

**DEVELOPMENT INCENTIVE PROGRAM LOAN COMMITMENT**

June 6, 2017

613 NW 3rd Ave, LLC  
c/o Mr. Jeff Burns  
4 West Las Olas Boulevard, Suite 106  
Fort Lauderdale, FL 33301

Re: Construction Loan Commitment of Seven Million Dollars (\$7,000,000) to be secured by certain property described in Exhibit A, attached hereto and made a part hereof (the "Property")

Dear Mr. Burns:

This Development Incentive Program Loan Commitment (the "Commitment") is to set forth the terms and conditions to be included in the Development Agreement for the Development Incentive Program (the "Agreement") to be entered into by and between the Fort Lauderdale Community Redevelopment Agency (the "Lender") and 613 NW 3<sup>rd</sup> AVE, LLC, a Florida Limited Liability Company, and any successor or assign thereof (the "Borrower"). Lender agrees to lend Seven Million Dollars (\$7,000,000) (the "Loan Amount") for an economic development and workforce housing loan that is forgivable in five (5) years (the "Loan Term") after completion of the improvements (the "Loan"). The Loan shall be advanced for the construction on the Property of a mixed-use development with approximately 142-unit apartment residences, approximately 8,300 square feet of ground level commercial space and a parking garage (collectively, the "Improvements" or "Project").

The CRA Board hereby authorizes the City Attorney's Office or outside legal counsel to prepare the Agreement under the authorization and direction of the CRA's Executive Director, and to incorporate the following terms and conditions as provided herein.

**COMMENCEMENT DATE:** Date on which the Project starts construction for the Improvements on the Property. Commencement shall occur within 540 days after approval of this Commitment, unless otherwise extended by the CRA's Executive Director in order to close on the financing.

**COMPLETION DATE:** Date on which the Project is substantially complete and the Temporary Certificate of Occupancy has been issued by the appropriate governing authority. The Completion Date is estimated to be 720 days from the Commencement Date, subject to extension for events outside of the Borrower's control and any limitations imposed by Part III, Chapter 163, Florida Statutes.

**STABILIZATION:** Stabilization is defined as the date upon which the Project's apartments have achieved 3 consecutive months of 93% occupancy

or more.

TAX PAYMENTS:	Borrower shall be obligated to pay all ad valorem property taxes due upon the Property and the Project as required by Florida law.
LOAN PAYMENTS:	Disbursement of the proportional Loan Amount during Fiscal Years 2017, 2018 and 2019, each Fiscal Year 2017 beginning on October 1, 2016 and ending on September 30, 2017, with same date range applying for each additional specified year. For Fiscal Year 2017, a disbursement of \$4,000,000.00; Fiscal Year 2018, a disbursement amount of \$2,000,000.00; and Fiscal Year 2019, a disbursement amount of \$1,000,000.00. All disbursements shall not be funded until the Project achieves a financial closing and such funds totaling the Loan Amount shall not be waived if not funded during the fiscal years as described herein, subject to any limitations of Part III, Chapter 163, Florida Statutes.
COVENANT TO FUND:	The Lender agrees to covenant to budget and appropriate the legally available funds, by amendment if necessary, sufficient to make all such required payments toward the committed loan amount for fiscal years 2017, 2018 and 2019, subject to the approval as to form and substance by the Agency's Special Counsel and City Auditor.
FUNDING REQUIREMENTS:	Supporting documentation must be submitted in order for a funding request to be processed. Supporting documentation shall include (but is not limited to): Construction Payment Application from the General Contractor including all supporting documentation, invoices and conditional lien waivers as well as an overall draw request from the Borrower including hard and soft costs and all supporting invoices and documentation.
FORGIVABLE LOAN:	Borrower shall execute; (a) a Promissory Note in the amount of \$7,000,000.00; and (b) a Second Mortgage in a form acceptable to Lender. Loan shall carry an interest rate of 0% per annum and be forgivable 5 years subsequent to the Completion Date. Payment of the outstanding principal amount of the Loan shall not be required except for an Event of Default. The principal balance of the Loan shall be reduced proportionately over the Loan Term, 20% principal reduction per year or \$1,400,000, provided that there is not an uncured default in that year. Any principal amount not reduced in years 1 through 5 shall be forgiven in year five provided that there is not an uncured default.
SUBORDINATION:	All the terms and provisions of the Agreement shall be subordinate to the First Mortgage Lender and the rights granted to First Mortgage Lender in connection with the loan secured by the First

Mortgage, including, without limitation to all renewals, modifications and extensions of said loan, except for the Regulatory Agreement. Any subsequent agreements required by Borrower or First Mortgage Lender as a condition of closing, and all terms and conditions contained therein, shall be at the discretion of the CRA's Executive Director without any further approval.

