

LEGISLATIVE #

110385

Letter of Commitment for HOME Funding Multi-Family Rehabilitation Funding

Name of Agent: Ken Kraus
Name of Development Company: KBR Investments, LLC
Address: 1690-98 N. E. 16th Avenue
City, State Zip: Gainesville, Florida 32601

Funding Commitment for the Rehabilitation of 11 unit affordable housing complex located at 1690-98 N.E. 16th Avenue, Gainesville, Florida 32601

The City of Gainesville, a municipal corporation existing under the laws of the State of Florida, (hereinafter referred to as "Lender") is pleased to offer the following funding commitment to KBR Investments, LLC (hereinafter referred to as "Borrower").

This is a non-assignable Commitment to finance the rehabilitation of the referenced project in an amount not to exceed **Fifty Nine Thousand Dollars (\$59,000.00)**, upon terms generally outlined below and subject to execution of definitive loan documents. This Commitment relies upon the accuracy of all facts, statements and financial information submitted by _____, Inc., as part of the loan request.

The specific terms of the loan will be documented prior to loan closing and the following provisions, terms and conditions are comprehensive, but not necessarily inclusive of the anticipated loan terms. All instruments, forms, documents, statements, agreements, and other materials and writings referred to herein must be acceptable in form and substance to Lender. This Commitment shall be construed under the laws of the State of Florida.

BORROWER: KBR Investments, LLC

LOAN AMOUNT: 1) Thirty-Nine Thousand Dollars (\$39,000.00) - Due on Sale Loan
2) Twenty Thousand Dollars (\$20,000.00) – Repayable Loan

LOAN PURPOSE: **Loan to provide funding for the Rehabilitation of 11 unit multi-family affordable housing complex located 1690-98 N.E. 16th Avenue, Gainesville, Florida 32601**

The Borrower agrees to use the Loan Proceeds to rehabilitate the property and the affordable housing units described herein and identified in the Application filed by the Borrower with the Lender to the extent authorize and in the manner specified by the Lender.

Borrower must comply with all Federal, State, and Local regulations; and regulations and compliance provisions as required under the HOME Investment Partnership (HOME) Program.

INTEREST RATE: 1) Interest shall be zero percent (0%) per annum; except that the Investor defaults, then the interest rate shall be ten percent (10%) per annum until it is paid in full by the Investor.

2) The interest rate on the principal balance outstanding shall be a rate of three percent (3%) during the term of the loan.

**LOAN AND
REPAYMENT
TERMS:**

1) The term of the Due on Sale loan will be 10 years (120 months)
2) The term of the repayable loan will be 10 years (120 months).

**TAXES AND
INSURANCE
ESCROW:**

None.

**PREPAYMENT
PENALTY:**

None.

LATE CHARGE:

None.

COLLATERAL:

This loan will be secured by a Second Mortgage on the property, and will be subordinate to the first lien position.

GUARANTORS:

Borrower

**COMMITMENT
FEE:**

None.

**LOAN SERVICE
FEE:**

None.

**CONSTRUCTION
PERIOD:**

As described in Construction Agreement (Stipulated Sum) between Borrower & Contractor. Construction Agreement must comply with all Federal, State, and Local regulations. The Borrower must comply with all regulations and compliance provisions as required under the HOME Investment Partnerships Program.

The Borrower must complete the construction improvements within 4-months (120 days) from the date of the construction loan closing. Lender reserves the right to review and approve the content of the Construction Agreement.

**COMMENCEMENT
DATE:**

The work to be performed under the Construction Agreement shall be commenced within 10 days after the Borrower has issued a Notice to Proceed to the Contractor and filing of the Notice of Commencement. The Borrower shall not issue the Notice to Proceed to the Contractor until the Lender notifies Borrower that the Lender has executed the purchase

order. The notification shall be in the form of the original copy of the executed Notice to Proceed delivered by the Lender.

MATURITY DATE: 1) Due on Sale Loan – 10 years from date of closing.
2) Repayable Loan - 10 years from date of closing.

DISBURSEMENT OF LOAN FUNDS: The Lender's Finance Department will hold funds in an escrow account. Funds will be made available during construction for eligible expenditures. The payments will be made payable to the Borrower and the Contractor. The Lender and Borrower shall agree on the disbursement schedule of loan funds. The Lender will provide construction management during the project to approve rehabilitation work and draws on the funding. The process for initiating draw payments from the Lender will be determined by the procedures of the Lender's Finance Department.

BORROWER'S EQUITY CONTRIBUTION: To consist of the Borrower's cash equity of \$19,000 and the underlying real property, subject to the first and second lien position of the construction and/or permanent lender.

