary Name: Carmen Cepeda
Notary Public - State of Florida

Approved as to Form
and Legal Sufficiency

By: 
Howard J. Falcon, III
Chief Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: 
Sherry Howard,
Deputy Director

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Citibank, N.A.
Transaction and Asset Management Group/Post Closing
388 Greenwich Street, Trading 6th Floor
New York, New York 10013
Attention: Tanya Jimenez
Re: Malibu Bay Apartments Deal ID No. 60000381

SUBORDINATION AND INTERCREDITOR AGREEMENT
(Palm Beach County)

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (this “**Agreement**”) is dated as of August 1, 2020 and will not be effective and binding on the parties hereto unless and until the Closing Date occurs, by and among (i) **CITIBANK, N.A.**, a national banking association (together with its successors and assigns, collectively, “**Senior Lender**”), (ii) **PALM BEACH COUNTY, FLORIDA**, a political subdivision of the State of Florida (“**Junior Lender**”), and (iii) **MALIBU BAY PRESERVATION, LTD.**, a Florida limited partnership (“**Borrower**”).

RECITALS:

A. Borrower has applied to the Housing Finance Authority of Palm Beach County, Florida, a public body corporate and politic, organized and existing under the laws of the State of Florida (the “**Governmental Lender**”), for a loan (the “**Senior Borrower Loan**”) for the acquisition, construction, rehabilitation, development, equipping, and/or operation of the Property (as defined herein).

B. The Senior Borrower Loan is evidenced by (i) that certain Multifamily Note dated the Closing Date in the maximum principal amount of \$40,000,000 made by Borrower payable to the order of Governmental Lender (the “**Senior Borrower Loan Note**”), and (ii) that certain Borrower Loan Agreement dated as of the date hereof, between Borrower and Governmental Lender (the “**Senior Borrower Loan Agreement**”).

C. The Senior Borrower Loan is secured by, among other things, that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated as of the date hereof, executed for the benefit of Governmental Lender (the “**Senior Borrower Loan Security Instrument**”), which Senior Borrower Loan Security Instrument encumbers the Property.

D. Borrower has requested that Governmental Lender enter into that certain Funding Loan Agreement dated as of the date hereof, by and among Governmental Lender, U.S. Bank

National Association, a national banking association, as Fiscal Agent, and Senior Lender, pursuant to which Senior Lender will make a loan to Governmental Lender (the “**Funding Loan**”), the proceeds of which will be used to make the Senior Borrower Loan pursuant to the Senior Borrower Loan Agreement to Borrower. Senior Lender and Borrower have entered into that certain Construction Funding Agreement dated as of the date hereof (the “**Construction Funding Agreement**”; together with the Senior Borrower Loan Note, the Senior Borrower Loan Security Instrument, the Senior Borrower Loan Agreement and all other documents executed in connection with the Senior Borrower Loan, the “**Senior Borrower Loan Documents**”) in order to reduce to writing their agreements regarding the manner in which the Senior Borrower Loan will be advanced to Borrower.

E. The Senior Borrower Loan Note, the Senior Borrower Loan Security Instrument and the Senior Borrower Loan Agreement shall be assigned by Governmental Lender to Senior Lender and the other Senior Borrower Loan Documents have or will be executed by Borrower for the benefit of Senior Lender to secure the Funding Loan.

F. In addition, Senior Lender has agreed to make a loan to Borrower in the principal amount of \$6,800,000 (the “**Senior Citi Loan**”), which Senior Citi Loan is evidenced by that certain Multifamily Construction Note, dated as of the Closing Date, in the maximum principal amount of \$6,800,000 made by Borrower payable to the order of Senior Lender (the “**Senior Citi Loan Note**”) and that certain Construction Loan Agreement dated as of the date hereof between Borrower and Senior Lender (the “**Senior Citi Loan Agreement**”).

G. The Senior Citi Loan is secured by, among other things, that certain Subordinate Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of the date hereof, executed by Borrower for the benefit of Senior Lender (the “**Senior Citi Loan Security Instrument**”; together with the Senior Citi Loan Note, the Senior Citi Loan Agreement and all other documents executed in connection with the Senior Citi Loan, including this Assignment, the “**Senior Citi Loan Documents**”), which Senior Citi Loan Security Instrument encumbers the Property.

H. Junior Lender made a certain loan to Executive Trust, Ltd., a Florida limited partnership (“**Original Borrower**”), in the principal amount of \$262,000 (the “**Junior Loan**”), which Junior Loan is evidenced by (i) that certain Loan Agreement, dated as of March 1, 2005, between Original Borrower and Junior Lender (the “**Junior Loan Agreement**”), as amended by First Global Modification and Amendment of Mortgage and Security Agreement, Promissory Note and Other Loan Documents, dated as of May 28, 2015, between Original Borrower and Junior Lender, recorded on May 28, 2015 in the Official Records (as defined herein) in O.R. Book 27563, Page 1144, and by Second Global Modification and Amendment of Mortgage and Security Agreement, Promissory Note and Other Loan Documents, dated August 28, 2020, to be recorded in the Official Records (collectively, the “**Junior Loan Modification**”), and (ii) that certain Promissory Note, dated as of March 30, 2005, made by Original Borrower in favor of Junior Lender in the principal amount of \$262,000 (the “**Junior Note**”), as amended by Allonge to Promissory Note, dated as of May 28, 2015 (the “**Junior Note Allonge**”) and by the Junior Loan Modification, and is secured by that certain Mortgage and Security Agreement, dated as of March 30, 2005, made by Original Borrower for the benefit of Junior Lender and recorded on April 6, 2005 in the Official Records of Palm Beach County, Florida (the “**Official Records**”) in

O.R. Book 18373, Page 865, encumbering the Property (the “**Junior Security Instrument**”), as amended by the Junior Loan Modification.

I. With the consent of Junior Lender, Original Borrower assigned to Borrower all of Original Borrower’s rights and obligations with respect to the Junior Loan pursuant to that certain Assumption and Consent Agreement, dated as of August 28, 2020, by and among Original Borrower, Borrower and Junior Lender (the “**Junior Loan Assignment**”), recorded in the Official Records substantially concurrently herewith, encumbering the Property.

J. As a condition to the making of the Senior Loan, Senior Lender requires that Junior Lender execute and deliver this Agreement prior to the making of the Senior Loan and the granting of the Senior Security Instrument by Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the making of the Senior Loan and to induce Senior Lender to consent to the Junior Loan and the Junior Security Instrument, Junior Lender hereby agrees as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings ascribed thereto in the Senior Security Instrument. As used in this Agreement, the terms set forth below shall have the respective meanings indicated:

“*Bankruptcy Proceeding*” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

“*Casualty*” means the occurrence of damage to or loss of any of the Property by fire or other casualty.

“*Condemnation*” means any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Property, whether direct or indirect.

“*Enforcement Action*” means the acceleration of all or any part of the Junior Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Junior Note or any other of the Junior Loan Documents, the exercising of any banker’s lien or rights of set-off or recoupment, the termination of any property manager at the Property, or the taking of any other enforcement action against Borrower, any other party liable for any of the Junior Indebtedness or obligated under any of the Junior Loan Documents, or the Property.

“*Enforcement Action Notice*” means a written notice from Junior Lender to Senior Lender, given following a Junior Loan Default and the expiration of any notice or cure periods

provided for such Junior Loan Default in the Junior Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by Junior Lender.

“Junior Indebtedness” means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Junior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

“Junior Loan Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Junior Security Instrument.

“Junior Loan Documents” means, collectively, the Junior Loan Agreement, the Junior Note, the Junior Note Allonge, the Junior Security Instrument, the Junior Loan Modification and all other documents evidencing, securing or delivered in connection with the Junior Loan, together with such modifications, amendments and supplements thereto as are approved in writing by Senior Lender prior to their execution, as assigned pursuant to the Junior Loan Assignment.

“Loss Proceeds” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“Property” means (i) the land and the improvements known or to be known as Malibu Bay Apartments, located in the City of West Palm Beach, Palm Beach County, Florida, which Property is more particularly described on Exhibit A attached hereto, and (ii) all furniture, fixtures and equipment located at such apartments and other property, accounts, deposits and rights and interests of Borrower encumbered by the Senior Security Instrument and/or the Senior Loan Documents.

“Senior Indebtedness” means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Senior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

“Senior Loan Default” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Security Instrument.

