

## PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT (this "Agreement") is made and entered into this 15<sup>th</sup> day of March, 2018, by and between CHANNELSIDE MORTGAGES, LLC, a Florida limited liability company, ("Lender") and \_\_\_\_\_ ("Participant").

### RECITALS

WHEREAS, on February 15, 2017, Lender entered into a loan in the amount of \$300,000.00 (the "Loan") with \_\_\_\_\_ (collectively, "Borrower") related to certain real property located at 823 SW Kings Bay Drive, Crystal River, Citrus County, Florida, and identified as Parcel ID No. 17E18S28-0020-0130 (the "Property").

WHEREAS, the Loan is secured by that certain Purchase Money Mortgage recorded in Official Records Book 2811, Page 1017, of the Public Records of Citrus County, Florida.

WHEREAS, Participant desires to purchase and Lender desires to sell an interest in the Loan to Participant in accordance with the amounts indicated on Exhibit "A" attached to this Participation Agreement. The amount which Participant purchases in the Loan is referred to as Participant's proportionate share of the Loan.

NOW, THEREFORE, Lender and Participant, in consideration of the mutual covenants contained herein, hereby agree as follows:

1. **Definitions.** All defined terms not otherwise defined in this Agreement shall have the meanings set forth in the documents evidencing and securing repayment of the Loan (collectively, the "Loan Documents").

2. **Sale of Participation.**

(a) Lender hereby sells to Participant and Participant hereby purchases from Lender, without recourse, an undivided participation in the Loan as indicated on Exhibit "A", except that such amount does not include or limit any additional amounts, costs, and expenses which may become due under this Agreement.

(b) Participant's obligation to participate in the Loan as provided herein shall be absolute, continuing, unconditional and irrevocable and shall not be affected by intervening circumstances occurring after the date hereof except as may be otherwise expressly stated herein.

3. **Funding.** Participant shall pay to Lender by wire transfer Participant's share of the amount of the Loan proceeds advanced to the Borrower under the Loan Documents within one (1) business days' notice by Lender to Participant.

4. **Payment of Loan Fees.** Upon receipt by Lender of any loan commitment fee, loan origination fee, or similar type fee, with respect to the Loan, Lender will forthwith remit to

Participant, Participant's agreed upon share of said fees, as more particularly described on Exhibit "A".

5. **Payments of Interest to Participant.** Upon receipt by Lender of any interest payment on the Loan, Lender will forthwith remit to Participant, Participant's agreed upon share of said interest, as more particularly described on Exhibit "A".

6. **Repayment of Principal.** Upon receipt by Lender of any principal payments on the Loan, Lender will forthwith remit to Participant, Participant's proportionate share of said principal repayments.

7. **Repayment in Event of Default.** In the event that, in Lender's and Participant's judgment, collection of any balance of principal or interest of the Loan seems uncertain, or if Borrower is in default on the Loan in any material respect, all principal and interest received by Lender shall be prorated between Lender and Participant and distributed between Lender and Participants in accordance with the percentage interests indicated on Exhibit "A".

8. **Additional Funding in Event of Default.** In the event that, in Lender's and Participant's, judgment collection of any balance of principal or interest seems uncertain, or if Borrower is in default on the Loan in any material respect and if, in Lender's and Participant's judgment, additional funding of the Loan is warranted, then all such additional funding shall be made in Participant's proportionate share of the Loan. Such amounts are Damages (as defined below) and are payable and reimbursable as set forth in Section 16.

9. **Sharing of Payments.**

(a) In the event Lender is required, by final non-appealable order of a court having jurisdiction, to repay any payment received, collected or applied by it with respect to the Loan and with respect to which payment was made by Lender to Participant pursuant to Sections 4 and/or 5 hereof, Participant shall, promptly upon demand of Lender, pay to Lender the amount actually received by Participant, plus any interest payable thereon.

(b) If Lender should for any reason make any payment to Participant in anticipation of the receipt of funds from the Borrower and such funds are not received by Lender on the date payment is due or make any payment to Participant in excess of the amount then due to Participant, Participant shall, promptly upon demand of Lender forthwith return to Lender all such amounts so transferred.

(c) To the extent permitted by applicable law and the Loan Documents, if Participant shall receive from any person by voluntary payment or through exercise of the right of set off, counterclaim, cross-action, or otherwise in the amount applicable to the Participation, Participant shall make a payment to Lender in such amount as shall ensure that Lender and Participant shall receive an amount equal to their respective shares in such amount at the time such amount was received.

