



**CITY OF FORT LAUDERDALE
COMMUNITY REDEVELOPMENT AGENCY**

DEVELOPMENT INCENTIVE PROGRAM LOAN LETTER OF INTENT

November____, 2023

Mr. Eyal Peretz
Sunshine Shipyard, LLC
900 NW 6th Street, Suite 201
Fort Lauderdale, FL 33311

Re: Letter of intent to provide a forgivable loan in an amount not to exceed Eight Million and No/100 Dollars (\$8,000,000) and a non-forgivable loan in the amount of Two Million and No/100 Dollars (\$2,000,000) to Sunshine Shipyard, LLC, a Delaware limited liability company ("Sunshine" or "Borrower") to be secured by a lien on real property located at 640 NW 7th Avenue, Fort Lauderdale, FL 33311 and more particularly described in Exhibit A (the "Property") to partially fund hard costs of construction of a mixed use, mixed income development on the Property (the "Project")

Dear Mr. Peretz:

This letter is intended to establish a framework for negotiating a Development Agreement under the Development Incentive Program (the "Development Agreement") by and between the Fort Lauderdale Community Redevelopment Agency (the "Lender" or "CRA") and Sunshine. Subject to the terms and conditions set forth herein and in the Development Agreement and other documents, Lender agrees to fund a forgivable loan to Borrower in an amount not to exceed Eight Million and No/100 Dollars (\$8,000,000) (the "Forgivable Loan") and a non-forgivable loan in the amount of Two Million and No/100 (\$2,000,000) (the "Non-Forgivable" Loan)(collectively, the Forgivable Loan and Non-Forgivable Loan are referred to as the "DIP Loans") that will be used to fund hard costs of construction of Phase I (to be defined in the Development Agreement) of the Project on the Property.

COMMUNITY REDEVELOPMENT AGENCY
914 SISTRUNK BLVD, SUITE 200, FORT LAUDERDALE 33311
TELEPHONE (954) 828-6130
WWW.FORTLAUDERDALE.GOV



COMPLETION DATE: The Project and all amenities shall be completed within twenty-four (24) months from the date of this letter, subject to extensions granted by the CRA's Executive Director, or his successor, for delays caused by circumstances beyond the Borrower's control but not due to a lack of funding to complete the Project. Completion Date is defined as the date on which a Certificate of Occupancy has been issued by the City of Fort Lauderdale or other governing authority and an approval letter of the Project has been issued by the Agency. If the Project is not completed by the sunset date of the CRA, then the CRA obligation to fund any undisbursed funds under the DIP Loans may be terminated.

USE OF PROCEEDS: Sunshine acknowledges that the proceeds of the DIP Loans shall be used to reimburse or fund hard costs of construction of a mixed use, mixed income development, consisting of an eight story building which shall include 478 multifamily rental units of apartments, commercial space of approximately 15,235 square feet and an eight story parking structure with 606 parking spaces (the "Project") according to a construction budget approved by the CRA Executive Director, as may be amended by Borrower and its construction lender, so long as such expenses are allowed in accordance with Part III, Chapter 163, Florida Statutes. The proposed site plan and illustrations are attached hereto as Exhibit B. The CRA proceeds shall not be used for operating and administrative expenses of the Project or for soft costs related to construction of the Project. Further, hard costs are defined as costs for work, labor and materials required to construct the building or for approved site work. The proceeds of the DIP Loans shall not be used for improvements within a public right of way.

RESERVATION OF COMMERCIAL SPACE: As a condition of the DIP Loans, Borrower shall provide 2,500 square feet of commercial retail space in Phase II of the Project to the CRA for a minimum of fifteen years at a rate of \$12.00 per square foot, triple net, plus standard CPI escalation, with the understanding that the CRA may sublet all or a portion of the retail or commercial space to small Class A businesses that are compatible with other businesses in the Project, meet the zoning requirements, and meets certain quality standards as part of its initiative to support and sustain small businesses. The CRA shall have the absolute right to assign its entire leasehold interest to a third party, without recourse provided prior to the assignment, the assignee does not violate the lease and exclusive use agreements for existing tenants. The small business tenant shall be required to execute the standard Borrower's lease. The CRA or its successor shall not be liable for acts of the assignee which occur after the assignment. If the Borrower fails to provide the reduced rent commercial space, then the principal balance of the Non-Forgivable Loan shall increase to \$5,000,000 and amortized over 10 years.

