LAKE WORTH

COMMUNITY REDEVELOPMENT AGENCY

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MEMORANDUM

TO: Chair, Vice-Chair and Members of the Board

FROM: Joan C. Oliva, Executive Director

DATE: December 15, 2015

SUBJECT: Amendments to Purchase and Sale and Development Agreements with Neighborhood Renaissance Inc. for West Village Project

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EXPLANATION:
In May the City conveyed the property at 110 North "F" to the CRA for the development of additional NSP-funded arts lofts. The CRA and Neighborhood Renaissance Inc., a local non-profit housing developer, are partnering to build West Village, a new live/work lofts development. Neighborhood Renaissance (NR) and the CRA executed Purchase and Sale and Development Agreements in August 2015. Since that time Neighborhood Renaissance has been further developing the project budget and seeking private financing.

Due to the project schedule, lender requests, and a need for further clarification, amendments to the agreements are needed. The Purchase and Sale and Development Agreement (Exhibits "**A**" and "**B**") now have a new effective date. The Development Agreement Amendment provides a mechanism that allows Neighborhood Renaissance to enforce the NSP-2 affordability restrictions. The Amendment also gives further clarification on the $700K CRA NSP-2 loan and the process for partial release of the lien upon sale of the units. Finally, the quit claim deed, mentioned in the original development agreement has been replaced by a Repurchase Agreement (Exhibit "**C**") or right of refusal from the construction lender.

REQUEST:
Staff requests the Board approve the West Village Purchase and Sale and Development Agreement Amendments and the Repurchase Agreement between Neighborhood Renaissance Inc. and the CRA.

FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS FIRST AMENDMENT TO THE AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY ("First Amendment"), made and entered into on this ____ day of _____, 2015, by and between The Lake Worth Community Redevelopment Agency, a public agency created pursuant to Part III, Chapter 163, Florida Statutes, hereinafter referred to as "Seller", and Neighborhood Renaissance, Inc., a Florida not for profit corporation, (hereinafter referred to as "Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser entered into the Agreement for Purchase and Sale of Real Property dated August 12, 2015 (the "Original Agreement"), for the purchase and sale of the real property located at 110 North F Street, Lake Worth, Florida (the "Property"); and

WHEREAS, the Seller and Purchaser desire to enter into this First Amendment in order to provide for clarification as to the timing of the conveyance of the Property, to provide for the Seller's right to repurchase upon the occurrence of certain conditions, as well as the relationship between the Original Agreement and the Development Agreement which the parties entered into at the same time as the Original Agreement.

NOW THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Seller and Purchaser agree to amend the Original Agreement as follows:

1. That the above referenced "WHEREAS" clauses shall be confirmed and ratified as if fully set forth herein.

2. Section 1.2, "Closing Date" shall be amended to read as follows:

The Closing Date is the date on which the closing ("Closing") shall occur and shall occur simultaneously with the Purchaser's closing on the construction loan for the development of the Property, which shall be no later than ninety (90) days following approval of the Site Plan by the City of Lake Worth, for the Property, and any extension thereof as mutually approved by the parties. With respect to such approval of the Site Plan, Purchaser shall not be deemed to have obtained such approval until all appeal periods have passed without any appeal having been taken, or, if any such appeal has been taken, such appeal(s) have been finally and conclusively been resolved in Purchaser's favor.

3. Section 8, "Closing Documents" of the Original Agreement shall be amended to read as follows:

8. CLOSING DOCUMENTS.

8.1 At Closing, Seller shall deliver to Purchaser a Special Warranty Deed, Bill of Sale, if applicable, No Lien/Gap Affidavit, Non-Foreign Certification in accordance with Section 1445 of the Internal

Revenue Code, 1099 Form and any other documents as listed as title requirements in Schedule B-I of the Title Commitment to assure the conveyance of good and marketable fee simple title of the Property to the PURCHASER.

8.2 At Closing, Seller and Purchaser shall execute a repurchase agreement which shall provide for the ability of the Seller to repurchase the Property in the event of a foreclosure by the construction lender, or the failure of the Purchaser to construct the development as provided in the Development Agreement entered into between the parties. The Development Agreement outlines the responsibilities of the Purchaser to the Seller and Seller to the Purchaser relative to the development of the Property. Purchaser and Seller acknowledge that the Development Agreement shall be recorded simultaneously with the Deed. The Development Agreement shall survive the Closing.