10. **Standard of Care.**

(a) In discharging its obligations under this Agreement, Lender shall exhibit the same degree of care in servicing the Loan that Lender would utilize were Lender the owner of a one hundred percent (100%) proportionate share of the Loan.

(b) Without in any way limiting the foregoing, Lender may rely upon: (i) the advice of other experts in the administration of the Loan; or (ii) the written instructions given to Lender by the owners of a majority in interest of the Participation Interests in the Loan. Neither Lender, nor any of its officers, directors, employees or agents, shall be liable for any act or omission taken or suffered as a result of Lender's good faith reliance on the instructions of the owners of a majority in interest of the Participation Interests in the Loan or the opinion or advice of any counselor or experts.

11. **Lender's Representations and Warranties.** Lender represents and warrants to Participant as follows:

(a) The Loan Documents and all of the collateral documentation related thereto are complete, genuine, and enforceable, subject to bankruptcy, insolvency, and moratoria legislation affecting the enforceability of creditors' rights generally, and were duly authorized and executed by Borrower.

(b) All Loan Documents and collateral documentation related thereto that must be recorded in order to perfect the lien interest(s) granted therein were duly filed in the office(s) in which such documents must be filed.

12. **Disclaimer of Warranties.** Lender makes no representation or warranty, express or implied, and shall have no responsibility or liability with respect to:

(a) The truthfulness and accuracy of any of the representations, warranties, statements and certifications made by Borrower in the Loan Documents and any collateral documentation related thereto (collectively, the "Borrower's Assurances"): provided, however, that Lender has no knowledge that any of Borrower's Assurances were untrue at the time they made or that any of Borrower's Assurances are untrue on the effective date of this Agreement;

(b) The collectability of any amount payable under the Loan Documents;

(c) The financial condition of the Borrower or any guarantors or of any other entity or person (collectively, the "Financial Matters"): provided, however, that Lender has no knowledge that any Financial Matters were untrue at the time they were presented to Lender or that any Financial Matters are untrue on the effective date of this Agreement;

(d) The accuracy or adequacy of any: (i) information contained in any document other than the Loan Documents and collateral documentation related thereto; or (ii) any oral information provided to Participant by the Borrower through Lender (collectively, the "Information"): provided, however, that Lender has no knowledge that any Information was untrue at the time it was presented to Lender or to Participant; or

(e) The adequacy of any collateral provided for in the Loan Documents (collectively, the "Collateral") to pay the Loan in full upon liquidation thereof: provided, however, that the Collateral satisfied Lender's underwriting guidelines on the date the Loan was approved and Lender has no knowledge that the Collateral does not satisfy such guidelines on the date of this Agreement.

13. **Credit Decision.** Participant represents to Lender that it has independently and without reliance upon Lender (except for the matters represented by Lender in Sections 11 and 12) and, based upon such representations, their own expertise, and such documentation and information as Participant has deemed appropriate, made their own credit analysis and decision to enter into this Participation Agreement. Participant also represents that it will, independently and without reliance upon Lender, except for information or documentation provided by Lender to Participant in connection with Lender's request for Participant to make decisions about a proposed course of action, continue to make their own credit decisions, based solely upon their own expertise in taking or not taking action in connection with this Agreement.

14. **Requested Information.** Upon Participant's request, Lender shall send Participant copies of such information that Lender has received from the Borrower from time to time. Lender's failure to do so shall be an event of default under this Agreement. Lender shall not be responsible for the authenticity, validity, accuracy or completeness of any information given by Borrower to Lender which is subsequently given to Participant pursuant to this Section.

15. **Approval of Loan Documents.** Participant hereby acknowledges receipt of copies of the Loan Documents and the collateral documentation related thereto and hereby approves the form and substance of the same.

16. **Costs and Expenses.**

(a) At any time that Lender suffers or incurs any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including without limitation, attorneys' fees and other legal expenses) of any kind or nature whatsoever in connection with the preparation, delivery, execution, enforcement or administration of the Loan or the Loan Documents or makes or becomes liable for any other payments in connection with the enforcement or administration of the Loan or any Loan Documents, including without limitation, payments made at any time after the commencement of a proceeding in bankruptcy or reorganization with respect to the Borrower, to any trustee, receiver, conservator or similar officer for the Borrower, (collectively, "Damages"), Lender shall promptly advise Participant thereof and Participant shall pay immediately to Lender, by wire transfer, the amount of Participant's proportionate share of such Damages. If Participant fails to do so, Lender shall be entitled to deduct the amount of unpaid Damages from any payments to be made to Participant under this Agreement and to reduce Participant's proportionate share of the Loan by the amount of such unpaid Damages and increase Lender's proportionate share of the Loan by the same amount.