“Senior Loan Documents” means, collectively, the Senior Borrower Loan Documents and the Senior Citi Loan Documents, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented in accordance with the provisions of this Agreement.

“Senior Security Instrument” means, collectively, the Senior Borrower Loan Security Instrument and the Senior Citi Loan Security Instrument.

2. Junior Loan and Junior Loan Documents are Subordinate; Acts by Senior Lender do not Affect Subordination.

(a) Junior Lender hereby covenants and agrees on behalf of itself and its successors and permitted assigns that the Junior Indebtedness is and shall at all times continue to be, subordinate, subject and inferior (in payment and priority) to the prior payment in full of the Senior Indebtedness, and that the liens, rights, payment interests, priority interests and security interests granted to Junior Lender in connection with the Junior Loan and under the Junior Loan Documents are, and are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof.

(b) Except as expressly set forth herein, repayment of the Junior Indebtedness, is and shall be postponed and subordinated to repayment in full of the Senior Loan. Prior to a Senior Loan Default (regardless of whether such Senior Loan Default occurs prior to or during the pendency of a Bankruptcy Proceeding), Junior Lender shall be entitled to receive and retain payments made pursuant to and in accordance with the terms of the Junior Loan Documents; provided, however, that no such payment is made more than ten (10) days in advance of the due date thereof. Junior Lender agrees that from and after such time as it has received from either Senior Lender or Borrower written notice that a Senior Loan Default then exists (which has not been expressly waived in writing by Senior Lender) or otherwise has actual knowledge of such a Senior Loan Default, Junior Lender shall not receive or accept any payments under the Junior Loan. If (i) Junior Lender receives any payment, property, or asset of any kind or in any form on account of the Junior Indebtedness (including, without limitation, any proceeds from any Enforcement Action) after a Senior Loan Default of which Junior Lender has actual knowledge or has been given notice of, or (ii) Junior Lender receives, voluntarily or involuntarily, by operation of law or otherwise, any payment, property, or asset in or in connection with any Bankruptcy Proceeding, such payment, property, or asset will be received and held in trust for Senior Lender. Junior Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets to Senior Lender. Senior Lender shall apply any payment, asset, or property so received from Junior Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender shall determine in its sole and absolute discretion.

(c) Without limiting the complete subordination of the Junior Indebtedness to the payment in full of the Senior Indebtedness, in any Bankruptcy Proceeding, upon any payment or distribution (whether in cash, property, securities, or otherwise) to creditors (i) the Senior Indebtedness shall first be paid in full in cash before Junior Lender shall be entitled to receive any payment or other distribution on account of or in respect of the Junior Indebtedness, and (ii) until all of the Senior Indebtedness is paid in full in cash, any payment or distribution to which Junior Lender would be entitled but for this Agreement (whether in cash, property, or other assets) shall be made to Senior Lender.

(d) The subordination of the Junior Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is

for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

(e) The subordination of the Junior Loan Documents and of the Junior Indebtedness shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Security Instrument and other Senior Loan Documents and of the Junior Security Instrument and other Junior Loan Documents, and (ii) the availability of any collateral to Senior Lender, including the availability of any collateral other than the Property.

(f) By reason of, and without in any way limiting, the full subordination of the Junior Indebtedness and the Junior Loan Documents provided for in this Agreement, all rights and claims of Junior Lender under the Junior Security Instrument or under the Junior Loan Documents in or to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of Senior Lender under the Senior Loan Documents in and to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto.

(g) If Junior Lender, by indemnification, subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Junior Indebtedness and the Junior Loan Documents are subordinate pursuant to this Agreement.

(h) [Intentionally Omitted]

(i) Junior Lender hereby acknowledges and agrees that Senior Lender may, without the consent or approval of Junior Lender, agree with Borrower to extend, consolidate, modify, increase or amend any or all the Senior Loan Documents and otherwise act or fail to act with respect to any matter set forth in any Senior Loan Document (including, without limitation, the exercise of any rights or remedies, waiver, forbearance or delay in enforcing any rights or remedies, the declaration of acceleration, the declaration of defaults or events of default, the release, in whole or in part, of any collateral or other property, and any consent, approval or waiver), and all such extensions, consolidations, modifications, amendments acts and omissions shall not release, impair or otherwise affect Junior Lender's obligations and agreements hereunder.

3. Junior Lender Agreements.

(a) Without the prior written consent of Senior Lender in each instance, Junior Lender shall not (i) amend, modify, waive, extend, renew or replace any provision of any of the Junior Loan Documents, or (ii) pledge, assign, transfer, convey, or sell any interest in the Junior Indebtedness or any of the Junior Loan Documents; or (iii) accept any payment on account of the Junior Indebtedness other than a regularly scheduled payment of interest or principal and interest made not earlier than ten (10) days prior to the due date thereof; or (iv) take any action which has the effect of increasing the Junior Indebtedness; or (v) appear in, defend or bring any action in connection with the Property; or (vi) take any action concerning environmental matters affecting the Property. Regardless of any contrary provision in the Junior Loan Documents, Junior Lender shall not collect payments for the purpose of escrowing for any cost or expense related to the Property or for any portion of the Junior Indebtedness.

(b) Junior Lender hereby agrees that Senior Lender may, at its option (but without any obligation to do so), at any time (including during the pendency of a Bankruptcy Proceeding), purchase the Junior Loan at par (and without liability for any prepayment premiums or liquidated damages set forth in the Junior Loan Documents). Such transfer and assignment of the Junior Loan shall be without representation or recourse, except that Junior Lender shall represent that it is the sole holder of the Junior Loan, that it has authority to assign and convey the Junior Loan Documents, that, to the best of its knowledge, there are no defaults or breaches under the Junior Loan Documents, and as to the total amount then outstanding under the Junior Loan. Junior Lender shall give Senior Lender a concurrent copy of each notice of a Junior Loan Default, Enforcement Action Notice or other material notice given by Junior Lender under the Junior Loan Documents. Notwithstanding any contrary provision in the Junior Loan Documents, Senior Lender shall have the right, but shall not have any obligation, to cure any Junior Loan Default until ninety (90) days following Senior Lender's receipt of an Enforcement Action Notice given by Junior Lender as a consequence of the Junior Loan Default. Senior Lender shall not be subrogated to the rights of Junior Lender under the Junior Loan Documents by reason of Senior Lender having cured any Junior Loan Default. However, Junior Lender acknowledges that all amounts advanced or expended by Senior Lender to cure a Junior Loan Default shall be added to and become a part of the Senior Indebtedness pursuant to the terms of the Senior Security Instrument.

(c) In the event and to the extent that each of Senior Lender and Junior Lender have under their respective loan documents certain approval or consent rights over the same subject matters (regardless of whether the obligations or rights are identical or substantially identical), Junior Lender agrees that Senior Lender shall exercise such approval rights on behalf of both Senior Lender and Junior Lender, and Junior Lender shall have no right to object to any such action or approval taken by Senior Lender and shall consent thereto and be bound thereby. Without limiting the generality of the foregoing, Senior Lender shall have all approval, consent and oversight rights in connection with any insurance claims relating to the Property, any decisions regarding the use of insurance proceeds after a casualty loss or condemnation awards, the hiring or firing of property managers, or otherwise related in any way to the Property, and Junior Lender shall have no right to object to any such action or approval taken by Senior Lender and shall consent thereto and be bound thereby.

(d) Junior Lender agrees that in any action commenced to enforce the obligation of Borrower to pay any portion of the Junior Indebtedness, the judgment shall not be enforceable personally against Borrower or Borrower's assets, and the recourse of Junior Lender for the collection of the Junior Indebtedness shall be limited to actions against the Property and the rents, profits, issues, products, and income from the Property.

