

RESOLUTION 2020-\_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, SOLELY FOR THE LIMITED PURPOSES OF SECTION 147(F) OF THE INTERNAL REVENUE CODE AND SECTION 163.01, FLORIDA STATUTES, THE ISSUANCE BY THE CAPITAL TRUST AGENCY OF ITS MORTGAGE FACILITIES REVENUE BONDS, IN ONE OR MORE SERIES PURSUANT TO A PLAN OF FINANCE, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$38,450,000, FOR THE PURPOSE OF FINANCING THE FACILITIES HEREIN DESCRIBED, LOCATED AT 1040 COLLINS AVENUE ("COUNCIL TOWERS NORTH") AND 533 COLLINS AVENUE ("COUNCIL TOWERS SOUTH"), WHICH FINANCING FOR THE FOREGOING AFFORDABLE SENIOR HOUSING FACILITIES IS CONTEMPLATED PURSUANT TO THE TERMS OF CITY'S LONG-TERM LEASE AGREEMENTS WITH THE MIAMI BEACH SENIOR CITIZENS HOUSING DEVELOPMENT CORPORATION, INC.; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission (the "City Commission") of the City of Miami Beach, Florida (the "City"), has been informed that the Capital Trust Agency (the "Agency") proposes to issue a principal amount of not exceeding \$38,450,000 of its Mortgage Facilities Revenue Bonds, in one or more series (the "Bonds"), the proceeds of which will be loaned to Elderly Housing Development and Operations Corporation, a not for profit corporation of the District of Columbia, authorized to do business in the State of Florida (the "State") and/or one or more related and/or affiliated entities (collectively, the "Borrower"), for the purpose of financing or refinancing, including through reimbursement, (i) the acquisition, renovation, installation and equipping, together with the acquisition and installation of related facilities, fixtures, furnishings and equipment, of a 252-unit multi-family rental housing facility (consisting of 250 one-bedroom units and two office units) for persons of low income known as Council Towers Apartments, located on approximately 1.05 acres of land at 533 & 1040 Collins Avenue, Miami Beach, Florida (the "Facility"), (ii) the funding of any necessary capitalized interest, (iii) the funding of any necessary reserves, (iv) the payment of certain costs of issuing the Bonds (collectively, the "Project"); and

**WHEREAS**, in order to finance the costs of the Project from the proceeds of the Bonds on a tax-exempt basis, it is necessary that a public hearing be held and the issuance of the Bonds be approved for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 163.01, Florida Statutes, as amended (the "Interlocal Act"); and

**WHEREAS**, following notice by publication in the *Miami Herald* on May 3, 2020, at least seven (7) days prior to May 13, 2020, proof of which is attached hereto as Exhibit A (the "Affidavit of Publication") a public hearing was held before the City Commission on May 13, 2020, during which comments and discussions concerning the plan of finance concerning the issuance of the Bonds by the Agency to finance the Project were requested and, if there were any such comments or discussions, heard, as required by Section 147(f) of the Code; and

**WHEREAS**, said public hearing disclosed no compelling reason why the Bonds should not be issued; and

**WHEREAS**, the Borrower and the Agency have requested the City Commission provide limited approval of the issuance of the Bonds by the Agency for purposes of Section 147(f) of the Code and the Interlocal Act; and

**WHEREAS**, the Bonds, when issued by the Agency, will be special, limited obligations of the Agency payable solely from the proceeds to be derived from the repayment of the related loan to the Borrower or from the security pledged therefor by the Borrower, and the City will not be the issuer of the Bonds nor will the City be obligated to pay the Bonds or have any obligation or liability pecuniary or otherwise in any respect whatsoever with respect to the Bonds or the Project;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1. Findings.** The City Commission hereby finds, determines and declares as follows:

A. The matters set forth in the "WHEREAS" clauses above are hereby ratified and affirmed.

B. The City Commission is the elected legislative body of the City, and the City has jurisdiction over the entire area in which the Facility is located.

C. The City Commission has determined, based solely upon representations and information provided by the Borrower and without any independent investigation or research by the City, that the issuance of the Bonds by the Agency to finance the Project: (i) is appropriate to the needs and circumstances of, and will make contributions to the economic growth of the City, (ii) will provide or preserve gainful employment, (iii) will provide education and promote commerce within the State, and (iv) will serve a public purpose by advancing the economic prosperity, and the general welfare of the State and its people by providing for affordable housing facilities for low income persons.

