



September 25, 2019

Via Email

Brian Poulin
 Evergreen Partners
 560 NE 44th Street
 Oakland Park, FL 33334

**Re: FAT Village, LP (the "Partnership")
 FAT Live, Fort Lauderdale, FL (the "Property")**

Dear Mr. Poulin:

Thank you for the opportunity to present this letter of intent to make an equity investment in your Partnership, subject to preliminary and final investor approval. This letter of intent, which is being provided on a "Best Efforts" basis, outlines certain terms and conditions that would be the basis of a partnership agreement (the "Partnership Agreement"), to be entered into among the general partner(s) listed below, an equity fund sponsored by PNC Bank, National Association ("PNC"), as the limited partner (the "Limited Partner") and a corporation affiliated with PNC as the special limited partner (the "Special Limited Partner").

Based on the information you provided to us, we have prepared this letter of intent under the following terms and assumptions:

1. PARTNERSHIP TAX CREDITS

Annual Forecasted Tax Credit: \$2,882,000

2. CAPITAL CONTRIBUTIONS TO THE GENERAL PARTNER

A. The Investment Limited Partner and will purchase 99.99% of the forecasted tax credits at a rate of \$.93 per allocated tax credit dollar credit (the "Investment Limited Partner's Capital Contribution"), assuming the foregoing material assumptions are accurate and subject to the terms set forth in this letter and the Partnership Agreement to be entered into prior to payment of any installment below. The total Capital Contribution will be rounded to the nearest dollar and is expected to be \$26,799,920 payable in installments. Each installment is due within five (5) business days of the Investment Limited Partner's receipt and approval of documentation evidencing the satisfaction of the installment's and all previous installments' conditions as follows:

- 1) \$5,359,984 or 20.00% (the "First Installment") paid prior to or simultaneously with the closing of construction financing;
- 2) \$9,379,972 or 35.00% ("the Second Installment") upon 25% construction completion;

- 3) \$8,186,144 or 30.55% ("the Third Installment") upon 75% construction completion;
- 4) \$2,664,483 or 9.94% (the "Fourth Installment") upon 95% physical occupancy, 100% initial tax credit occupancy, cost certification, permanent loan commencement or conversion, or property stabilization;
- 5) \$1,209,337 or 4.51% (the "Final Installment") upon the latest of receipt of IRS Forms 8609.

Funds from installments one, two and three will be paid prior to construction completion for a total of \$22,926,100.

- B. The Capital Contribution shall be applied by the Partnership first to direct development costs, then to the payment of the development fee (the "Development Fee"). To the extent the Capital Contribution or net cash flow is not sufficient to pay the full Development Fee within ten years of the construction completion date, the General Partner shall be obligated to contribute capital to the Partnership to enable it to pay the remaining balance.

3. DISTRIBUTION OF NET CASH FLOW

- A. Net cash flow, generated by the Property after payment of operating expenses, debt service and replacement reserve deposits, shall be distributed within 45 days of the end of the fiscal year, prior to the first full year of operations, 100% to the General Partner, and beginning in the first full year of operations, as follows:
 - i) To the Investment Limited Partner \$75 per unit as a cumulative annual investor services fee, increasing 3% annually;
 - ii) To the Investment Limited Partner as reimbursement for any debts or liabilities owed to the Investment Limited Partner;
 - iii) To the developer as payment of the Development Fee until payment in full of the Development Fee;
 - iv) To the General Partner \$150 per unit, as a cumulative annual partnership management fee, increasing 3% annually;
 - v) To the Investment Limited Partner, to the extent that any Partnership taxable income is allocated to the Investment Limited Partner in any year, cash flow equal to 40% of the taxable income;
 - vi) To the General Partner as reimbursement for operating deficit loans made to the Partnership and owed to the General Partner;
 - vii) Finally, any remaining net cash flow shall be distributed 90% to the General Partner and 10% to the Investment Limited Partner.

4. DISTRIBUTION OF NET CASH PROCEEDS UPON SALE OR REFINANCING

- A. The net cash proceeds upon sale or refinancing shall be distributed in the following order:
 - i) To the payment of all debts and liabilities of the Partnership, excluding those owed to Partners, and to the establishment of any required reserves;

- ii) To the payment of any debts and liabilities owed to the Investment Limited Partner;
 - iii) To the payment of any fees, debts, and liabilities owed to the General Partner and any unpaid partnership management fees for such year;
 - iv) The balance, 90% to the General Partner, and 10% to the Investment Limited Partner.
- B. For a period of one year after the expiration of the initial compliance period, the General Partner may commence marketing the Property or may have the option to purchase the Investment Limited Partner's interest for a purchase price equal the fair market value of the Investment Limited Partner's interest. Fair market value shall be determined in accordance with the Partnership Agreement.