(e) Junior Lender shall not commence or join with any other creditor in commencing any Bankruptcy Proceeding involving Borrower, and Junior Lender shall not initiate and shall not be a party to any action, motion or request, in a Bankruptcy Proceeding involving any other person or entity, which seeks the consolidation of some or all of the assets of Borrower into such Bankruptcy Proceeding. In the event of any Bankruptcy Proceeding relating to Borrower or the Property or, in the event of any Bankruptcy Proceeding relating to any other person or entity into which (notwithstanding the covenant in the first sentence of this clause) the assets or interests of Borrower are consolidated, then in either event, the Senior Loan shall first be paid in full before Junior Lender shall be entitled to receive and retain any payment or distribution in respect to the Junior Loan. Junior Lender agrees that (i) Senior Lender shall receive all payments and distributions of every kind or character in respect of the Junior Loan to which Junior Lender would otherwise be entitled, but for the subordination provisions of this Agreement (including without limitation, any payments or distributions during the pendency of a Bankruptcy Proceeding involving Borrower or the Property), and (ii) the subordination of the Junior Loan and the Junior Loan Documents shall not be affected in any way by Senior Lender electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim. In addition, Junior Lender hereby covenants and agrees that, in connection with a Bankruptcy Proceeding involving Borrower, neither Junior Lender nor any of its affiliates shall (i) make or participate in a loan facility to or for the benefit of Borrower on a basis that is senior to or *pari passu* with the liens and interests held by Senior Lender pursuant to the Senior Loan Documents, (ii) not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan, and (iii) not contest the continued accrual of interest on the Senior Indebtedness, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Bankruptcy Proceedings. Junior Lender shall execute and deliver to Senior Lender powers of attorney, assignments or other instruments as may be requested by Senior Lender in order to enable it to exercise the above-described authority or powers with respect to any or all of the Junior Loan Documents, and to collect and receive any and all payments or distributions which may be payable or deliverable at any time upon or with respect to any of the Junior Loan Documents to Junior Lender.

(f) Junior Lender covenants and agrees that the effectiveness of this Agreement and the rights of Senior Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Loan, by any delay, forbearance, failure, neglect or refusal of Senior Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Loan Documents or any other security which may have been given or may

hereafter be given for the Senior Loan, by any waiver or failure to exercise any right or remedy under the Senior Loan Documents, or by any other act or failure to act by Senior Lender. Junior Lender acknowledges that Senior Lender, at its sole option, may release all or any portion of the Property from the lien of the Senior Security Instrument, and may release or waive any guaranty, surety or indemnity providing additional collateral to Senior Lender, and Junior Lender hereby waives any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Property by Senior Lender, to require the separate sales of any portion of the Property or to require Senior Lender to exhaust its remedies against any portion of the Property or any other collateral before proceeding against any other portion of the Property or other collateral (including guarantees) for the Senior Loan. Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Junior Lender. At any time or from time to time and any number of times, without notice to Junior Lender and without affecting the liability of Junior Lender, (a) the time for payment of the Senior Indebtedness may be extended or the Senior Indebtedness may be renewed in whole or in part; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Senior Loan Documents, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Indebtedness may be accelerated as provided in the Senior Loan Documents; (d) any Senior Loan Document may be extended, consolidated, modified or amended by Senior Lender and Borrower in any respect, including, but not limited to, an increase in the principal amount; and (e) any security for the Senior Indebtedness may be modified, exchanged, surrendered or otherwise dealt with or additional security may be pledged or mortgaged for the Senior Indebtedness. If, after the occurrence of a Senior Loan Default, Senior Lender acquires title to any of the Property pursuant to a mortgage foreclosure conducted in accordance with applicable law, the lien, operation, and effect of the Junior Security Instrument and other Junior Loan Documents automatically shall terminate with respect to such Property upon Senior Lender's acquisition of title.

(g) Junior Lender acknowledges that it entered into the transactions contemplated by the Junior Loan Documents and made the Junior Loan to Borrower without reliance upon any information or advice from Senior Lender. Junior Lender made its own underwriting analysis in connection with the Junior Loan, its own credit review of Borrower, and investigated all matters pertinent, in Junior Lender's judgment, to its determination to make the Junior Loan to Borrower. Junior Lender acknowledges that it is a sophisticated, experienced commercial lender, and was represented by competent counsel in connection with this Agreement.

(h) Junior Lender hereby represents and warrants that, as of the date hereof, the entire proceeds of the Junior Loan have been disbursed to Borrower. Junior Lender hereby further represents and warrants that: (i) Junior Lender is now the owner and holder of the Junior Loan Documents; (ii) the Junior Loan Documents are now in full force and effect; (iii) the Junior Loan Documents have not been modified or amended; (iv) to the best of Junior Lender's knowledge, no default or event which, with the passing of time or giving of notice would constitute a default, under the Junior Loan Documents

has occurred; (v) the current outstanding principal balance of the Junior Loan is \$262,000, (vi) no scheduled monthly payments under the Junior Loan Documents have been or will be prepaid except with the prior written consent of Senior Lender; and (vii) none of the rights of Junior Lender under any of the Junior Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise. Borrower further represents and warrants that it has provided to Senior Lender a true, complete, and correct copy of all the Junior Loan Documents.

(i) Junior Lender hereby agrees that notwithstanding anything to the contrary in the Junior Loan Documents, for so long as the Senior Loan is outstanding, the maturity date of the Junior Note shall occur no earlier than one (1) month after the maturity date of the Senior Note.

4. Standstill Agreement; Right to Cure Senior Loan Default.

(a) Until such time as any of the Senior Indebtedness has been repaid in full and the Senior Security Instrument has been released and discharged, Junior Lender shall not without the prior written consent of Senior Lender, which may be withheld in Senior Lender's sole and absolute discretion, take any Enforcement Action, including, without limitation, (i) accelerate the Junior Loan, (ii) exercise any of Junior Lender's remedies under the Junior Security Instrument or any of the other Junior Loan Documents (including, without limitation, the commencement of any judicial or non-judicial action of proceeding (a) to enforce any obligation of Borrower under any of the Junior Loan Documents, (b) to collect any monies payable to Borrower, (c) to have a receiver appointed to collect any monies payable to Borrower; or (d) to foreclose the lien(s) created by the Junior Security Instrument) or (iii) file or join in the filing of any involuntary Bankruptcy Proceeding against Borrower or any person or entity which owns a direct or indirect interest in Borrower; provided, however, that such limitation on the remedies of Junior Lender shall not derogate or otherwise limit Junior Lender's rights, following an event of default under the Junior Loan Documents to (a) compute interest on all amounts due and payable under the Junior Loan at the default rate described in the Junior Loan Documents, (b) compute prepayment premiums and late charges, and (c) enforce against any person, other than Borrower and any guarantors or indemnitors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Junior Loan.

(b) Senior Lender shall, simultaneously with the sending of any notice of a Senior Loan Default to Borrower, send to Junior Lender a copy of said notice under the Senior Loan Documents; provided, however, failure to do so shall not affect the validity of such notice or any obligation of Borrower to Senior Lender and shall not affect the relative priorities between the Senior Loan and the Junior Loan as set forth herein. Borrower covenants and agrees to forward to Junior Lender, within three (3) business days of Borrower's receipt thereof, a copy of any notice of a Senior Loan Default Borrower receives from Senior Lender.

(c) Junior Lender shall have the right, but shall have no obligation, to cure any Senior Loan Default; provided, if Junior Lender shall elect to cure any such Default,

it shall so notify Senior Lender and shall commence and complete such curing within any applicable notice or grace period, if any, as Borrower is permitted by the terms of the Senior Loan Documents to cure such Senior Loan Default. Junior Lender shall not be subrogated to the rights of Senior Lender under the Senior Loan Documents by reason of Junior Lender having cured any Senior Loan Default. However, Senior Lender acknowledges that, to the extent so provided in the Junior Loan Documents, amounts advanced or expended by Junior Lender to cure a Senior Loan Default may be added to and become a part of the Junior Indebtedness.

(d) Junior Lender agrees that, notwithstanding any contrary provision contained in the Junior Loan Documents, a Senior Loan Default shall not constitute a default under the Junior Loan Documents if no other default occurred under the Junior Loan Documents.

(e) Junior Lender acknowledges that any conveyance or other transfer of title to the Property pursuant to a foreclosure of the Junior Security Instrument (including a conveyance or other transfer of title pursuant to the exercise of a power of sale contained in the Junior Security Instrument), or any deed or assignment in lieu of foreclosure or similar arrangement, shall be subject to the transfer provisions of the Senior Loan Documents; and the person (including Junior Lender) who acquires title to the Property pursuant to the foreclosure proceeding (or pursuant to the exercise of a power of sale contained in the Junior Security Instrument) shall not be deemed to be automatically approved by Senior Lender.

5. **Insurance.** Junior Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Junior Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Property.

6. **Default.** Junior Lender and Borrower acknowledge and agree that a default by either such party under this Agreement shall, at the sole option of Senior Lender, constitute a default under the Senior Loan Documents. Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

7. **Enforcement Costs.** Borrower agrees to reimburse Senior Lender for any and all costs and expenses (including reasonable attorneys' fees) incurred by Senior Lender in connection with enforcing its rights against Junior Lender, arising out of a default by the Junior Lender, under this Agreement.