D. Based solely upon representations and information provided by the Borrower, the City will be able to cope satisfactorily with the impact of the acquisition of the Facility by the Borrower and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the operation, repair, and maintenance of the Facility and on account of any increases in population or other circumstances resulting therefrom.

**SECTION 2. Approval for Purposes of Section 147(f) of the Code.** For the purposes of Section 147(f) of the Code, the City Commission hereby approves the issuance of the Bonds by the Agency in one or more series, in an aggregate principal amount not exceeding \$35,000,000.

**SECTION 3. Approval for Purposes of the Interlocal Act.**

A. For the purposes of the Interlocal Act, the City authorizes the Agency to issue the Bonds in a principal amount not exceeding \$38,450,000 and to loan the proceeds thereof to the Borrower to finance or refinance the Project. The Agency is hereby authorized to exercise all powers relating to the issuance of the Bonds vested in the City Commission pursuant to the Constitution and the laws of the State and to do all things within the jurisdiction of the City which are necessary or convenient for the issuance of the Bonds and the financing or refinancing of the

Project to the same extent as if the City were issuing its own obligations for such purposes without any further authorization from the City to exercise such powers or to take such actions.

B. The City shall not be liable for any costs of issuing the Bonds or the costs incurred by it in connection with the preparation, review, execution or approval of any documentation or opinions required to be delivered in connection therewith by the City or counsel to any of them. All of such costs shall be paid from the proceeds of the Bonds or from other moneys of the Borrower.

C. The Bonds shall not constitute an indebtedness or liability of the City.

**SECTION 4. Payment of Fees and Costs by Borrower.** The fees and expenses of the City shall be paid by the Borrower in the manner and to the extent mutually agreed upon by the officials of the City and the Borrower at or prior to issuance of the Bonds.

**SECTION 5. No Liability or Endorsement.** The City shall have no obligation, financial or otherwise, with respect to the Bonds, and the approval given herein by the City Commission shall not be deemed or construed to create any obligation or liability, pecuniary or otherwise, of the City, in connection with either the Bonds or the Project in any respect whatsoever, and the Agency shall so provide in the documents related to the issuance of the Bonds. The general credit or taxing power of the City or the State or any political subdivision or public agency thereof shall not be pledged to the payment of the Bonds. No statement, representation or recital made herein shall be deemed to constitute a legal conclusion or a determination by the City that any particular action or proposed action is required, authorized or permitted under the laws of the State or the United States.

No recourse under or upon any obligation, covenant or agreement of this Resolution or the Bonds or any agreement executed in connection with the Bonds, or for any claim based thereon or otherwise in respect thereof, shall be had against any City Commission member, the City Manager, the City Clerk or the City Attorney or any other City staff or professionals retained by the City in connection with the issuance of the Bonds, as such, past, present or future, either directly or through the City, it being expressly understood (a) that no personal liability whatsoever shall attach to, or is or shall be incurred by, the City Commission members, the City Manager, the City Clerk or the City Attorney or any other staff of the City or professionals retained by the City in connection with the issuance of the Bonds, as such, under or by reason of the obligations, covenants or agreements contained in this Resolution or implied therefrom, and (b) that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such Commission member, the City Manager, the City Clerk or the City Attorney or any other staff of the City or professionals retained by the City in connection with the issuance of the Bonds, as such, are waived and released as a condition of, and as a consideration for, the execution of this Resolution on the part of the City.

The approval given herein shall not be construed as: (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Facility, and the City Commission shall not be construed by reason of its adoption of this Resolution to make any endorsement, finding or recommendation or to have waived any right of the City Commission or to have estopped the City Commission from asserting any rights or responsibilities it may have in such regard.

**SECTION 6. Indemnification.** The receipt of the Indemnification Certificate of the Borrower previously delivered to the City and attached hereto as Exhibit "B" and incorporated hereby by reference is a material inducement to the City in granting the approvals set forth herein.