(b) To the extent Lender is reimbursed by or on behalf of the Borrower for Damages under this Section for which Participant has previously paid Participant's share to Lender as required hereunder, Lender shall repay to Participant its proportionate share of any such reimbursement.

(c) Each party hereto shall bear the costs of its own attorneys' fees and expenses in the negotiation and execution of this Agreement.

17. **Assignment and Sale of Participations.** Participant shall not assign, sell, transfer or sub-participate the Participation, or its rights under this Agreement, without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion: provided, however, Participant may sell or sub-participate its Participation to its affiliates or subsidiaries without Lender's consent. Without Participant's prior written consent, which may be withheld in Participant's sole and absolute discretion, Lender shall not assign, sell, transfer, participate or sub-divide its rights hereunder or under the Loan Documents.

18. **Rights of Participant in the Loan Documents.**

(a) Lender reserves the right in its sole and absolute discretion to negotiate, control, manage, service and administer the Loan, the Loan Documents, and the collateral documentation related thereto and to exercise all such powers as are incidental thereto provided, however, that Lender shall not without the consent of Participant: (i) extend the maturity date of a Loan or extend the date of any interest or principal payment thereunder; (ii) except as specifically set forth in the Loan Documents, change the rate at which interest is computed as set forth in the Loan Documents; (iii) agree to the non-payment of any principal or interest under the Loan or Loan Documents; or (iv) release any collateral other than as may be provided in the Loan Documents.

(b) If Lender requests the consent or approval of Participant to any matter, Participant shall respond in writing to Lender within five (5) business days after such notice is received by Participant. If Participant does not respond in writing within that time, Participant shall conclusively be deemed to have given the consent or approval requested or otherwise to have agreed with the request.

(c) In the event that Lender, in exercising its rights under the Loan and the Loan Documents, becomes the owner of any real or personal property collateral, Participant shall also be deemed to be an owner of such real or personal property collateral to the extent of their proportionate interest in the Loan, regardless of the fact that legal title to such real or personal property collateral may be held solely by Lender.

19. **Events of Default.** Any of the following acts or occurrences shall constitute an event of default by Lender under this Agreement:

(a) Any failure by Lender to distribute funds collected under the Loan Documents within three (3) business days after receipt of such funds.

(b) The appointment by a supervisory authority having jurisdiction over Lender of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding, or for the winding-up or liquidation of its affairs and such appointment shall have remained in force undischarged or unstayed for a period of sixty (60) days.

(c) Lender shall: (i) consent to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding of or relating to Lender of or relating to all or substantially all of its property; or (ii) admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations.

(d) Any representation, warranty or statement of Lender made in Sections 11 and 12 of this Agreement or any certificate, report or other writing delivered pursuant hereto shall prove to be incorrect in any material respect as of the time made and, within 30 days after written notice thereof shall have been given to Lender by Participant, the circumstance or condition in respect of which such representation, warranty or statement was incorrect shall not have been eliminated or otherwise cured.

(e) Any failure by Lender to comply in all material respects with Post Default Instructions (as defined below) or any other written instructions from the owners of a majority in interest of the Participation Interests in the Loan which Lender fails to remedy within five business days after receipt of written notice of the nature of such failure from a Participant.

20. **Remedies.** Upon the occurrence of any of the events of default set forth in Section 19, Participant shall, in addition to all other remedies available to Participant at law or in equity, have the right, but not the obligation:

(a) to purchase Lender's interest in the Loan at par value plus accrued interest and other amounts due to Lender if at such time Lender owns a participation interest in the Loan. Any such purchase by Participant shall be completed within thirty (30) days after the election to do so is made, and shall be without recourse to Lender. Upon any such purchase, Lender's authority under this Agreement with respect to the servicing and administration of the Loan shall be terminated and Participant shall service and administer the Loan thereafter.

(b) to give written notice to Lender that Participant will assume Lender's authority under this Agreement with respect to servicing and administration of the Loan (collectively, the "Lender's Servicing Obligations") if at such time Lender does not own a participation interest in the Loan.

If Participant elects to purchase Lender's participation interest in the Loan or terminate Lender's Servicing Obligations, Lender shall execute and deliver such documents as Participant shall reasonably request in order to give effect to the action taken by Participant. Participant shall have the right to maintain an action for specific performance against Lender to enforce the rights under this Agreement.