At any time after the year following the initial compliance period, PNC and the General Partner may commence marketing the Property. If PNC receives a bona fide offer to purchase the Property, PNC will forward a copy of the offer to the General Partner. If the General Partner chooses to refuse the offer, the General Partner will purchase the Investment Limited Partner's interest for a purchase price equal to the net proceeds pursuant to Section 5 if the offer had been accepted.

5. DISTRIBUTION OF BENEFITS

Profits, losses and tax credits will be allocated 99.99% to the Investment Limited Partner based on the percentage of limited partner interest to be acquired. In the first year of operations when the net cash flow is allocated 100% to the General Partner, any taxable income will be allocated to the General Partner in the same proportion as the net cash flow distribution.

6. GENERAL PARTNER OBLIGATIONS

A. Construction Completion Obligations

The General Partner and the Developer shall guarantee lien-free construction completion of all improvements substantially in accordance with the approved plans and specifications. The General Partner and the Developer shall fund any development cost overruns through permanent loan(s) commencement/conversion and such overruns will not be reimbursed by the Partnership.

The General Partner shall provide copies of each draw request, change orders and all supporting documentation to the Investment Limited Partner simultaneously with submission to the construction lender. The Investment Limited Partner shall have the right to approve change orders in excess of \$25,000. If the general contractor is not an affiliate of the General Partner, the construction contract shall be a fixed price contract and the general contractor shall be bonded in a manner satisfactory to the Investment Limited Partner.

B. Operating Deficit Guaranty and Operating Reserve Account

The General Partner shall guarantee the funding of any operating deficits for operating or fixed costs for 60 months following the later of the break-even operations or permanent mortgage loan commencement or conversion in a maximum amount to subject to the Investment Limited Partner's due diligence review. The partnership may also establish an operating reserve if the projections change.

C. Replacement Reserve Account

The Partnership shall deposit monthly into a replacement reserve account no less than \$250 per unit occupied at conversion (the "Replacement Reserve Account"). The Replacement Reserve Account shall be used to fund the replacement of major capital improvements, and disbursements shall require annual notification of anticipated expenditures and prior written approval of unanticipated expenditures.

D. Tax Credit Adjustments

- i) If the annual actual tax credits allocated on the Carryover Allocation or Form(s) 8609 is less than the forecasted tax credits stated in Section 1, then the Capital Contribution shall be reduced in an amount equal to the total tax credit shortfall to the Investment Limited Partner multiplied by the price paid for the tax credits.
- ii) If the annual actual tax credits allocated on Form(s) 8609 is greater than the forecasted tax credits stated in Section 1 (the "Additional Credit"), then the Capital Contribution shall be increased in an amount equal to the Additional Tax Credit multiplied by the price paid for the tax credits, and paid pro rata over the remaining Installments. This adjustment combined with all other upward adjustments shall be limited to 10% of the Capital Contribution.
- iii) For each additional \$1.00 of tax credit delivered in the first years beyond the amount projected in this letter, the ILP shall pay an additional equity amount per tax credit dollar to be determined by Investment Limited Partner during due diligence. The additional capital shall be paid pro rata over the remaining Installments.
- iv) If the amount of actual tax credit in any year after construction completion is less than the amount of forecasted tax credit in Section 2 (except for reasons stated in item 6(D)(i) above), the Capital Contribution shall be reduced by an amount equal to the tax credit shortfall amount multiplied by the price paid for the tax credits, plus the amount of any recapture, interest or penalty (a "Reduction Amount").
- v) If any Reduction Amount cannot be paid from the Capital Contribution, the General Partner shall pay the Reduction Amount. Reduction Amounts not paid upon demand shall accrue interest at the prime rate as published in the Wall Street Journal plus 2%.

E. Net Worth and Guarantee Requirements

All obligations of the General Partner shall be guaranteed by person(s) or entities ("Guarantor(s)") acceptable to the Investment Limited Partner and with sufficient net worth and liquidity.

7. **CONDITIONS**

A. Property

The Property will be a new construction development located in Fort Lauderdale, Broward County, Florida.

B. Tax Credit Allocation

The Partnership may elect to defer the use of tax credits for any individual building which is not 100% tax credit qualified by December 31 of the year in which it is placed in service, at the

Investment Limited Partner's discretion. It is assumed that IRS form 8609 will be issued subsequent to the anticipated placed-in-service deadline.

C. Tax Credit Occupancy

The Partnership must comply with the 40/60 minimum set-aside test (a minimum of 40% of the units must be rented to tenants with incomes less than 60% of area median, adjusted for family size).