4. Section 10, "Closing Date and Place" of the Original Agreement, shall be amended to read as follows:

10. <u>CLOSING DATE AND PLACE</u>. The Closing will take place on or before the Closing Date, as provided herein. The closing shall take place at the CRA offices located at 29 South "J" Street, Lake Worth, FL 33460, or such other location as the Seller may designate.

5. Except as amended herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

6. To the extent there exists a conflict between this First Amendment and the Original Agreement, the terms and conditions of this First Amendment shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement for Purchase and Sale of Real Property the day and year first above written.

Witnesses:

_____

_____

SELLER:

Lake Worth Community Redevelopment Agency

_____

By: Joan Oliva
Title: Executive Director

Signed on _____

PURCHASER:

NEIGHBORHOOD RENAISSANCE, INC.,
a Florida not-for-profit corporation

ATTEST:

_____
Print Name: _____
Title: _____

By:_____
Print Name:_____
Title: _____

Signed on _____

(CORPORATE SEAL)

EXHIBIT "B"

FIRST AMENDMENT TO NSP2 PROPERTY DEVELOPMENT AGREEMENT (West Village)

THIS FIRST AMENDMENT TO THE NSP2 PROPERTY DEVELOPMENT AGREEMENT ("First Amendment"), made and entered into on this ____ day of _____ _____, 2015, by and between The Lake Worth Community Redevelopment Agency, a public agency created pursuant to Part III, Chapter 163, Florida Statutes, hereinafter referred to as "CRA", and Neighborhood Renaissance, Inc., a Florida not for profit corporation, hereinafter referred to as "NRI".

W I T N E S S E T H:

WHEREAS, CRA and NRI entered into the NSP2 Property Development Agreement with an Effective Date of August 11, 2015 (the "Original Agreement"), for the development of the real property located at 110 North F Street, Lake Worth, Florida (the "Property"); and

WHEREAS, CRA and NRI desire to enter into this First Amendment in order to clarify the time periods associated with the development of the Property as provided for in the Original Agreement; and

WHEREAS, as NRI is obtaining a construction loan for the development of the West Village Project (the "Development"), the parties have agreed to eliminate the quit claim deed that the CRA would be entitled to record in the event of NRI's default, and provide that the CRA would have a right of repurchase from the construction lender in the event of a default by NRI with respect to the construction loan, or by NRI's failure to construct the Development in conformity with the requirements of the Original Agreement.

NOW THEREFORE, in consideration of the terms and conditions hereinafter set forth, the Seller and Purchaser agree to amend the Original Agreement as follows:

1. That the above referenced "WHEREAS" clauses shall be confirmed and ratified as if fully set forth herein.

2. That Section 2.2, "Effective Date" of the Original Agreement shall be amended to provide that the Effective Date shall be December 8, 2015

3. That Section 3.2.3 of the Original Agreement, shall be amended to read as follows:

> **3.2.3 Affordability Declaration.** The affordability periods shall remain in place for a minimum of fifteen (15) years after the sale date, and shall be evidenced by a declaration recorded in the public records of Palm Beach County, Florida at the time NRI conveys the Property to the buyer of the residential condominiums. The declaration shall provide that NRI has all rights and the obligation to enforce the affordability restrictions

contained in the declaration, and may include the affordability restrictions in any condominium documents recorded against the Property as part of the Development.