CONDITIONS FOR CLOSING: The Lender shall have no obligation to close on the DIP Loans until completion of the following conditions to the satisfaction of the Lender in its sole discretion:

1. Review and acceptance of environmental assessment on the Property;

2. Satisfactory evidence that Borrower has sufficient equity to complete construction of Phase I of the Project;
3. Receipt and review of a draw schedule, construction schedule and budget, sources and uses, project schedule and schedule of values for the Project;
4. Receipt and review of a construction contract between the Borrower and a qualified and experienced general contractor along with copy of the general contractor's license;
5. Certificate of Good Standing and corporate authorization of the Borrower;
6. Builder's Risk Insurance and Payment and Performance Bond listing the CRA as an additional obligee and such other insurances as are customary and standard for a Project of this scope and size;
7. Title Insurance Commitment and policy insuring the interest of the CRA in the Property in the amount of the DIP Loans, deleting all schedule B-I requirements and all standard exceptions, subject to those special exceptions approved by the CRA;
8. Simultaneous closing with the construction lender which shall include a guaranty of payment and completion as may be required by construction lender, such requirements shall be disclosed by Borrower to CRA in a writing signed by the construction lender;
9. All development approvals by the appropriate governing authority have been issued for the Project;
10. Execution of the CRA documents for the DIP Loans, including without limitation, the Promissory Notes, Second Mortgage, Assignment of Leases, Rents and Profits, Assignment of Development Approvals, Environmental Indemnity Agreement, Construction Loan Agreement, Regulatory Agreement, Security Agreement, UCC-1 Financing Statement, Funding Agreement, Development Agreement, Commercial Lease, Negative Pledge Agreement and such other agreements and instruments required by the CRA in the exercise of its reasonable discretion;
11. Receipt and review of all owners who hold a direct or beneficial interest in the Property or Borrower along with copies of the organizational documents;
12. An acceptable appraisal of the Project. An appraisal ordered by the construction lender and delivered to the CRA is an acceptable appraisal.
13. Survey of the Property which meets the minimum local and state standards.
14. Such other documents, instruments, studies, analysis and evaluation as required by the CRA in the exercise of its reasonable discretion.

LOAN PAYMENTS AND TERM: Repayment of the Forgivable Loan shall not be required except in the event of default as defined in the Development Agreement. The Forgivable Loan shall be satisfied five years after the Certificate of Occupancy for Phase II is issued provided the Borrower continuously operates and maintains the Project for a minimum of

five years. The Borrower covenants and agrees with the CRA that it and its principal owners shall lease, manage, operate and maintain the Project for a period of no less than five (5) years commencing on the Project Completion Date. During this five-year period, the Developer agrees to submit on the annual anniversary of the Effective Date of the Agreement an affidavit executed by the Borrower that the Project has not been sold or any interest in the Borrower has been transferred or conveyed. Further, Borrower agrees that the building shall not be used for those non-permitted uses as provided in Section 47-12 of the ULDR and shall not be used for the following (i) "adult uses" as such term is defined in Section 47-18.2 of the ULDR; (ii) tattoo parlors; or (iii) massage parlors (other than as an ancillary use to a health club or beauty salon or beauty space; or (iv) liquor store or convenience kiosk as provided in the ULDR, during a five (5) year term commencing on Project Completion Date and will execute at Closing a restrictive covenant to be recorded in the public records of Broward County evidencing these restrictions. The Non-Forgivable Loan which shall accrue interest at rate of zero percent, except in the event of default, requires a repayment of \$200,000 per year over ten (10) years starting one year from the date the Certificate of Occupancy for Phase II is issued. However, if Phase II is not completed within twenty-four (24) months after issuance of the Certificate of Occupancy for Phase I, then the term for repayment of the Forgivable Loan shall start the following month after the date for completion of Phase II has expired. The Non-Forgivable Loan may be prepaid in whole or part without any prepayment penalty and shall contain a 15-day grace period. Thereafter, a late fee of 5% of the payment due shall be assessed. Neither loan shall be subject to a charge of interest except in the event of default. Upon such an occurrence, interest shall accrue at the maximum rate permitted by law. The Non-Forgivable Loan shall be satisfied upon payment of the principal balance owed plus accrued interest, late fees, advances and other fees, costs and expenses due and owing under the Non-Forgivable Loan.