D. Construction and Permanent Financing

The General Partner shall provide to PNC for its review and approval, copies of the loan commitments and loan documents for all financing sources, which are assumed to be from qualified commercial lenders and qualify for the 9% tax credit applicable percentage.

E. Property Management Agent

- i) The General Partner shall provide or cause the Property management agent to provide management reports to the Investment Limited Partner in a timely manner concerning operations, occupancy and other information essential to the management of the Property.
- ii) Upon the occurrence of certain events, including any material violations, negligence or misconduct or inadequate reporting, the Special Limited Partner will have the option to replace the Property management agent. All Property management agreements will include a termination clause allowing either the General Partner or the Property management agent to terminate the agreement by giving a 30-day advance written notice to the other party.

F. Repurchase Obligations

The Investment Limited Partner shall not be required to advance any unpaid Installments and the General Partner may be required to repurchase the Investment Limited Partner's interest for the invested amount. Conditions for repurchase shall include: construction completion, break-even operations or permanent loan closing(s)/conversion(s) are not achieved or other tax credit compliance conditions are not met in a reasonable time period.

G. Insurance Obligations

The Partnership will provide the following insurance policies: i) an extended ALTA owner's title insurance policy in an amount not less than the permanent mortgage(s), the General Partner's and Investment Limited Partner's capital contributions, with all standard exceptions deleted or approved and with Fairways, non-imputation and other requested endorsements; ii) commercial general liability insurance in the minimum amount of \$5,000,000 naming the Investment Limited Partner as named insured party of which not more than \$2,000,000 is through an umbrella policy; (iii) builder's risk insurance through construction completion, and all risk or fire and extended coverage and, if necessary, earthquake, hurricane and flood insurance, all policies in a minimum amount equal to full replacement value; (iv) workers' compensation as required under state law; (v) business interruption insurance coverage equal to one full year's gross rental income or as acceptable to the Investment Limited Partner; and (vi) any other insurance as may be necessary or customary.

H. Accountant's Obligations

The General Partner shall provide or cause the Partnership's accountant to provide the following annual reports: i) federal and state tax returns for the previous year (including all supporting documentation necessary to verify the calculation of the tax credit) by February 28th and ii)

annual audited Partnership financial statements (including all supporting documentation) by March 1st. Any delays beyond the designated due date may result in a \$100 per day penalty to the Partnership. The Partnership Accountant shall review and approve the basis and benefits calculations prior to the payment of the First Installment.

I. General Partner Removal

The Partnership Agreement shall contain provisions for the removal of the General Partner with cause.

8. DUE DILIGENCE PERIOD

The General Partner grants the Investment Limited Partner the exclusive right to acquire the Partnership interest commencing on the date of the initial execution of this letter of intent and terminating 60 days after receipt of the documents necessary to complete the due diligence review.

Our agreement to make the investment described in this letter of intent is subject to the accuracy of the information you have provided to us and our mutual agreement on the terms of the closing documents and review of customary due diligence which shall include those items specifically referenced in the PNC commitment for construction and term financing sent under separate cover.

This letter of intent does not expire before June 30, 2020.

This letter of intent is not a commitment and is subject to PNC's underwriting, due diligence review, and market conditions at the time a letter of intent is issued following the tax credit award. During the due diligence period, PNC will conduct a due diligence review and negotiate with the General Partner, in good faith, any open terms of this letter of intent. The due diligence period will commence upon receipt by PNC of all Property and Partnership documents identified in the syndication binder. The due diligence review will include, without limitation, the verification of factual representations made by the General Partner, a review of the Property and Partnership documents, a site visit and an evaluation of the following: the experience and expertise of the General Partner, general contractor, architect and Property management agent; Property area market; an appraisal of the Property; the construction schedule; the total development budget; the residual potential of the Property and capital account analysis; Phase I environmental assessment and all subsequent reports and other relevant factors. PNC may also commission consultants to perform market analysis, construction, insurance and environmental reviews. The General Partner and PNC acknowledge that no legally enforceable relationship shall exist between General Partner and PNC unless and until the Acquisition Review Committee of PNC shall have approved the proposed transaction, and the parties shall have executed the Partnership Agreement and the other transaction and financing documents contemplated herein. . The foregoing pricing assumptions for this application letter of intent are based on current market conditions, which are subject to change in the event of a change in the federal income tax laws or regulations which would have an effect on the benefits PNC expects to receive from the transaction.


Should you have any questions, please do not hesitate to call (502) 581-2640. We look forward to working with you on this and future transactions.

Sincerely,

PNC BANK, N.A.

Agreed and Accepted:

FAT VILLAGE, LP



Ryan Edwards
Vice President

cc: Tricia Hurley, File

By: 

Name:

Brian Paul

Title:

Authorized Signatory

Date:

9-25-19