4. That Section 3.2.4 of the Original Agreement, shall be amended to read as follows:

3.2.4 Loan to Fund Development Costs. The CRA agrees to provide NRI with funding in the amount of Seven Hundred Thousand and 00/100 Dollars ($700,000.00) in conjunction with the closing of the sale of the Property to NRI (the "Loan"). The Loan will be used to pay for costs associated with the Project, including, construction, impact fees, permit fees, water and sewer connection fees, public infrastructure, and other necessary fees and costs such as recording and closing costs, engineering and architectural fees, utility relocation and other fees that all constitute NSP-2 eligible expenses ("Development Costs"). The Loan shall be evidenced by NRI executing a Promissory Note in favor of the CRA which shall be secured by a second mortgage on the Property and shall be recorded in the Palm Beach County Public Records. The CRA agrees to execute a partial release of its second mortgage at the time each individual unit is sold to a qualified purchaser. As consideration for the release of the NRI's loan obligation to the CRA, NRI will record a declaration as defined in section 3.2.3. The partial release and loan balance reduction shall evidence the CRA's release of a portion of the Loan in an amount equal to the amount of the Loan divided by the pro-rata residential square footage of the unit constructed in the Development.

For example, there is a total of 10,000 square feet of residential condominiums in the project. If the subject condo being sold is 1,000 square feet, the Loan and Note will be reduced by 10% (1,000/10,000).

5. That Section 8, "Quit Claim Deed" shall be deleted in its entirety, and a new Section 8, "Right of Repurchase/Right of First Refusal" shall be inserted to read as follows:

> **8. Right of Repurchase/Right of First Refusal.** At the time of the closing on the sale of the Property from the CRA to NRI, the parties acknowledge that NRI will obtain a construction loan, and that the lender will record a first mortgage on the Property. As a result, and in order to protect the CRA's interest in the Property and the Development, at the closing, the CRA and NRI shall enter into a Repurchase Agreement, in substantially similar form to the Repurchase Agreement which is attached hereto as **Exhibit "1"** to this First Amendment. The Repurchase Agreement shall provide the CRA with the right to repurchase the Property in the event of NRI's default under the Development Agreement. In addition, NRI agrees to require that the Construction Lender provide terms and conditions in the construction loan mortgage that will enable the CRA to have a right of first refusal to purchase the Property in the event of a default under the construction loan promissory note and mortgage by NRI.

6. NRI shall record the Original Agreement and any amendments in the Palm Beach County Public Records at the time of closing on the acquisition of the Property.

7. Except as amended herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

8. To the extent there exists a conflict between this First Amendment and the Original Agreement, the terms and conditions of this First Amendment shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Agreement for Purchase and Sale of Real Property the day and year first above written.

Witnesses:

Lake Worth Community Redevelopment Agency

_____

_____

By: Joan Oliva
Title: Executive Director

_____

Signed on _____

NEIGHBORHOOD RENAISSANCE, INC., a Florida not-for-profit corporation

ATTEST:

_____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

Signed on _____

(CORPORATE SEAL)

EXHIBIT "C"

THIS INSTRUMENT PREPARED BY AND AFTER
RECORDING SHOULD BE RETURNED TO:

David N. Tolces, Esq.
Goren, Cherof, Doody & Ezrol PA
3099 E. Commercial Blvd.
Fort Lauderdale, FL 33308

LAKE WORTH CRA AND NEIGHBORHOOD RENAISSANCE, INC.
REPURCHASE AGREEMENT FOR WEST VILLAGE DEVELOPMENT

THIS REPURCHASE AGREEMENT ("Agreement") is made this _____ day of _____, 2015, by LAKE WORTH COMMUNITY REDEVELOPMENT AGENCY, a Florida public body corporate and politic created pursuant to Section 163.356 F.S. (hereafter the "Seller"), and NEIGHBORHOOD RENAISSANCE, INC., a Florida not for profit corporation, (hereinafter the "Purchaser").

W I T N E S S E T H :

WHEREAS, Seller and Purchaser are parties to that certain Agreement for Purchase and Sale of Real Property, dated August 12, 2015 (the "CRA Agreement"), pursuant to which Purchaser has agreed to purchase from Seller, and Seller has agreed to sell to Purchaser, fee simple title to certain real property located in located in the City of Lake Worth, Palm Beach County, Florida, more particularly described on **Exhibit "A"** attached hereto (the "Property");

WHEREAS, on or about September 4, 2015, the Seller and Purchaser entered into the NSP2 Property Development Agreement ("Development Agreement") to provide for the conditions for the development of the Property following the closing of the purchase and sale of the Property.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Purchaser and Seller agree and covenant as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference

2. Seller expressly reserves the right at its sole option and election, to repurchase the Property for the same Purchase Price as paid by Purchaser to Seller hereunder, in the event the Purchaser shall fail to develop the Property and obtain a certificate of occupancy for the development, pursuant to the terms and conditions contained in the Development Agreement; subject, however, to extensions for delays attributable to Force Majeure as defined herein below.