21. **Repurchase by Lender of the Participation.** Lender reserves the absolute and unconditional right (but not the obligation) to repurchase from Participant upon ten (10) days prior written notice the Participation or, with Participant's consent, portions thereof (a "Partial Participation"), for a purchase price equal to the outstanding principal amount of the Participation or applicable portion thereof, plus accrued interest and fees thereon, if any, less Participant's proportionate share of all costs, expenses and other amounts payable but not yet paid by Participant hereunder. Provided, however, that if Lender purchases a Partial Participation, the Participation owned by Participant after such purchase and sale shall not be less than fifty-one percent (51%) of the then-outstanding principal balance of the Loan. In the event of a purchase in accordance with this Section, Participant shall execute and deliver to Lender any documents necessary to transfer the Participation to Lender.

22. **Actions Upon Occurrence of a Loan Default.** Upon the occurrence of an event of default under the Loan Documents which is not cured within any applicable grace and/or cure period set forth therein (a "Loan Default"), Lender agrees to promptly and with due diligence implement the Post Default Instructions. As used herein, "Post Default Instructions" means those actions with respect to foreclosure of the liens granted in the Loan Documents, pursuit of any deficiency judgment available under the Loan Documents and/or applicable law, liquidation of the Collateral, and distribution of proceeds from such collection activities.

23. **Confidentiality.** Except as may be required by law, Participant will not, without Lender's written consent, disclose any information regarding the Borrower, the Loan or the Participation including, without limitation, any financial or business information which may be provided to Participant by Lender; provided, however, that Participant may disclose such information to its attorneys and, upon request, to any regulatory or governmental agency (or a representative thereof, having jurisdiction over Participant, or pursuant to court order).

24. **Right to Conduct Other Business.** Lender may accept deposits from, lend money to, and generally engage in any kind of banking or other business with the Borrower, and any other related entity or affiliate, and Lender may accept and retain any funds payable in connection with any such other business for Lender's own account and shall have no obligation to account therefor or to remit to Participant any portion thereof.

25. **Successors; Assigns; Rights of Third Parties.** This Agreement shall be binding upon and inure to the benefit of Participant and Lender and their respective successors and assigns. No person (including, without limitation, the Borrower) other than Participant and Lender and their respective permitted successors and assigns, shall have any rights under this Agreement.

26. **Investment Representation.** Participant represents to Lender that it has acquired and is acquiring the Participation for its own account and not with a view toward the sale or other distribution thereof.

27. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

28. **Entire Agreement: Amendments.** This Agreement embodies the entire agreement and understanding between Lender and Participant and supersedes all prior agreements and understandings between Lender and Participant relating to the subject matter thereof. The terms of this Agreement may not be modified or amended in any way except in writings signed by Lender and Participant.

29. **Interpretation of Agreement.** This Agreement is not intended to constitute, and shall not be construed to establish, a partnership or joint venture between Lender and Participant. Lender will have no obligation or responsibility to Participant except to the extent specifically stated herein. Lender shall not have a fiduciary or agency relationship of any kind with Participant, and nothing in this Agreement, whether express or implied, is intended or shall be construed to impose upon Lender any obligations with respect to the transactions contemplated hereby, except as expressly set forth herein.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers as of the date first above written.

LENDER:

**CHANNELSIDE MORTGAGES, LLC,**  
a Florida limited liability company

By: \_\_\_\_\_  
William L. Williams, its Manager

PARTICIPANT:

\_\_\_\_\_

**EXHIBIT "A"**

<u>Address for Notices to Lender:</u>  Channelside Mortgages, LLC 602 Channelside Drive Tampa, Florida 33602 Attn: William L. Williams, III Email: billy@wlwcapital.com	<u>Address for Notices to Participant:</u>  _____ ( _____ Tampa, FL _____
<u>Lender's Participation Interest:</u>  \$173,000.00; 57.67% of the Loan	<u>Participant's Participation Interest:</u>  \$100,000.00; 33.33% of the Loan
<u>Lender's Interest Rate Under the Note:</u>  12.0% per annum, paid monthly in arrears	<u>Participant's Agreed Upon Interest Rate:</u>  10.0% per annum, paid monthly in arrears
<u>Lender's Share of Origination Fee:</u>  \$9,000.00 (\$9,000.00 total)	<u>Participant's Share of Origination Fee:</u>  None.