**RENTAL REQUIREMENTS:** Borrower agrees to rent one hundred percent (100%) of the residential units to tenants that qualify under the Workforce Housing Requirements set forth herein. Workforce Housing Requirements shall be defined by tenants having a gross household income that does not exceed one hundred and sixty percent (160%) of the Broward County Area Median Income (AMI), as set forth each year by the Department of Housing and Urban Development (HUD). Rental requirements with a maximum rent at 160% AMI shall be in effect for a period not to exceed 10 years from certificate of occupancy.

**RENTAL REQ REPORTING:** Borrower shall provide to the Agency an annual written report certifying that all tenant occupant incomes at initial lease commencement do not exceed one hundred and sixty percent (160%) of the Broward County AMI. The first Rental Report shall be submitted within sixty (60) days after "Initial Qualified Occupancy", meaning that all of the units have been rented to qualified tenants and subsequent Rental Reports shall submitted annually thereafter (by October 31<sup>st</sup>). ~~Commencing on the Completion Date until~~ Upon the date the Agency sunsets, Borrower shall submit Rental Requirement Reporting directly to the City Manager's Office. Each Rental Requirement Report shall be certified by a third party Certified Public Accountant licensed to practice in the State of Florida chosen by the Borrower in order to verify the complete and accurate nature of this requirement.

**PENALTY:** After the Loan is forgiven and the lien is released, Borrower shall have the following obligation for meeting the Rental Requirements as set forth herein. Total maximum penalties for noncompliance for each year shall be set at \$100,000.00. At the time a Rental Requirement Report indicating units that are not in compliance is provided to the City, City shall have the option to assess a penalty equal to \$100,000.00 multiplied by the percentage of units that are in noncompliance. Borrower shall have 60 days from the date of receiving such notice to pay the penalty amount to the City.

**JOB CREATION:** Upon the Completion Date, Borrower shall use best efforts to create 6 Full Time Equivalent (FTE) jobs for 6 employees with residents residing in the Community Redevelopment Area for job positions

related to the administration, leasing, maintenance and operations of the apartment Project. Best Effort as used herein is defined as “a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one’s duty of obligation, (3) observance of reasonable commercial standards, of fair dealing in a given trade or business, and (4) absence of intent to defraud or the seek unconscionable advantage”. The Borrower shall also use commercially reasonable efforts to encourage the Project’s commercial tenants to provide FTE job opportunities for 12 employees with residents residing in the Community Redevelopment Area at any time during such employment.

**JOBS REPORT:**

Borrower shall provide to the Agency an annual written report of the Full Time Equivalent Job Hours for the immediately previous calendar year no later than four hundred twenty five (425) days after the Completion Date and by October 31<sup>st</sup> thereafter for a period not to exceed the life of the CRA. Each Jobs Report shall be certified by a third party Certified Public Accountant licensed to practice in the State of Florida chosen by the Borrower in order to verify the complete and accurate nature of this requirement.

**LOCAL CONTRACTING:**

Borrower will use its Best Efforts to work with the Agency 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.

**LOAN DEFAULT:**

The occurrence of any one or more of the following and the continuance thereof uncured or uncorrected for a period of 90 days following proper notice. 1) Borrower defaults in the performance to construct the Project under the terms and conditioned contained herein, 2) an order, judgment or decree is entered by any court of competent jurisdiction adjudicating the Borrower; bankrupt or insolvent, 3) any misrepresentation made by Borrower in any material respect and which adversely affects the rights, duties and obligations of the Agency, 4) foreclosure against the Project. During the time of the Loan Default is deemed uncured, the CRA, pursuant to the terms and conditions of the Lender, may exercise the right to require repayment of the unpaid principal balance of the Loan at the time of the Loan Default. Borrower and Lender shall have the right to cure any Loan Default within 90 days from written notice.

**MAINTENANCE/REPAIRS:**

During the construction and upon completion of the project, the Borrower shall at its own expense keep the Project and Property in good and clean order and condition. All construction will be done in accordance with Borrower Improvements as stated herein and in accordance with necessary approvals and the permitted set of plans

and specifications. The Borrower is required to comply with the Unified Land Development Regulations and will obtain necessary governmental approvals prior to commencement of construction. Once project is complete, Borrower at its own expense, shall properly maintain and repair the property, as necessary and as may be required by the code of ordinances.

INSURANCE:

The Borrower and the general contractor for the Project, as applicable, shall purchase and maintain at its own expense, insurance, in forms and from companies reasonably satisfactory to the Agency and Lender.