**SECTION 7. Effective Date.** This Resolution shall take effect immediately upon its adoption.

**DULY PASSED AND ADOPTED** this 13<sup>th</sup> day of May, 2020.

CITY OF MIAMI BEACH, FLORIDA

By: \_\_\_\_\_  
Dan Gelber, Mayor

ATTEST:

By: \_\_\_\_\_  
Rafael E. Granado, City Clerk

Exhibit A: Publisher's Affidavit Regarding Notice of Public Hearing  
Exhibit B: Indemnification Certificate of the Borrower

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Rafael E. Granado      5-1-20  
City Attorney      RAP      Date

EXHIBIT A  
PROOF OF PUBLICATION

[Follows.]

## EXHIBIT B

### INDEMNIFICATION CERTIFICATE OF THE BORROWER

The undersigned hereby certifies that he or she is authorized to execute and deliver this Indemnification Certificate of the Borrower and further represents, on behalf of Elderly Housing Development and Operations Corporation, a not-for-profit corporation of the District of Columbia, authorized to do business in the State of Florida, and/or one or more related and/or affiliated entities (the "Borrower"), the following (capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the resolution adopted by the City Commission (the "City Commission") of the City of Miami Beach, Florida (the "City") on May 13, 2020 regarding the hereinafter defined Bonds (the "City Resolution")):

- (1) At the request of the Borrower, the Capital Trust Agency (the "Agency") proposes to issue a principal amount of not exceeding \$38,450,000 of its Mortgage Facilities Revenue Bonds (Council Towers Apartments Project) (the "Bonds"), the proceeds of which will be loaned to the Borrower for the purpose of financing or refinancing, including through reimbursement, (i) the acquisition, renovation, installation and equipping, together with the acquisition and installation of related facilities, fixtures, furnishings and equipment, of a 252-unit multi-family rental housing facility (consisting of 250 one-bedroom units and two office units) for persons of low income known as Council Tower Apartments, located on approximately 1.05 acres of land at 533 & 1040 Collins Avenue, Miami Beach, Florida (the "Facility"), (ii) the funding of any necessary capitalized interest, (iii) the funding of any necessary reserves, and (iv) the payment of certain costs of issuing the Bonds (collectively, the "Project");
- (2) The issuance of the Bonds to finance the Project: (i) is appropriate to the needs and circumstances of, and will make contributions to, the economic growth of the City, (ii) will provide or preserve gainful employment, (iii) will provide education and promote commerce within the State, and (iv) will serve a public purpose by advancing the economic prosperity and the general welfare of the State and its people by providing for affordable housing facilities for low income persons;
- (3) The City will be able to cope satisfactorily with the impact of the acquisition and renovation of the Facility by the Borrower and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the operation, repair, and maintenance of the Facility and on account of any increases in population or other circumstances resulting therefrom;
- (4) In order to finance the costs of the Project from the proceeds of the Bonds on a tax-exempt basis, it is necessary to hold a public hearing and approve the issuance of the Bonds for the purposes of Section 147(f) of the Internal Revenue

Code of 1986, as amended (the "Code"), and Section 163.01, Florida Statutes, as amended (the "Interlocal Act");

(5) The Borrower has requested a public hearing be held by the City, and that the City approve the issuance of the Bonds for purposes of Section 147(f) of the Code; and

(6) The City desires indemnification from the Borrower as a material inducement to the City Commission granting the foregoing approval.

NOW THEREFORE, THE UNDERSIGNED, ON BEHALF OF THE BORROWER, DOES HEREBY: Agree to defend the City and its officials, employees, attorneys, professionals and agents and the members of the City Commission, and hold the City and its officials, employees, attorneys, professionals and agents and the members of the City Commission, harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds or the acquisition or operation of the Project by or on behalf of the Borrower, including in the case of any and all negligence of such indemnitee, or in any way growing out of or resulting from the Project or from the issuance, sale or delivery of the Bonds, including, but not limited to, liabilities or costs arising under the Code, the Securities Act of 1933, the Securities Exchange Act of 1934 or any applicable securities law of the State, including, without limitation, all costs and expenses of the City, including reasonable attorneys' fees, incurred in connection therewith.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Borrower has executed this Indemnification Certificate of the Borrower this \_\_\_\_ day of \_\_\_\_\_, 2020.

ELDERLY HOUSING DEVELOPMENT  
OPERATIONS CORPORATION, a not for profit  
corporation of the District of Columbia

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[Signature Page | Indemnification Certificate of the Borrower]