COVENANT TO FUND: Funding of the DIP Loans is subject to budget and appropriation of legally available funds sufficient to fully fund the DIP Loans by Fiscal Year 2025, beginning with fiscal year 2024, as follow, subject to the approval as to form and substance by the CRA's General Counsel and City Auditor, as follows:

Fiscal Years 2023 and 2024- \$7,000,000

Fiscal Year 2025- \$3,000,000

Such obligations to annually appropriate and disburse the DIP Loans are subordinate to overhead and administrative costs related to operating and managing the CRA and senior CRA debt and previously approved CRA projects.

LOAN DISBURSEMENTS: The Borrower and Lender, in consultation with the construction lender, shall develop a schedule for disbursement of the DIP Loans proceeds as constrained by the CRA annual budget appropriation and construction schedule for completion of the Project. Such disbursement schedule shall be incorporated in a Construction Loan Agreement and Funding Agreement, if necessary. Both parties anticipate a portion of the DIP Loans may be available to fund construction draws. If so, then the DIP Loans shall fund construction draws for Phase I pari passu with the construction lender or pari passu and simultaneously with Borrower's equity and only for hard costs.

CLOSING COSTS: Borrower shall bear all closing and transactional fees, expenses and costs, including without limitation, documentary stamp taxes, intangible taxes, title insurance premium and search fees, recording fees, in connection with closing on the DIP Loans.

SECOND MORTGAGE AND SUBORDINATION: The DIP Loans shall be secured by a second mortgage, assignment of leases, rents, profits and proceeds on the Property and security interest in the personal property of the Project in favor of the CRA, subordinate to the lien of the First Mortgage of the construction/permanent lender. The Borrower agrees that the First Mortgage shall include a provision requiring the First Mortgagee to give notice of default and an opportunity to cure in favor of the CRA. The First Mortgage shall not contain a future advance provision unless approved by the CRA. Borrower shall execute a negative pledge agreement in which in agrees not to further encumber the Property. Any approvals of subsequent agreements required by Borrower or the First Mortgage lender as a condition of closing the DIP loans, shall be granted at the discretion of the CRA's Executive Director without any further approval of the governing body of the CRA, subject to approval of the CRA General Counsel.

LOCAL CONTRACTING: Borrower will use its best efforts to work with the Lender to notify local business firms, minority owned firms, women-owned firms or labor surplus area firms of the opportunity to submit bids for work on the Project, with the goal of achieving a minimum 30% participation for minorities.

LOAN DEFAULT: The occurrence of any one or more of the following Loan Defaults and the continuance thereof uncured or uncorrected for a period of 30 days, or longer period of time as may be necessary so long as Borrower is diligently pursuing cure, following proper notice, except for monetary defaults which shall have a grace period of 15 days and Lender shall not be required to give notice:

- 1) Borrower defaults in its obligation to operate and manage the Project for a minimum of five (5) years under the terms and conditioned contain herein; or



- 2) A final order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Borrower bankrupt or insolvent; or
- 3) Any misrepresentation made by Borrower in any material respect, and which adversely affects the rights, duties and obligations of the CRA; or
- 4) Foreclosure judgment is secured against the Project. Notwithstanding, if the construction lender files a foreclosure proceeding, then the CRA shall have the right to withhold any and all disbursement of the DIP Loans pending resolution of the foreclosure proceeding filed by the construction/permanent lender; or
- 5) A default under the First Mortgage; or
- 6) Failure to make payments under the Forgivable Loan as they become due or pay the real property taxes and insurance on the Project;
- 7) Such other reasonable defaults as incorporated in the Development Agreement and other CRA loan documents as are customary in the lending industry relating to construction loans.

MAINTENANCE/REPAIRS: Upon completion of the Project, Borrower, its successors and/or assigns, shall have a continuing obligation to maintain the Project in good repair and provide adequate insurance coverages at its expenses, all as set forth in the Development Agreement. All construction will be done in accordance with necessary approvals and the permitted and approved set of plans and specifications by the appropriate governing authority.

INSURANCE: The Borrower and/or the general contractor for the Project, as applicable, shall purchase and maintain at its own expense insurance, as required by the Lender and shall include the Lender as an "Additional Insured".

RIGHT TO AUDIT: Lender shall have the right to audit, at its expense, the books and records relating to the Project as may be reasonably required, and Borrower shall provide CRA with necessary information to conduct such audit.

CROSS DEFAULT: The Development Agreement, and the Second Mortgage will be cross defaulted with the construction loan and First Mortgage. A default under the Forgivable Loan shall be deemed a default under the Non-Forgivable Loan and vice versa.

