

**POMPANO BEACH
COMMUNITY REDEVELOPMENT AGENCY**

Meeting Date: May 15, 2018

Agenda Item 7

REQUESTED CRA BOARD ACTION:

Resolution(s) Consideration Approval Other

SHORT TITLE OR MOTION: A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A SECOND AMENDMENT TO THE PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CRA AND ETA NU EDUCATION FOUNDATION, INC. REGARDING PROPERTY LOCATED AT MLK BOULEVARD AND 10TH AVENUE (THE PROPERTY) AND A FIRST AMENDMENT TO THE LEASE FOR THE PROPERTY, BOTH AMENDMENTS ALLOWING FOR AN INSTALLMENT PURCHASE OPTION

Summary of Purpose and Why:

Both the Development Agreement and the Lease between the CRA and ETA NU Foundation provide for a purchase option. The existing option contemplates notice by Eta Nu and a regular closing to occur with payment of the full purchase price at the time of closing. ETA NU has requested that the CRA allow it to pay the purchase price on an installment payment. If the purchase option is exercised during the first ten year term of the Lease, the purchase price for the land is fixed at \$150,000. Accordingly, the amendments to the Development Agreement and the Lease would allow ETA NU to begin with an initial payment of \$20,000 which they would like to make in June, 2018, with installment payments of \$18,600 in each of the remaining seven years of the first ten year term.

CRA Staff recommends approval.

QUESTIONS TO BE ANSWERED BY ORIGINATING DEPARTMENT:

- (1) Origin of request for this action: Staff
- (2) Primary staff contact: Claudia M. McKenna 561-307-6413 Ext. _____
- (3) Expiration of contract, if applicable: _____
- (4) Fiscal impact and source of funding: N/A

| DEPARTMENTAL COORDINATION | DATE | DEPARTMENTAL RECOMMENDATION | AUTHORIZED SIGNATURE OR ATTACHED MEMO NUMBER |
|---------------------------|------|-----------------------------|--|
| | | | |
| | | | |

- CRA Executive Director
- CRA Attorney
- Finance Director

Greg Harrison
Claudia M. McKenna
A. Jean-Pierre

ACTION PREVIOUSLY TAKEN BY CRA BOARD:

| <u>Resolution</u> | <u>Consideration</u> | <u>Other:</u> |
|-------------------------|----------------------|-----------------|
| <u>Results:</u> | <u>Results:</u> | <u>Results:</u> |
| <u>2012-79 approved</u> | | |
| | | |



P. O. Drawer 1300
Pompano Beach, FL 33061

Phone: (954) 786-5535
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MEMORANDUM

DATE: May 15, 2018
TO: CRA Board
FROM: Greg Harrison, Executive Director
SUBJECT: Amendments to Development Agreement and Lease with ETA NU Foundation

Background

In 2012, the CRA entered into a Property Disposition and Development Agreement (the Agreement) with ETA NU Foundation, Inc. (ETA NU). The Agreement provides for a long term lease (the Lease) and a purchase option that allows ETA NU to pay \$150,000 for the Property (excluding the building which ETA NU constructed at its expense). The purchase option in the Agreement and in the Lease contemplates a regular purchase and sale and payment of the purchase price in full at the time of closing.

ETA NU has requested that it be allowed to pay the \$150,000 purchase price on an installment basis. The initial payment of \$20,000 would be made in June, 2018 and payment of \$18,600 would be made each subsequent year for the seven years remaining in the ten year term. Exercising this option would relieve ETA NU from paying rent during the purchase option period so long as each installment payment is made.

Recommendation

The Executive Director recommends approval of the Amendment to Interlocal Agreement.

POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY

A RESOLUTION OF THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY (CRA) APPROVING AND AUTHORIZING THE PROPER OFFICIALS TO EXECUTE A SECOND AMENDMENT TO THE PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CRA AND ETA NU EDUCATION FOUNDATION, INC. REGARDING PROPERTY LOCATED AT MLK BOULEVARD AND 10TH AVENUE (THE PROPERTY) AND A FIRST AMENDMENT TO THE LEASE FOR THE PROPERTY, BOTH AMENDMENTS ALLOWING FOR AN INSTALLMENT PURCHASE OPTION; PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE POMPANO BEACH COMMUNITY REDEVELOPMENT AGENCY THAT:

SECTION 1. The Second Amendment to the Property Disposition and Development Agreement (the Agreement) between the Pompano Beach Community Redevelopment Agency (the CRA) and ETA NU Education Foundation, Inc. (ETA NU), allowing for an installment purchase option (the Second Amendment), a copy of which Second Amendment is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 2. The First Amendment to the Lease between the CRA and ETA NU, allowing for an installment purchase option (the First Amendment), a copy of which First Amendment is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

SECTION 3. The proper officials are hereby authorized to execute the Second Amendment to the Agreement and the First Amendment to the Lease, together with such other documents as may be required to effectuate the amendments.

SECTION 3. This Resolution shall become effective upon passage.

PASSED AND ADOPTED this 15th day of May, 2018.

LAMAR FISHER, CHAIRPERSON

ATTEST:

MARSHA CARMICHAEL, SECRETARY

**SECOND AMENDMENT TO
PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT**

This **Second Amendment to Property Disposition and Development Agreement** between the **Pompano Beach Community Redevelopment Agency (CRA)** and **ETA NU Education Foundation, Inc.** (Developer) is entered into this _____ day of May, 2018.

WHEREAS, by Resolution 2012-79, the CRA approved the Property Disposition and Development Agreement entered into by the parties on July 23, 2012; and

WHEREAS, the Agreement provides for a lease to the Developer and a purchase option; and

WHEREAS, the parties desire to amend the provisions relating to the purchase option.

