



## Cover Memorandum/Staff Report

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**File #:** 18-1062 CRA

**Agenda Date:** 5/24/2022

**Item #:** 7G.

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**TO:** CRA Board of Commissioners  
**FROM:** Kim N. Phan, Legal Advisor  
**THROUGH:** Renée A. Jadusingh, Executive Director  
**DATE:** May 24, 2022

### **FIRST AMENDMENT TO THE CONSTRUCTION LOAN AGREEMENT WITH HATCHER CONSTRUCTION & DEVELOPMENT, INC.**

#### **Recommended Action:**

Approve the First Amendment to the Construction Loan Agreement with Hatcher Construction & Development, Inc. ("Hatcher") for the purpose of constructing two separate 2-story commercial buildings on CRA owned land located at 20 and 26 NW 6<sup>th</sup> Avenue, in substantially the attached form.

#### **Background:**

On June 11, 2019, the CRA Board approved a ground lease ("Ground Lease") with Hatcher to construct a two-story 6,000 SF office building on two (2) adjacent, vacant CRA-owned parcels located at 20 and 26 NW 6<sup>th</sup> Avenue ("Project"). The Ground Lease was executed on July 18, 2019.

On October 21, 2021, the CRA Board approved a Loan Commitment Letter providing a \$1.4 million dollar loan to Hatcher for the Project. Accordingly, on February 9, 2022, the CRA and Hatcher executed a construction loan agreement ("Construction Loan Agreement"). Hatcher has made one draw in the amount of \$279,287.10 pursuant to the Construction Loan Agreement.

The Construction Loan Agreement currently states that repayment of the principal and interest begins when the promissory note and the Construction Loan Agreement are executed and delivered to the CRA for eighty-four (84) consecutive months. More specifically, the Construction Loan Agreement states the following:

1.2 Sums due under this Promissory Note shall be payable to the Delray Beach Community Redevelopment Agency, 20 North Swinton Avenue, Delray Beach, Florida 33444, or such other place as the Note holder may designate. The sums due in accordance with the terms herein are from the date the Promissory Note and this Construction Loan Agreement are executed and delivered to the DBCRA (initial date) payments of principal and interest will be due on the first day of each consecutive month for eighty-four (84) consecutive months. The loan shall mature on the eighty-fourth (84<sup>th</sup>) month (Maturity Date) at which time all outstanding principal and accrued interest shall be due and owing to the DBCRA.

The proposed first amendment to the Construction Loan Agreement (“First Amendment”) and restated and amended promissory note (“Amended and Restated Promissory Note”) will require repayment of interest to start May 1, 2022 and the principal and interest to begin after the certificate of occupancy has been received. More specifically, the proposed language in the First Amendment will state:

1.2 Commencing on May 1, 2022, and each consecutive month thereafter, Borrower shall make interest only monthly payments on this Amended Note at an interest rate of Three percent (3.00%) per annum on the total of all draw amounts received by Borrower until such time as Borrower receives a Certificate of Occupancy and provide a Final Release of Lien and Contractor’s Affidavit and Waiver of Lien reasonably satisfactory to the DBCRA. Commencing on the first day of each month subsequent to the Borrower’s receipt of the Certificate of Occupancy, and for each consecutive month thereafter, Borrower shall make consecutive monthly payments of principal and interest based on the foregoing interest rate for a period of eighty-three (83) months shall be paid monthly until the last day of the eighty-fourth (84th) month (“Maturity Date”) at which time all outstanding principal and accrued interest shall be due and payable in full. All payments of principal and interest shall be due on the first (1st) day of each month (“Due Date”).

Furthermore, the proposed first amendment will no longer require full disbursement of the remaining loan amount to Hatcher upon receipt of the certificate of occupancy. Rather, Hatcher may request draws up to the loan amount as needed pursuant to the Funding Agreement. Mr. William and Jeff Hatcher have personally guaranteed the loan in lieu of the requirement for a performance and payment bond. Therefore, the requirement for a performance and payment bond in the Construction Loan have been removed in the proposed first amendment.

At this time, Staff is recommending approval of the First Amendment to the Construction Loan Agreement with Hatcher, in substantially the attached form.

Attachments: Exhibit A - First Amendment to Construction Loan Agreement; Exhibit B - Amended and Restated Promissory Note

**CRA Attorney Review:**

The CRA Attorney has reviewed the attached and has determined it to be acceptable as to form.

**Funding Source/Financial Impact:**

Funding was previously allocated from General Ledger #5123 NW 600 Block Redevelopment.

**Overall need within the Community Redevelopment Area from Delray Beach CRA**

**Redevelopment Plan:**

Removal of Slum and Blight

Land Use

Economic Development

Affordable Housing

Downtown Housing

Infrastructure

Recreation and Cultural Facilities