8. **Notices.** Any notice which any party hereto may be required or may desire to give hereunder shall be deemed to have been given and shall be effective only if it is in writing and (i) delivered personally, (ii) mailed, postage prepaid, by United State registered or certified mail, return receipts requested, or (iii) delivered by overnight express courier, in each instance addressed as follows:

If to Junior Lender: Department of Housing and Economic Sustainability
Palm Beach County
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

With copy to: County Attorney's Office
Palm Beach County
301 North Olive Avenue, Suite 601
West Palm Beach, Florida 33401

If to Senior Lender: Citibank, N.A.
388 Greenwich Street, Trading 6th Floor
New York, New York 10013
Attention: Transaction and Asset Management Group
Re: Malibu Bay Apartments Deal ID No. 60000381
Facsimile: (212) 723-8209

With a copy to: Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: Malibu Bay Apartments Deal ID No. 60000381
Facsimile: (805) 557-0924

Prior to the Conversion Date,
with a copy to: Citibank, N.A.
388 Greenwich Street, Trading 6th Floor
New York, New York 10013
Attention: Account Specialist
Re: Malibu Bay Apartments Deal ID No. 60000381
Facsimile: (212) 723-8209

Following the Conversion
Date, with a copy to: Citibank N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Re: Malibu Bay Apartments Deal ID No. 60000381
Facsimile: (215) 328-0305

And a copy of any notices of default sent to: Citibank, N.A.
388 Greenwich Street, 17th Floor
New York, New York 10013
Attention: General Counsel's Office
Re: Malibu Bay Apartments Deal ID No. 60000381
Facsimile: (646) 291-5754

or at such other addresses or to the attention of such other persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender.

9. **WAIVER OF TRIAL BY JURY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE PARTIES HERETO (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

10. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Junior Loan Documents, other than by reason of payments which Junior Lender is obligated to remit to Senior Lender pursuant to the terms hereof; (iii) the acquisition by Senior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Security Instrument; or (iv) the acquisition by Junior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Junior Security Instrument, but only if such acquisition of title does not violate any of the terms of this Agreement.

11. **Miscellaneous.**

(a) Junior Lender shall, within ten (10) business days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Junior Loan, the aggregate accrued and unpaid interest under the Junior Loan, and stating whether, to the knowledge of Junior Lender, any default or event of default exists under the Junior Loan, and containing such other information with respect to the Junior Indebtedness as Senior Lender may require. Upon notice from Senior Lender from time to time, Junior Lender shall execute and deliver such additional instruments and documents, and shall take such actions, as are required by Senior Lender in order to further evidence or effectuate the provisions and intent of this Agreement.

(b) This Agreement shall bind and inure to the benefit of all successors and assigns of Junior Lender and Senior Lender. Senior Lender may assign its interest in the Senior Loan Documents without notice to or consent of Junior Lender. Junior Lender may only assign its rights and interests hereunder following the prior written consent of Senior Lender, which consent may be withheld or conditioned in its sole and absolute discretion.

(c) Senior Lender hereby consents to the Junior Loan and the Junior Loan Documents; provided, however, that this Agreement does not constitute an approval by Senior Lender of the terms of the Junior Loan Documents. Junior Lender hereby consents to the Senior Loan and the Senior Loan Documents; provided, however, that this Agreement does not constitute an approval by Junior Lender of the terms of the Senior Loan Documents.

(d) This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

(e) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(f) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(g) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(h) Each party hereto hereby represents and warrants that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(i) Borrower hereby acknowledges and consents to the execution of this Agreement, and agrees to be bound by the provisions hereof that are applicable to Borrower. Solely as between Senior Lender and Junior Lender, all of the signatories below hereby agree that to the extent of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Senior Loan Documents and/or the Junior Loan Documents respectively, the terms and provisions of this Agreement shall govern and control. By executing this Agreement in the place provided below, Borrower

hereby (i) acknowledges the provisions hereof, (ii) agrees not to take any action inconsistent with Senior Lender's rights or Junior Lender's rights under this Agreement, (iii) waives and relinquishes to the maximum extent permitted by law any and all rights, defenses and claims now existing or hereinafter accruing relating to Junior Lender's forbearance from exercising any rights and remedies pursuant to Section 4 of this Agreement, including, without limitation, any defenses based on the statute of limitations or any equitable defenses, such as laches, and (iv) acknowledges and agrees that (A) this Agreement is entered into for the sole protection and benefit of Senior Lender and Junior Lender (and their respective successors, assigns and participants), and no other person (including Borrower) shall have any benefits, rights or remedies under or by reason of this Agreement, (B) nothing in this Agreement is intended, or shall be construed to, relieve or discharge the obligations or liabilities of any third party (including Borrower under the Senior Loan Documents and the Junior Loan Documents), (c) neither of them nor any of their affiliates shall be, or be deemed to be, beneficiaries of any of the provisions hereof or have any rights hereunder whatsoever, and (D) no provision of this Agreement is intended to, or shall be construed to, give any such third party (including Borrower) any right subrogating to the rights of, or action against, Senior Lender or Junior Lender.

(j) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

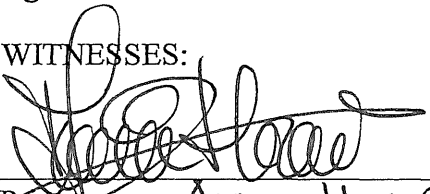
(k) No party other than Senior Lender and Junior Lender shall have any rights under, or be deemed a beneficiary of any of the provisions of, this Agreement.

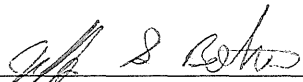
(l) Nothing herein or in any of the Senior Loan Documents or Junior Loan Documents shall be deemed to constitute Senior Lender as a joint venturer or partner of Junior Lender.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Subordination and Intercreditor Agreement or caused this Subordination and Intercreditor Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above. The undersigned intend that this instrument shall be deemed to be signed and delivered as a sealed instrument.

WITNESSES:

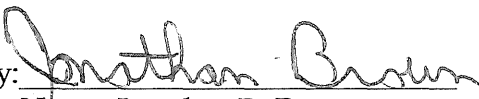

Print: Amin Houry


Print: Jeffrey S. Bolton

JUNIOR LENDER:

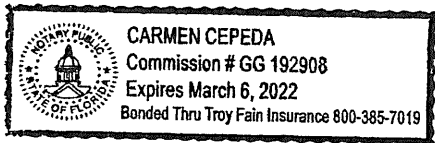
PALM BEACH COUNTY, a political subdivision
of the State of Florida

FOR ITS BOARD OF COUNTY COMMISSIONERS


By: 
Name: Jonathan B. Brown
Title: Director, Dept. of Housing
and Economic Sustainability

STATE OF FLORIDA
COUNTY OF PALM BEACH


The foregoing instrument was acknowledged before me by means of [☒] physical presence or [☐] online notarization, on August 25th, 2020, by Jonathan B. Brown as Director of Palm Beach County Dept. of Housing and Economic Sustainability, who is personally known to me or who has produced _____ as identification and who did not take an oath.



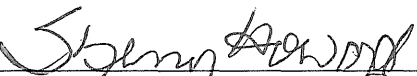
(NOTARY SEAL ABOVE)

Signature: 
Notary Name: Carmen Cepeda
Notary Public - State of Florida

Approved as to Form
and Legal Sufficiency

By: 
Howard J. Falcon, III
Chief Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: 
Sherry Howard
Deputy Director

(Signatures follow on subsequent page)

WITNESSES:

Ashley Washington
Name: Ashley Washington

JAY ABEYWARDENA
Name: JAY ABEYWARDENA

SENIOR LENDER:

CITIBANK, N.A.

By: [Signature]
Kathy Millhouse
Vice President
Deal ID No. 60000381

(Signatures follow on subsequent page)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

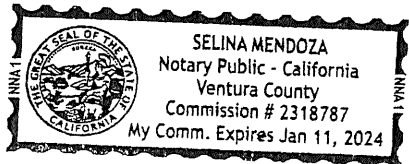
COUNTY OF VENTURA

On August 24, 2020, before me, Selina Mendoza, Notary Public, personally appeared Kathy Millhouse who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

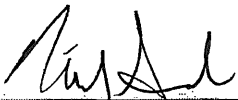
WITNESS my hand and official seal.