NOW, THEREFORE, the parties agree as follows:

1. Each "Whereas" clause stated above is true and correct and incorporated in this First Amendment by reference.

2. The Agreement shall remain in full force and effect except as specifically amended below.

3. Article 4, General Description of Lease and Development Project, Paragraphs 3 is amended to add Paragraph 3.e which shall read as follows:

e. The Developer shall have the option to pay the purchase price for the Property on an installment basis during the first ten year term of the Lease. If the installment purchase option is exercised, the purchase price of \$150,000 shall be paid as follows: \$20,000 as the initial payment and \$18,600 for each year remaining in the ten year term. As provided in Paragraph 3.d., the restrictive covenants provided for in the Lease shall survive the purchase of the Property and shall be contained in the deed from the CRA. Developer acknowledges that the transfer of the Property shall not occur until the final installment payment is made. Payment of the initial payment and subsequent installment payments shall relieve the Developer of the obligation to pay rent during the purchase option period.

4. No other amendment to the Agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity with this Second Amendment.

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the date and year first above written.

Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: _____

Lamar Fisher, Chairman

Print Name: _____

ATTEST:

Print Name: _____

Marsha Carmichael, Secretary

EXECUTIVE DIRECTOR:

a

Print Name: _____

By: _____

Gregory P. Harrison, Executive Director

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by LAMAR FISHER, MARSHA CARMICHAEL and GREGORY P. HARRISON, Chairman, Secretary and Executive Director, respectively, of the Pompano Beach Community Redevelopment Agency, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"DEVELOPER":

Signed, Sealed and Witnessed

**THE ETA NU EDUCATION FOUNDATION,
INC.**

In the Presence of:

By: _____
HARRY HARRELL, PRESIDENT

Print Name: _____

ATTEST:

By: _____
ANTONIO BRIHM, SECRETARY

Print Name: _____

STATE OF FLORIDA
COUNTY OF BROWARD

I HEREBY CERTIFY, that on this _____ day of _____, 2018, before me personally appeared _____, President of The ETA NU EDUCATION FOUNDATION, INC., who is personally known to me, and he acknowledged that he executed the foregoing instrument as the proper official of ETA NU EDUCATION FOUNDATION, INC., and the same is the act and deed of ETA NU EDUCATION FOUNDATION, INC.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgement)

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by _____ as Secretary of The ETA NU EDUCATION FOUNDATION, INC., who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or
Stamped)

Commission Number

**FIRST AMENDMENT TO LEASE
WITH OPTION TO PURCHASE AGREEMENT**

This **First Amendment to Lease with Option to Purchase Agreement** between the **Pompano Beach Community Redevelopment Agency (CRA)** and **ETA NU Education Foundation, Inc.** (Developer) is entered into this _____ day of May, 2018.

WHEREAS, by Resolution 2012-79, the CRA approved the Property Disposition and Development Agreement (the Agreement) entered into by the parties on July 23, 2012; and

WHEREAS, the Agreement provides for a lease to the Developer (the Lease) and a purchase option; and

WHEREAS, the parties desire to amend the provisions relating to the purchase option.

NOW, THEREFORE, the parties agree as follows:

1. Each "Whereas" clause stated above is true and correct and incorporated in this First Amendment by reference.

2. The Lease shall remain in full force and effect except as specifically amended below.

3. Article 21, Purchase Option, is amended to add Paragraph 4 which shall read as follows:

4. The Developer shall have the option to pay the purchase price for the Property on an installment basis during the first ten year term of the Lease. If the installment purchase option is exercised, the purchase price of \$150,000 shall be paid as follows: \$20,000 as the initial payment and \$18,600 for each year remaining in the ten year term. Paragraph 3 of this Article relating to the \$250,000 deferred loan shall apply to this purchase option and the restrictive covenants provided for in the Lease shall survive the purchase of the Property and shall be contained in the deed from the CRA. Developer acknowledges that the transfer of the Property shall not occur until the final installment payment is made. Payment of the initial payment and subsequent installment payments shall relieve the Developer of the obligation to pay rent during the purchase option period.

4. No other amendment to the Lease shall be effective unless contained in a written document executed with the same formality and of equal dignity with this First Amendment.

IN WITNESS WHEREOF, the parties have executed this First Amendment on the date and year first above written.

Signed, Sealed and Witnessed
In the Presence of:

**POMPANO BEACH COMMUNITY
REDEVELOPMENT AGENCY**

By: _____

Lamar Fisher, Chairman

Print Name: _____

ATTEST:

Print Name: _____

Marsha Carmichael, Secretary

EXECUTIVE DIRECTOR:

Print Name: _____

By: _____
Gregory P. Harrison, Executive Director

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by LAMAR FISHER, MARSHA CARMICHAEL and GREGORY P. HARRISON, Chairman, Secretary and Executive Director, respectively, of the Pompano Beach Community Redevelopment Agency, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"DEVELOPER":

Signed, Sealed and Witnessed

**THE ETA NU EDUCATION FOUNDATION,
INC.**

In the Presence of:

By: _____
HARRY HARRELL, PRESIDENT

Print Name: _____

ATTEST:

By: _____
ANTONIO BRIHM, SECRETARY

Print Name: _____

STATE OF FLORIDA
COUNTY OF BROWARD

I HEREBY CERTIFY, that on this _____ day of _____, 2018, before me personally appeared _____, President of The ETA NU EDUCATION FOUNDATION, INC., who is personally known to me, and he acknowledged that he executed the foregoing instrument as the proper official of ETA NU EDUCATION FOUNDATION, INC., and the same is the act and deed of ETA NU EDUCATION FOUNDATION, INC.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgement)

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by _____ as Secretary of The ETA NU EDUCATION FOUNDATION, INC., who is personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or
Stamped)

Commission Number