BROKER: Borrower certifies that there were no brokers engaged as a result of this DIP Loans and indemnifies the Lender against any claims, losses, fees or expenses in connection with the DIP Loans.



TERMINATION: Prior to execution of the Development Agreement, Lender or Borrower may terminate this letter of intent if any of the following events shall occur:

If the Borrower:

- a. Applies for or consent to the appointment of a receiver, trustee, or liquidator for it or for any of its property;
- b. Admit in writing an inability to pay its, debts as they mature;
- c. Make a general assignment for the benefit of creditors;
- d. Be adjudicated bankrupt or insolvent;
- e. Files a voluntary petition or an answer seeking reorganization or an arrangement with creditors or take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution, or liquidation law or statute, or file an answer admitting the material allegations of a petition filed against it or them in any proceeding under any such law; or
- f. If condemnation proceedings are commenced against the Project or any part thereof;
- g. If the Lender and Borrower are unable to agree to the terms of the Development Agreement; or
- h. Borrower fails to secure and close the equity investment and construction loan on or before June 2024 for Phase I of the Project. (Note: The parties shall agree to define in the Development Agreements a description for each phase of the project.)

ASSIGNMENT: During the term of the DIP Loans, Borrower, developer and owner of the Property shall not sell, assign, convey or transfer (all of the foregoing referred to as an “Assignment”) its interest in the Project or Property to any person, or a controlling interest in Borrower or such entities which hold the right, title and interest in the Property or developer of the Project, without the express written consent of the CRA which consent shall not be unreasonably withheld. CRA shall either approve such Assignment or specify in reasonable detail the basis for its disapproval within thirty (30) days after request for such approval. Such Assignment shall not be valid until the CRA has consented in writing to such Assignment and there shall have been delivered to CRA a true copy of the proposed instruments effecting such Assignment, and an original counterpart of an

agreement in which each such assignee assumes and agrees to perform all the terms, covenants and conditions under the DIP Loans on Borrower's, or such applicable entity's, part to be performed, including those matters that arose or became due prior to the effective date of the Assignment, and proof that the assignee has been approved as the successor under all third-party agreements affecting the Project and Property. After the aforesaid instruments have been delivered to CRA and CRA has consented in writing to such Assignments, then from and after the effective date of Assignment, the assigning party shall be released of all obligations under the DIP Loans for matters arising after the effective date of the Assignment, but shall remain liable to the CRA for all obligations under the DIP Loans relating to matters that arose or became due prior to the effective date of the Assignment. The factors upon which CRA may base its decision on whether to grant consent to an Assignment will be limited to whether (i) the proposed assignee and/or any of the direct or indirect principals of such proposed assignee (as may be set forth in a certification to the Agency by a certified public accountant) meets standards of creditworthiness and have sufficient financial resources to acquire, operate, manage and maintain the Project, (ii) the proposed assignee has the reasonable ability to perform the obligations of the Borrower under the DIP Loans or other parties related to the Project; (iii) the proposed assignee has prior business experience related to operating property with uses similar to the Project, (iv) the reputation of the proposed assignee, and (vi) the form of the documents evidencing the assignment and the assumption, and (vii) other reasonable factors. Borrower agrees to disclose the principals with controlling interest in the Borrower, owner of the land and building and the developer of the Project and to provide such documents requested by the CRA in a timely manner.

PUBLIC RECORDS. Unless a specific statutory exemption exists, all documents, instruments, surveys, reports, etc. received by the CRA are subject to review by the public.

The letter of intent shall be made and construed in accordance with the laws of the State of Florida.

The individuals executing this Letter of Intent are authorized to execute this letter on behalf of the respective entities.

The provisions of the letter of intent cannot be modified unless such modification is in writing and signed by Lender and Borrower.

This Letter of intent has been issued for the sole and exclusive benefit of the Borrower and no third party shall have any rights hereunder without the express written consent of the Lender. Further, Borrower shall not assign its rights under this Letter of Intent without the written consent of the Lender which may be withheld in its sole discretion.



Lender and Borrower agree to act in good faith to formalize the Development Agreement within a timely manner. However, nothing in this letter of intent shall be deemed an obligation of Lender or Borrower to execute a Development Agreement.

This letter of intent may be executed in one or more counterparts, each of which shall constitute an original and together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE



IN WITNESS OF THE FOREGOING, the parties have set their hands and seals
the day and year first set forth below.