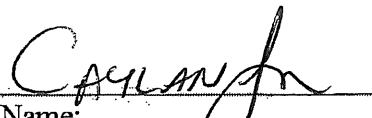
Signature Selina Mendoza (Seal)



ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST SET FORTH ABOVE:

WITNESSES:



Name: Nicholas Saade


Name: CAYLAN JONES

BORROWER:

MALIBU BAY PRESERVATION, LTD.,
a Florida limited partnership

By: Malibu Bay GP LLC,
a Delaware limited liability company
Its: General Partner

By: 
Name: Jonathan Gruskin
Title: Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF Los Angeles

On August 24th, 2020 before me, Arriel T. Stroub, ^{Notary} Public (here insert name and title of the officer), personally appeared Jonathan Gruskin who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

☐ I NESS my hand and official seal.

Signature Arriel T. Stroub (Seal)

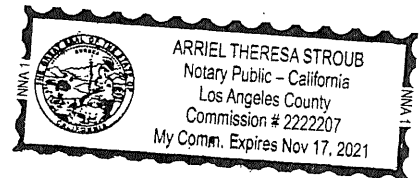


EXHIBIT A

LEGAL DESCRIPTION

All that certain real property situated in the County of Palm Beach, State of Florida, described as follows:

All of MALIBU BAY, according to the plat thereof recorded in Plat Book 101, page 54 of the public records of Palm Beach County, Florida.

Also known as:

Record Description per Plat

Parcel 1

Being a parcel of land lying in portions of Sections 17, 19 and 20, Township 43 South Range 43 East, Palm Beach County, Florida, and being more particularly described as follows:

Commencing at a point in the South line of Palm Beach Lakes Boulevard, as recorded in Plat Book 28, Page 94, of the Public Records of Palm Beach County, Florida at the intersection with the Northwest corner of the Plat of Executive Center Drive, as recorded in Plat Book 88, Page 55, of the Public Records of Palm Beach County, Florida;

THENCE along the North line of said Plat of Executive Center Drive, the following four (4) courses and distances:

- 1) South 04 degrees 03 minutes 34 seconds East, a distance of 52.51 feet;
- 2) South 45 degrees 04 minutes 45 seconds East, a distance of 71.77 feet to a point of curvature of a circular curve concave to the Southwest having a radius of 2007.85 feet and a central angle of 09 degrees 30 minutes 08 seconds;
- 3) Along the arc of said curve an arc length of 332.99 feet;
- 4) North 36 degrees 57 minutes 36 seconds East, a distance of 2.62 feet to the point of beginning;

THENCE continue North 36 degrees 57 minutes 36 seconds East, a distance of 417.18 feet;

THENCE North 53 degrees 02 minutes 24 seconds West, along a line radial to the next described curve, 30.00 feet to a point of curvature of a circular curve concave to the Southeast having a radius of 2538.57 feet and a central angle of 02 degrees 08 minutes 52 seconds;

THENCE along the arc of said curve an arc distance of 95.15 feet;

THENCE South 49 degrees 23 minutes 42 seconds East, a distance of 395.50 feet;

THENCE South 23 degrees 46 minutes 37 seconds East, a distance of 216.19 feet;

THENCE South 29 degrees 18 minutes 45 seconds East, a distance of 21.53 feet;

THENCE South 38 degrees 50 minutes 37 seconds East, a distance of 43.83 feet;

THENCE South 35 degrees 50 minutes 27 seconds East, a distance of 46.10 feet;

THENCE South 16 degrees 20 minutes 21 seconds East, a distance of 130.50 feet;

THENCE South 24 degrees 46 minutes 56 seconds West, a distance of 8.29 feet;

THENCE South 23 degrees 46 minutes 37 seconds East, a distance of 482.54 feet;

THENCE South 68 degrees 28 minutes 10 seconds West, a distance of 176.16 feet to a point of curvature of a circular curve concave to the Northwest having a radius of 460.00 feet and a central angle of 25 degrees 03 minutes 41 seconds;

THENCE along the arc of said curve an arc length of 201.21 feet to a point in the said northerly line of the Plat of Executive Center Drive;

THENCE along said Northerly line the following four (4) courses and distances:

- 1) North 48 degrees 34 minutes 10 seconds West, a distance of 4.12 feet to a point of curvature of a circular curve concave to the Northeast having a radius of 2017.61 feet and a central angle of 15 degrees 34 minutes 12 seconds;
- 2) Along the arc of said curve an arc distance of 548.28 feet;
- 3) North 32 degrees 59 minutes 58 seconds West, a distance of 354.71 feet to a point of curvature of a circular curve concave to the Southwest having a radius of 2010.35 feet and a central angle of 2 degrees 35 minutes 59 seconds;
- 4) Along the arc of said curve an arc distance of 91.21 feet to the point of BEGINNING.

TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

PARCEL 2:

Together with a Non-Exclusive Drainage Easement for the benefit of the above described property by virtue of the Grant of Easement recorded in O.R. Book 16174, Page 1054, Public Records of Palm Beach County, Florida.

A drainage easement, lying in Section 17, Township 43 South, Range 43 East, Palm Beach County, Florida, being more particularly described as follows:

Commencing at the southwest corner of said Section 17; thence South 89 degrees 51 minutes 41 seconds East, along the south line of said Section 17, a distance of 95.10 feet;

THENCE departing said South line North 36 degrees 57 minutes 36 seconds East, a distance of 176.22 feet;

THENCE North 53 degrees 02 minutes 24 seconds West on a radial bearing, a distance of 30.00 feet to a point on the northerly line of an 80 foot Non-Exclusive Outfall Easement and Drainage Easement recorded in Official Records Book 8135, page 1017, Official Records Book 11870, page 300 and Official Records Book 2550, page 1406, public records of Palm Beach County, Florida and a point of curvature of a curve concave to the southeast having a radius of 2538.27 feet, a radial bearing of South 53 degrees 02 minutes 24 seconds East and a central angle 02 degrees 08 minutes 52 seconds;

THENCE northeasterly along said northerly line and arc of said curve, a distance of 95.15 feet to the Point of Beginning;

THENCE continue along said northerly line, and said curve, concave to the southeast, having a radius of 2538.27 feet, a radial bearing of South 50 degrees 53 minutes 32 seconds East and a central angle of 11 degrees 24 minutes 29 seconds;

THENCE easterly along the arc of said curve, a distance of 505.39 feet to a point on the north line of a 60 foot drainage easement, as described in Official Records Book 2550, page 1406, public records of Palm Beach County, Florida;

THENCE North 62 degrees 01 minutes 43 seconds East along said north line, a distance of 328.99 feet to a point on the westerly line of a 50 foot drainage easement as described in Official Records Book 2550, page 1406;

THENCE departing said north line North 26 degrees 37 minutes 24 seconds West, along the westerly line of said 50 foot drainage easement, a distance of 182.97 feet to a point on the northerly line of a parcel of land described in Official Records Book 11242, page 1534, Public Records of Palm Beach County, Florida;

THENCE North 63 degrees 55 minutes 19 seconds East along said northerly line, a distance of 50.00 feet to a point on the easterly line of said 50 foot drainage easement;

THENCE South 26 degrees 37 minutes 24 seconds East along said easterly line, a distance of 241.33 feet to the southeast corner of said 60 foot drainage easement described in Official Records Book 2550, page 1406;

THENCE South 62 degrees 01 minutes 43 seconds West along the southerly line of said 60 foot drainage easement, a distance of 365.37 feet;

THENCE South 39 degrees 29 minutes 03 seconds East to the southeast corner of said 80 foot non-exclusive outfall easement and drainage easement recorded in Official Records Book 8135, page 1017, Official Records Book 11870, page 300 and Official Records Book 2550, page 1406, a distance of 18.77 feet and the point of curvature of a non-tangent curve concave to the southeast, having a radius of 2458.27 feet, a radial bearing of South 39 degrees 29 minutes 03 seconds East and a central angle of 11 degrees 27 minutes 24 seconds;

THENCE southwesterly along the south line of said 80 foot easement and the arc of said curve, a distance of 491.55 feet; thence departing said south line, North 49 degrees 23 minutes 42 seconds West, a distance of 80.03 feet to the Point of BEGINNING.