RIGHT TO AUDIT:

Agency shall have the right to audit the Project as may be reasonably required, and Borrower shall provide Agency with necessary information to conduct such report.

LOCAL BORROWER:

The Project is being developed by a Fort Lauderdale-based Borrower that intends on holding the Project for a period of time greater than Five years. Loan Documents shall require the controlling member of the Borrower, Jeff Burns, to maintain ownership of the Premises during the Loan Term and failure to do so shall constitute a default. The Project is being developed by a Fort Lauderdale based Borrower that intends on holding the Project for a period of time greater than five years. The controlling member of the Borrower is 613 Developer LLC, owned 75% by 613 Developer AFCO LLC, an entity that is controlled by Jeffrey Burns. Loan Documents shall require that 613 Developer AFCO LLC, or an entity owned by Jeffrey Burns, maintain majority ownership of the Project during the Loan Term and failure to do so shall constitute a repayment of the entire Loan Amount. This provision shall not apply to a change in ownership as the result of the First Mortgagee foreclosing on the First Mortgage.

BROKER:

Borrower certifies that there were no brokers engaged as a result of this Loan and indemnifies the Lender against any claims in connection with the Loan.

TERMINATION:

Lender may terminate the Commitment if any of the following events shall occur:

- i. If any of the terms and conditions of the Commitment cannot be complied with;
- ii. If the Borrower:
  - a. Applies for or consent to the appointment of a receiver, trustee, or liquidator for it or them or for any of its or their property;
  - b. Admit in writing an inability to pay its, his, or their 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 Premises or any part thereof.
- g. If the Lender and Borrower are unable to agree to the terms of the Development Agreement.

CONDITIONS TO FUND: The following conditions and documentation must be provided by Borrower to Lender prior to Loan funding as contemplated herein:

1. The receipt by Lender of evidence that (a) Borrower is in existence under the Laws of the State of Florida (b) Borrower is qualified to do business and operate the Premises under the laws of the State of Florida and (c) Borrower has full power to execute and deliver the loan documents contemplated hereby and to engage in and consummate the transaction contemplated by the Commitment;
2. Construction Contract with the construction budget or schedule of values;
3. Evidence that Borrower has purchased the Property;
4. Updated Sources & Uses Budget approved by the First Mortgage Lender;
5. Payment & Performance Bond;
6. Utility-ready letter providing that utilities are to be available on the Property;
7. Closing of the construction loan with the First Mortgage Lender in an amount sufficient to complete the Project to occur simultaneous with the closing of the Loan;
8. Borrower's investment of equity into the project in an amount not to be less than \$6,944,596 ;
9. Regulatory Agreement executed by Borrower to set forth the Rental Requirement as contemplated herein;
10. Copy of the Appraisal for the First Mortgage Lender;
11. Plans & Specifications for the Project;
12. Title Insurance Policy;
13. Survey to be updated no less than 120 days prior to closing;
14. Building Permits;
15. Evidence of Municipal Development Approvals necessary to build the Project;
16. Insurance Policy satisfactory to Lender and First Mortgage Lender;
17. Articles of Organization for the Borrower;
18. Such other documents, instruments, opinions, and assurances as Lender, or Lender's counsel, may reasonably request;

- 19. Mortgage;
- 20. Note;
- 21. Development Agreement.

The Commitment and Agreement shall be made and construed in accordance with the laws of the State of Florida.

The provisions of the Commitment cannot be waived or modified unless such waiver or modification is in writing and signed by Lender and Borrower.

The Commitment shall not be assignable to any person or entity without Lender's prior written consent.

Lender and Borrower agree to act in good faith to use best efforts to formalize the Agreement within a timely manner.

This Commitment hereby supersedes and cancels all of Lender's prior commitments and agreements, oral or written, to and with Borrower or any affiliate of Borrower, with respect to the subject matter hereof.

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

**[Signatures of following page]**

WITNESSES:

\_\_\_\_\_

Print Name

\_\_\_\_\_

Print Name

ATTEST:

\_\_\_\_\_

Jeffrey A. Modarelli, CRA Secretary

**Fort Lauderdale Community Redevelopment  
Agency**

By \_\_\_\_\_

John P. "Jack" Seiler, Chairman

By \_\_\_\_\_

Lee R. Feldman, Executive Director

APPROVED AS TO FORM:

Cynthia A. Everett, CRA General Counsel

\_\_\_\_\_  
Lynn Solomon, Assistant General Counsel

AGREED TO AND ACCEPTED this \_\_\_\_ of June, 2017

613 NW 3rd Ave., LLC,

a Florida limited liability company

By: \_\_\_\_\_

Managing Member

[Name and title]