3. In the event the Purchaser fails to obtain the certificate of occupancy as required by the terms and provisions of this Agreement, then the Seller may elect to exercise its right to repurchase

the Property by providing written notice to the Purchaser of the failure, and an opportunity to cure said failure within sixty (60) days of the written notice. The closing effectuating the repurchase shall occur within thirty (30) days of the date of the Purchaser's failure to cure and written notice to Purchaser of the Seller's election to repurchase the Property. The re-conveyance shall be effectuated by a Special Warranty Deed subject to good and marketable title. The recording of the Special Warranty Deed shall be subject to any construction loan mortgage recorded against the Property and the CRA's right of first refusal to acquire the Property in the event of a default under the mortgage by NRI. All costs associated with the re-conveyance of the property to the Seller, including, but not limited to, recording fees, documentary stamps, unpaid taxes, and assessments, both ad valorem, and non-ad valorem, shall be borne by the Purchaser. In the event the Purchaser fails to execute the Special Warranty Deed to re-convey the Property to the Seller, the Seller shall have the right to pursue all legal remedies, including specific performance. In the event the Seller must file suit to require the Purchaser to re-convey the Property, the Purchaser shall pay all costs, expenses, reasonable attorney's fees and paralegal expenses incurred by the Seller at both the trial and appellate levels.

4. Acknowledgments. Seller and Purchaser hereby, agree and acknowledge as follows:

(a) For avoidance of doubt, Purchaser and Seller agree that Seller's right to re-purchase the Property shall automatically terminate and be of no further force or effect upon the issuance of a Certificate of Occupancy (C.O.).

(b) Each party, by signing this Agreement, certifies that it has full authority to enter into this Agreement, and the execution, delivery, and performance of this Agreement have each been duly authorized pursuant to all requisite authority, and this Agreement constitutes the legal, valid, and binding obligations of Purchaser and Seller, each enforceable in accordance with its respective terms.

(c) The provisions of this Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective successors and assigns.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(e) This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

(f) Signatures transmitted by facsimile transmission or otherwise appearing on a facsimile transmission of this Agreement shall be treated in all manner and respects and have the same binding legal effect as original signatures. The parties hereto hereby agree that none shall raise the use of a facsimile machine as a defense to the enforceability of this Agreement and forever waive such defense.

(g) The Seller and Purchaser may agree to an extension of any time period contained in this Agreement pursuant to the execution of a written amendment to this Agreement.

IN WITNESS WHEREOF, Purchaser and Seller have executed this Agreement as of the date first above written.

Witnesses:

PURCHASER

NEIGHBORHOOD RENAISSANCE, INC.

By: _____

Print Name: _____

Title: _____

_____

Print Name: _____

_____

Print Name: _____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ of Neighborhood Renaissance, Inc., on behalf of said Neighborhood Renaissance, Inc. He/She is personally known to me or has produced _____ as identification.

_____

NOTARY PUBLIC

Name: _____

Serial No. _____

My Commission Expires: _____

Witnesses:

SELLER

Lake Worth Community Redevelopment Agency, a Florida public body corporate and politic

_____
Print Name:_____

By: _____
Name: Cary Sabol
Title: Chair

_____
Print Name:_____

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Cary Sabol, as Chair of Lake Worth Community Redevelopment Agency, on behalf of said Agency. He is personally known to me or has produced _____ as identification.

_____
NOTARY PUBLIC
Name: _____
Serial No. _____
My Commission Expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION

Lots 26 to 31, inclusive, Block 12, Palm Beach Farms Company Plat No. 2, The Townsite of Lucerne n/k/a Lake Worth, according to the map or plat thereof as recorded in Plat Book 2, Page 29, Public Records, Palm Beach County, Florida

Property ID No.: 38-43-44-21-15-012-0260

Property Address: 110 North F Street, Lake Worth, Florida