INFORMATIONAL NOTE ONLY: Tax Folio #74-43-43-17-27-000-0000

THIS INSTRUMENT PREPARED BY:
Department of Housing and Economic Sustainability
Palm Beach County
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406

ABOVE SPACE RESERVED FOR
RECORDING PURPOSES ONLY

**SECOND GLOBAL MODIFICATION AND AMENDMENT OF
MORTGAGE AND SECURITY
AGREEMENT AND OTHER LOAN DOCUMENTS**

THIS SECOND GLOBAL MODIFICATION AND AMENDMENT OF MORTGAGE AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS, including, among others,

- (i) Mortgage and Security Agreement dated March 30, 2005, and recorded April 6, 2005, in Official Records Book 18373, Page 0865, of the Public Records of Palm Beach County, Florida (the “Mortgage”).
- (ii) First Global Modification and Amendment of Mortgage and Security Agreement, Promissory Note and Other Loan Documents dated May 28, 2015, and recorded May 28, 2015, in Official Records Book 27563, Page 1144, of the Public Records of Palm Beach County, Florida.

(this “Amendment”), effective as of August 28, 2020, is entered into by and among MALIBU BAY PRESERVATION, LTD., a Florida limited partnership (“New Borrower”), whose address is c/o Lincoln Avenue Capital LLC, 401 Wilshire Blvd., Suite 1070, Santa Monica, CA 90401 and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (the “Junior Lender”).

RECITALS

A. On or about March 30, 2005, the Junior Lender issued to Executive Trust, Ltd., a Florida limited partnership (“Borrower”) a loan in the principal amount of TWO HUNDRED SIXTY-TWO THOUSAND AND NO/100 DOLLARS (\$262,000.00) (the “Loan”) to finance the construction and permanent financing of a multifamily rental housing development on the real property described in Exhibit “A” attached hereto (the “Land”) and the improvements thereon, known as Malibu Bay Apartments located in Palm Beach County, Florida. The Land, the improvements, the fixtures and personal property and other amenities now or hereafter located on the Land are referred to collectively hereafter as the “Development.”

B. As a condition precedent to the Junior Lender making of the Loan, the Borrower entered into that certain Loan Agreement between the Junior Lender and the Borrower dated March 1, 2005, and executed that certain Promissory Note dated March 30, 2005, which is modified by that certain Allonge to Promissory Note, dated May 28, 2015 ("Subordinate Note") and together with the Mortgage and all other documents executed in connection therewith, collectively referred to herein as the "Loan Documents".

C. On even date herewith, New Borrower requested Housing Finance Authority of Palm Beach County, Florida ("Governmental Lender") to enter into a funding loan agreement by and among Governmental Lender, U.S. Bank National Association, as fiscal agent (the "Fiscal Agent"), and Citibank, N.A. (the "Funding Lender"), under which the Funding Lender will make the Funding Loan (as defined herein) to the Governmental Lender, the proceeds of which will be loaned to Borrower, in the original principal amount of FORTY MILLION AND NO/100 DOLLARS (\$40,000,000.00) (the "Senior Loan"). The Senior Loan is evidenced by that certain Multifamily Note dated as of August 28, 2020 (the "Senior Note") and secured by that certain Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Florida) dated as of August 1, 2020 and recorded prior to this Amendment in the Public Records of Palm Beach County, Florida (the "Senior Mortgage").

D. The New Borrower has also received a construction loan ("Construction Loan") from the Funding Lender, in the original principal amount of SIX MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,800,000.00). The Construction Loan is evidenced by that certain Multifamily Construction Note dated as of August 28, 2020 (the "Construction Note") and secured by that certain Subordinate Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (Florida) dated as of August 1, 2020 and recorded prior to this Amendment in the Public Records of Palm Beach County, Florida (the "Construction Mortgage")

E. The Senior Note, Senior Mortgage, Construction Note, Construction Mortgage, together with all other documents executed in connection with the Senior Loan and Construction Loan are collectively referred to as the "Senior Loan Documents".

F. Pursuant to that certain Subordination Agreement of even date herewith, between Junior Lender, Fiscal Agent, Funding Lender and New Borrower (the "Subordination Agreement"), and this Amendment, the Junior Lender agreed to subordinate the Loan Documents to the Senior Loan Documents, and the parties hereto desire to amend and modify the Loan Documents as set forth herein.

G. The Junior Lender is the owner and holder of the Mortgage, the Subordinate Note, and all other Loan Documents described above.

H. On even date herewith, the Borrower, the New Borrower and the Junior Lender entered into an Assumption and Consent Agreement whereby the Junior Lender consented to the transfer of the Development as encumbered by the Mortgage, as amended, from the Borrower to the New Borrower and the assumption of the Loan by New Borrower, whereby the New Borrower assumed and agreed to pay the outstanding principal balance of the Subordinate Note, together

with interest thereon at the rate and in accordance with the terms of the Subordinate Note and whereby the New Borrower assumed all obligations of the Borrower under the Loan Documents.

I. On even date herewith, the New Borrower took title to the Development subject to the Mortgage, as amended.

J. The New Borrower acknowledges that the Assumption and Consent Agreement and this Amendment confer a substantial benefit upon it and is supported by good and valuable consideration.

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

SECTION 1 AMENDMENTS TO THE LOAN DOCUMENTS

A. All references to the Maturity Date in the Loan Documents is deleted and replaced with October 1, 2053.

B. The fifteen (15) year period found in Section 7 of the Loan Agreement between the Junior Lender and the Borrower dated March 1, 2005, is hereby extended to October 1, 2053.

C. Add Section 1.12 to the Mortgage as follows:

1.12 Covenants Running With the Land:

The Mortgagor expressly agrees to the following terms and conditions:

All 262 housing units on the Mortgaged Property, with the exception of two (2) manager units, shall, until October 1, 2053, be leased to a person or persons whose household annual gross income, adjusted for family size, is at no more than eighty percent (80%) of Area Median Income (hereinafter "AMI") at any time new tenants occupy these units.

AMI shall mean the most current area median income published by HUD for the West Palm Beach-Boca Raton Metropolitan Statistical Area and annual gross income shall be as defined at s. 420.9071, Florida Statutes.

The Mortgagor shall re-certify the tenant's household income annually after the date of initial occupancy to ensure continued income eligibility. Limitations, if any, on the increase of tenants' annual gross incomes while in occupancy of these units shall be as established by the Florida Housing Finance Corporation.

**THE REQUIREMENTS AND RESTRICTIONS SET FORTH IN
THIS SECTION 1.12 SHALL BE COVENANTS RUNNING WITH**

THE LAND UNTIL OCTOBER 1, 2053, AND SHALL SURVIVE ANY FORECLOSURE OR DEED-IN-LIEU OF FORECLOSURE.

IN THE EVENT THE MORTGAGE IS SATISFIED PRIOR TO THE EXPIRATION OF THE AFFORDABILITY PERIOD, THE RESTRICTIVE COVENANTS MAY, WITH THE APPROVAL OF THE COUNTY, BE TRANSFERRED TO A SEPARATE DECLARATION OF RESTRICTIVE COVENANTS CONSISTENT WITH THE TERMS SET FORTH HEREIN, WHICH COVENANTS SHALL BE RECORDED IN THE PUBLIC RECORDS OF PALM BEACH COUNTY.

D. Delete the contents of Section 2.2(l) of the Mortgage and replace them with the following: The Mortgagor, with the exception of two (2) manager units, shall, at any time prior to October 1, 2053, cease to lease one hundred percent (100%) of the Mortgaged Property comprising 262 housing units to the households specified herein.

SECTION 2 ACKNOWLEDGEMENT OF MODIFICATION

A. All of the recitals hereinabove set forth are by reference incorporated in and specifically made a part of this Amendment as if fully set forth herein.

B. New Borrower acknowledges and agrees that all of the other stipulations, terms, provisions and covenants and agreements as contained in the Loan Documents shall remain in full force and effect except as herein provided to the contrary or modified in conjunction herewith.

C. This Amendment shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

SECTION 3 MISCELLANEOUS

A. Full Force and Effect. Except as modified by this Amendment, the Loan Documents shall remain in full force and effect.

B. Governing Law. This Amendment shall be construed, and the obligations, rights and remedies of the parties hereunder shall be determined, in accordance with the laws of the State of Florida without regard to conflicts of laws or principles, except to the extent that the laws of the United States of America may prevail.