AGENCY

**FORT LAUDERDALE COMMUNITY
REDEVELOPMENT AGENCY**, a
Community Redevelopment Agency created
pursuant to Chapter 163, Part III, Florida
Statutes

By: _____
Greg Chavarria, Executive Director

ATTEST:

APPROVED AS TO FORM AND
CORRECTNESS:
Thomas J. Ansbro, General Counsel

David R. Soloman, CRA Secretary

Lynn Solomon, Assistant General Counsel

AGREED TO AND ACCEPTED this ____ day of November, 2023.

SUNSHINE SHIPYARD, LLC, a
Delaware limited liability company

Print Name: _____
Title: _____



EXHIBIT "A"
(LEGAL DESCRIPTIONS OR SUMMARY)

Parcel 1

Lots 2 through 24, Block 325, PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, said lands situate, lying and being in Broward County, Florida.

Less and except from Parcel 1, the following property conveyed by C. W. HENDRIX et. al. to the CITY OF FORT LAUDERDALE, a municipal corporation by deed recorded in Official Records Book 3411, Page 994:

That part of Lots 23 and 24 in Block 325 of "PROGRESSO", as recorded in Plat Book 2, Page 18 of the public records of Miami-Dade County, Florida; described as follows:

BEGIN at the southwest corner of said Lot 24; thence go easterly 135.0 feet along the south line thereof to the southeast corner of said Lot 24; thence northerly along the east line thereof 37.36 feet to the tangent point of a circular arc having a radius of 25 feet and being concave to the northwest; thence southerly to westerly along said arc, 39.27 feet through a central angle of 90°00' to the end of said arc; thence westerly and tangent to said arc along a line being 35 feet north of and parallel to the south boundary of the N1/2 of Section 3, Township 50 South, Range 42 East, 110.0 feet to the west line of said Lot 24; thence southerly 12.32 feet along said west line to the POINT OF BEGINNING.

Parcel 2

Lots 25 through 48, less the West 15 feet for right of way of said Lots, in Block 325, PROGRESSO, according to the Plat thereof, as recorded in Plat Book 2, Page 18, of the Public Records of Miami-Dade County, Florida, said lands situate, lying and being in Broward County, Florida.

Less and except from Parcel 2, the following property conveyed by C. W. HENDRIX et. al. to the CITY OF FORT LAUDERDALE, a municipal corporation by deed recorded in Official Records Book 3411, Page 995:

That part of Lots 25 and 26 in Block 325 of "PROGRESSO", as recorded in Plat Book 2, Page 18 of the public records of Miami-Dade County, Florida; described as follows:

BEGIN at the intersection of the east line of the west 15 feet and the north line of the south 17 feet of said Lot 25; thence go northerly along said east line and along the east line of the west 15 feet of Lot 26, 20.27 feet to the tangent point of a circular arc concave to the northeast; thence southeasterly along said arc, having a radius of 25 feet and arc






distance of 23.64 feet through a central angle of $54^{\circ} 10' 48''$ to the north line of the south 17 feet of Lot 25; thence westerly along said north line 10.37 feet to the POINT OF BEGINNING.

AND Less the South 17 feet of the aforesaid Lot 25 for right of way.



EXHIBIT "B"
SITE PLAN ILLUSTRATIONS

<p>THE ARCADIAN</p> <p>MIXED USE RESIDENTIAL DEVELOPMENT 840 NW 7TH AVENUE, FT. LAUDERDALE, FLORIDA 33311</p>		<p>BEHAR·FONT</p> <p>PARTNERS, P.A.</p> <p>ARCHITECTURE · PLANNING · INTERIORS</p> <p>CORAL GABLES · ATLANTA</p>	
		<p>OWNER'S INFORMATION</p> <p>Burnside Midway, LLC 500 NW 7TH STREET, SUITE 201 FT. LAUDERDALE, FL 33311 Owner's Representative Suzanne Leggett 407.326.1522 / 407.326.0400</p>	
 		<p>GOVERNING AGENCY</p> <p>City of Ft. Lauderdale Development Service Department Building Division 700 NW 18TH AVENUE FT. LAUDERDALE, FL 33311 (954) · 420-4520 plan@fortlauderdale.gov</p>	



FRONT VIEW NORTHWEST 7TH AVENUE



SIDE VIEW NORTHWEST 7TH AVENUE & NORTHWEST 4TH AVENUE



CORNER VIEW NORTHWEST 4TH AVENUE



CORNER FRONT VIEW NORTHWEST 7TH AVENUE & NORTHWEST 4TH AVENUE