C. Definitions. Initially capitalized terms used herein without definition shall have the respective meanings set forth in the agreement,

D. Multiple Counterparts. This Amendment may be simultaneously executed in one or more counterparts, all of which shall constitute the same instrument and each of which shall be deemed an original.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR
SECOND GLOBAL MODIFICATION AND AMENDMENT OF
MORTGAGE AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS**


IN WITNESS WHEREOF, the New Borrower and the Junior Lender have caused this Amendment to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

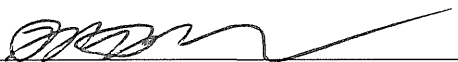
NEW BORROWER:


Malibu Bay Preservation, Ltd., a Florida
limited partnership

By: Malibu Bay GP LLC, a Delaware limited
liability company, its general partner

WITNESSES:


Print: Samantha Singh


Print: Qilubi Fu

By: 
Jonathan A. Gruskin, Vice President

[SEAL]

Acknowledgement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On May 18th 2020, before me, Melanee Singha (Notary public), personally appeared Jonathan A. Gruskin, Vice President of Malibu Bay GP LLC, a Delaware limited liability company, General Partner of Malibu Bay Preservation, Ltd., a Florida limited partnership, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

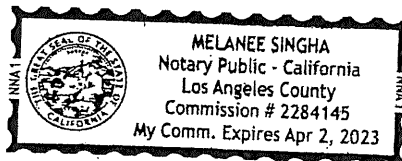
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Melanee Singha


(Seal)

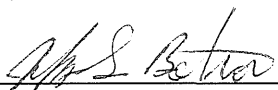


**COUNTERPART SIGNATURE PAGE FOR
SECOND GLOBAL MODIFICATION AND AMENDMENT OF
MORTGAGE AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS**

IN WITNESS WHEREOF, the New Borrower and the Junior Lender have caused this Amendment to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

WITNESSES:



Print: AMIN HOURY


Print: Jeffrey S. Bolton

JUNIOR LENDER:

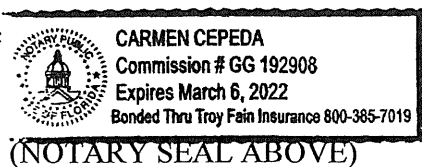
PALM BEACH COUNTY, a political subdivision
of the State of Florida


FOR ITS BOARD OF COUNTY COMMISSIONERS

By: 
Name: Jonathan B. Brown
Title: Director, Dept. of Housing and Economic
Sustainability


**STATE OF FLORIDA
COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me by means of [☒] physical presence or [☐]
online notarization, on August 25th, 2020, by Jonathan B. Brown as Director of Palm
Beach County Dept. of Housing and Economic Sustainability, who is personally known to me or
who has produced _____ as identification and who did not take an oath.



Signature: 
Notary Name: Carmen Cepeda
Notary Public - State of Florida

Approved as to Form
and Legal Sufficiency

By: 
Howard J. Falcon, III
Chief Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

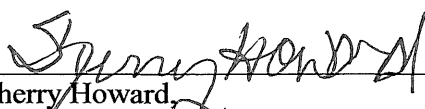
By: 
Sherry Howard
Deputy Director

EXHIBIT "A"

**LEGAL DESCRIPTION
MALIBU BAY**

All of Malibu Bay, according to plat thereof, as recorded in Plat Book 101, Page 54, of the Public Records of Palm Beach County, Florida.

Together with a Non-Exclusive Drainage Easement for the benefit of the above described property by virtue of the Grant Of Easement recorded in O.R. Book 16174, Page 1054, Public Records of Palm Beach County, Florida.

Also known as:

PARCEL 1:

Being a parcel of land lying in portions of Sections 17, 19, and 20, Township 43 South, Range 43 East, Palm Beach County, Florida, and being more particularly described as follows:

Commencing at a point in the South line of Palm Beach Lake Boulevard, as recorded in Plat Book 28, Page 94, of the Public Records of Palm Beach County, Florida at the intersection with the Northwest corner of the Plat of EXECUTIVE CENTER DRIVE, as recorded in Plat Book 88, Page 55, of the Public Records of Palm Beach County, Florida; thence along the North line of said Plat of EXECUTIVE CENTER DRIVE, the following four (4) courses and distances: 1) South 04°03'34" East, a distance of 52.51 feet; 2) South 45°04'45" East, a distance of 71.77 feet to a point of curvature of a circular curve concave to the Southwest having a radius of 2007.85 feet and a central angle of 09°30'08"; 3) along the arc of said curve an arc length of 332.99 feet; 4) North 36°57'36" East, a distance of 2.62 feet to the Point of Beginning; thence continue North 36°57'36" East, a distance of 417.18 feet; thence North 53°02'24" West, a along a line radial to the next described curve, 30.00 feet to a point of curvature of a circular curve concave to the Southeast having a radius of 2538.27 feet and a central angle of 02°08'52"; thence along the arc of said curve an arc distance of 95.15 feet; thence South 49°23'42" East, a distance of 395.50 feet; thence South 23°46'37" East, a distance of 942.46 feet; thence South 68°28'10" West, a distance of 176.16 feet to a point of curvature of a circular curve concave to the Northwest having a radius of 460.00 feet and a central angle of 25°03'41"; thence along the arc of said curve an arc length of 201.21 feet to a point in the said Northerly line of the Plat of EXECUTIVE CENTER DRIVE; thence along said Northerly line the following four (4) courses and distances: 1) North 48°34'10" West, a distance of 4.12 feet to a point of curvature of a circular curve concave to the Northeast having a radius of 2017.61 feet and a central angle of 15°34'12"; 2) along the arc of said curve an arc distance of 548.28 feet; 3) North 32°59'58" West, a distance of 354.71 feet to a point of curvature of a circular curve concave to the Southwest having a radius of 2010.35 feet and a central angle of 2°35'59"; 4) along the arc of said curve an arc distance of 91.21 feet to the Point of Beginning.

THE ABOVE NOW BEING DESCRIBED AS:

All of the Plat of MALIBU BAY, according to the Plat thereof, as recorded in Plat Book 101, Page 54, of the Public Records of Palm Beach County, Florida.

TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

A parcel of land lying in Section 20, Township 43 South, Range 43 East, Palm Beach County, Florida, said parcel more particularly described as follows:

Commence at the Northwest corner of said Section 20 and proceed South 89°51'41" East, along the North line of said Section 20, a distance of 509.59 feet; thence South 49°23'42" East, a distance of 34.76 feet; thence South 23°46'37" East, a distance of 216.19 feet to the Point of Beginning; thence South 29°18'45" East, a distance of 21.53 feet; thence South 38°50'37" East, a distance of 43.83 feet; thence South 35°50'27" East, a distance of 46.10 feet; thence South 16°29'21" East, a distance of 130.50 feet; thence South 24°42'56" West, a distance of 8.29 feet; thence North 23°46'37" West, a distance of 243.73 feet to the Point of Beginning.

TOGETHER WITH THE FOLLOWING DESCRIBED PROPERTY:

PARCEL 2:

A drainage easement lying in Section 17, Township 43 South, Range 43 East, Palm Beach County, Florida being more particularly described as follows:

Commencing at the Southwest corner of said Section 17; thence South 89°51'41" East, along the South line of said Section 17, a distance of 95.10 feet; thence departing said South line North 36°57'36" East, a distance of 176.22 feet; thence North 53°02'24" West on a radial bearing, a distance of 30.00 feet to a point on the Northerly line of an 80 foot Non-Exclusive Outfall Easement and Drainage Easement recorded in Official Records Book 8135, Page 1017, Official Records book 11870, page 300 and Official Records Book 2550, Page 1406, Public Records of Palm Beach County, Florida and a point of curvature of a curve concave to the Southeast, having a radius of 2538.27 feet, a radial bearing of South 53°02'04" East, and a central angle of 02°08'52"; thence Northeasterly along said Northerly line and arc of said curve, a distance of 95.15 feet to the Point of Beginning; thence continue along said Northerly line and said curve, concave to the Southeast, having a radius of 2538.27 feet, a radial bearing of South 50°53'32" East and a central angle of 11°24'29"; thence Easterly along the arc of said curve, a distance of 505.39 feet to a point on the North line of a 60 foot Drainage Easement, as described in Official Records Book 2550, Page 1406, Public Records of Palm Beach County, Florida; thence North 62°01'43" East, along said North line, a distance of 328.99 feet to a point on the Westerly line of a 50 foot Drainage Easement as described in Official Records Book 2550, Page 1406; thence departing said North line North 26°37'24" West, along the Westerly line of said 50 foot Drainage Easement, a distance of 182.97 feet to a point on the Northerly line of a parcel of land described in Official Records Book 11242, Page 1534, Public Records of Palm Beach County, Florida; thence North 63°55'19" East, along said Northerly line, a distance of 50.00 feet to a point on the Easterly line of said 50 foot Drainage Easement; thence South 26°37'24" East, along the Easterly line, a distance of 241.33 feet to the Southeast corner of said 60 foot Drainage Easement

described in Official Records Book 2550, Page 1406; thence South $62^{\circ}01'43''$ West, along the Southerly line of said 60 foot Drainage Easement, a distance of 365.37 feet; thence South $39^{\circ}29'03''$ East to the Southeast corner of said 80 foot Non-Exclusive Outfall Easement and Drainage Easement recorded in Official Records Book 8135, Page 1017, Official Records Book 11870, Page 300 and Official Records Book 2550, Page 1406, a distance of 18.77 feet and the point of curvature of a non-tangent curve concave to the Southeast, having a radius of 2458.27 feet, a radial bearing of South $39^{\circ}29'03''$ East and a central angle of $11^{\circ}27'24''$; thence Southwesterly along the South line of said 80 foot easement and the arc of said curve, a distance of 491.55 feet; thence departing said South line, North $49^{\circ}23'42''$ West, a distance of 80.03 feet to the Point of Beginning.

LOAN RIDER

This LOAN RIDER ("Loan Rider") is attached to and made a part of the SECOND GLOBAL MODIFICATION AND AMENDMENT OF MORTGAGE AND SECURITY AGREEMENT AND OTHER LOAN DOCUMENTS, by and between MALIBU BAY PRESERVATION, LTD., a Florida limited partnership ("New Borrower"), whose address is c/o Lincoln Avenue Capital LLC, 401 Wilshire Blvd., Suite 1070, Santa Monica, CA 90401 and PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida (the "Junior Lender").

The parties hereto agree that the following covenants, terms, and conditions shall be part of and shall modify or supplement the Loan Documents, and that in the event of any inconsistency or conflict between the covenants, terms, and conditions of the Loan Documents and this Loan Rider, the following covenants, terms, and conditions shall control and prevail:

1. General Partner Change. The withdrawal, removal, and/or replacement of the general partner of the New Borrower pursuant to the terms of the amended and restated limited partnership agreement of New Borrower shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loans, so long as Junior Lender consents prior thereto, which consent shall not be unreasonable withheld.

2. Monetary Default. If a monetary event of default occurs, prior to exercising any rights and remedies Junior Lender may have, Junior Lender shall give New Borrower, the general partner of New Borrower ("General Partner"), and NEF Assignment Corporation, an Illinois not-for-profit corporation, and its successors and/or assigns ("NEF") written notice of such event of default. New Borrower and NEF have the right, but not the obligation a period of seven (7) days after such notice has been deemed delivered and received within which to cure such event of default under any of the Loan Documents on behalf of New Borrower prior to Junior Lender's exercise of its right and remedies.

3. Non-Monetary Default. If a non-monetary event of default occurs, prior to exercising any rights and remedies Junior Lender may have Junior Lender shall give New Borrower, the General Partner and NEF written notice of such event of default (the "Notice"). If such event of default is reasonably capable of being cured within thirty (30) days (as determined by Junior Lender in its sole and reasonable discretion), New Borrower and NEF have the right, but not the obligation, for thirty (30) days after such Notice has been deemed delivered and received within which to cure such event of default under any of the Loan Documents on behalf of the New Borrower prior to Junior Lender's exercise of its right and remedies. If such event of default is such that it is not reasonably capable of being cured within thirty (30) days (as determined by Junior Lender in its sole and reasonable discretion), and New Borrower diligently, continually, and in good faith works to cure such event of default, then New Borrower shall have such additional time as is reasonably necessary (as determined by Junior Lender in its sole and reasonable discretion) to cure such event of default prior to Junior Lender's exercise of its right and remedies. If New Borrower fails to cure such event of default within such time, Junior Lender shall give New Borrower, the General Partner and NEF written notice thereof at their last known

addresses, whereupon NEF may remove and replace the General Partner with a substitute general partner who shall cure such event of default within a reasonable time thereafter.

4. Junior Lender Approvals, Etc. In any approval, consent, or other determination by Junior Lender required under any of the Loan Documents, Junior Lender shall act reasonably and in good faith.

5. Notices. Any notice required to be given to New Borrower shall be copied to NEF Assignment Corporation, 10 South Riverside Plaza, Suite 1700, Chicago, IL 60606, Attention: General Counsel.

6. Permitted Assignment. The following transfers shall be permitted under the Loan Documents and shall not be an event of default: (1) a transfer by NEF Assignment Corporation in the New Borrower to an affiliate of National Equity Fund, Inc. or a fund controlled by National Equity Fund, Inc.

[signature pages follow]

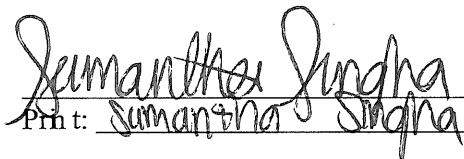
IN WITNESS WHEREOF, the New Borrower and the Junior Lender have caused this Loan Rider to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

NEW BORROWER:


Malibu Bay Preservation, Ltd., a Florida limited partnership

WITNESSES:

By: Malibu Bay GP LLC, a Delaware limited liability company, its general partner


Print: Samantha Singh

By: 
Jonathan A. Gruskin, Vice President


Print: Qivei Fu

Acknowledgement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of

Los Angeles

On Aug 18th 2020, before me, Melanie Singha (Notary Public), personally appeared Jonathan A. Grusk in, Vice President of Malibu Bay GP LLC, a Delaware limited liability company, General Partner of Malibu Bay Preservation, Ltd., a Florida limited partnership, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

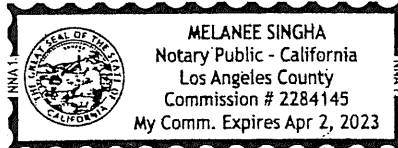
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature


Melanie Singha

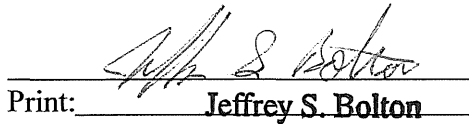
(Seal)



IN WITNESS WHEREOF, the New Borrower and the Junior Lender have caused this Loan Rider to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

WITNESSES:

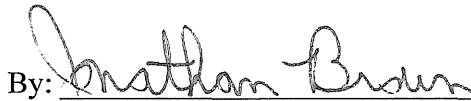

Print: AMIN HOURY


Print: Jeffrey S. Bolton

JUNIOR LENDER:

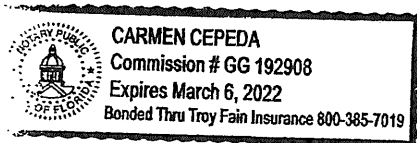
PALM BEACH COUNTY, a political subdivision
of the State of Florida

FOR ITS BOARD OF COUNTY COMMISSIONERS

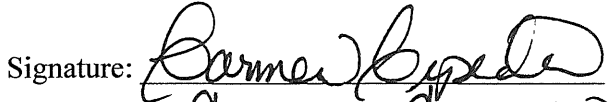
By: 
Name: Jonathan B. Brown
Title: Director, Dept. of Housing and Economic
Sustainability

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

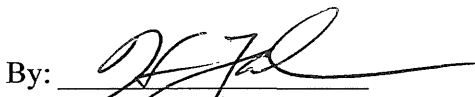
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, on August 25th, 2020, by Jonathan B. Brown as Director of Palm Beach County Dept. of Housing and Economic Sustainability, who is personally known to me or who has produced _____ as identification and who did not take an oath.



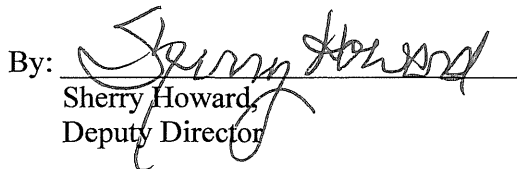
(NOTARY SEAL ABOVE)

Signature: 
Notary Name: Carmen Cepeda
Notary Public - State of Florida

Approved as to Form
and Legal Sufficiency

By: 
Howard J. Falcon, III
Chief Assistant County Attorney

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: 
Sherry Howard,
Deputy Director