LOAN CLOSING DEADLINE: November 30, 2011.

TERM OF COMMITMENT: This commitment shall be valid until December 31, 2011; and with the written consent of all parties, this commitment may be extended for an additional period to comply with the overall viability of the property. Subject to fulfillment of Lender's requirements as outlined herein and such other requirements as Lender may reasonably impose, Lender will make and Borrower will accept the amount and terms of the loan in accordance with this Commitment and the final definitive loan documents executed at closing.

The parties hereto agree that Lender shall receive the following documentation from the Borrower at the construction loan closing:

- A. A Mortgage and Note, properly executed, evidencing the loan in the amount of this Commitment.
- B. A properly executed Mortgage Deed and Security Agreement, naming the Lender as the holder of a second lien on all real and personal property pledged as collateral for the loan.
- C. Evidence that Borrower has complied with all regulations and compliance provisions of the City of Gainesville Rental Rehabilitation Program, with construction inspections to be performed by the City of Gainesville Building Code Inspectors and the Housing & Community Development Division construction staff.
- D. ***(30 days prior to closing):**. Evidence that the Borrower has completed an original and complete copy of final plans, specifications, and cost breakdown for the construction of

the improvements on the property, approved by the appropriate governmental authority. A Florida Licensed General Contractor or Certified Architect must prepare the plans and specifications. All changes to the original plans and/or specifications and costs must be approved in writing, in advance by the Lender. A Florida licensed General Contractor must perform the construction improvements. Any bidding conducted by the Borrower must meet all federal HOME Investment Partnership Program and be approved by the Lender. The Lender reserves the right to reasonably approve the licensed General Contractor chosen by the Borrower and/or to terminate this commitment or impose additional conditions.

- E. A copy of the executed Construction Loan Agreement setting forth, among other things, the terms and conditions required by Lender for construction of the improvements on the subject property and the disbursement of loan proceeds. Lender reserves the right to review and approve construction loan agreement.
- F. Copies of properly executed contracts with the general contractor, engineer, and architect relating to the design and construction of the improvements; executed assignments of such contracts to Lender and consents of each general contractor, architect and engineer to such assignments and undertakings on their part to continue performance on behalf of the Lender without additional cost in the event of default by Borrower under any of the loan documents.
- G. Properly executed Notice of Commencement or Notice of Completion to be recorded immediately subsequent to recording of the second mortgage instrument. If the Notice of Commencement or Notice of Completion is recorded prior to the second mortgage instrument, this Commitment will be null and void.
- H. The Borrower shall provide the Lender with an Insurance Binder Policy for KBR Investments, LLC.
- I. An original and complete copy of final plans and specifications approved by the appropriate governmental authority, if applicable. All changes to the original plans and specifications must be approved in advance by the Lender.
- J. A detailed schedule of costs indicating for each particular category, the particular cost allocated to that category for completion of the improvements.
- K. Evidence satisfactory to Lender that all governmental zoning ordinances and restrictive covenants affecting the subject property have been complied with and permit the use for which the completed improvements are intended.

Borrower also represents that such ordinances and covenants will continue to be adhered to and that there is no pending litigation regarding the validity of it.
- L. Evidence satisfactory to Lender of established legal ingress and egress between the subject property and publicly dedicated roadway.
- M. Appropriate and properly executed corporate, partnership or other entity resolutions, affidavits or certificates for review and approval by Lender, together with such other organizational documents, certificates of authority of good standing, and other documents as Lender may require.

- N. A real estate Appraisal to indicate a loan to value not less than that approved by the First Lien Holder and the Lender, if applicable.
- O. A current boundary Survey, prepared by a licensed and registered land surveyor, certified to the Lender and abstracted for right of ways, easements, and all other recorded documents.
- P. The Building Permit.
- Q. Written evidence of the availability of water, sewer and electricity to the property.
- R. Copies of Leases. a) Lender reserves the right to approve the content of the leases; and b) the leases for occupied units shall be in full force and effect prior to loan closing.
- S. Evidence that the Borrower has complied with all regulatory and compliance provisions as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; and must pay all relocation assistance expenditures, as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; and the Lender's Optional Relocation Policy; and provide relocation assistance documentation to the Lender in a timely manner.
- U. No material adverse changes in the Borrower's financial condition prior to loan closing. Borrower agrees to provide verification of annual income in the form of audited financial statements, Federal and State (if applicable) tax returns, and verifications from other sources as required by Lender. Borrower must have a satisfactory credit report and rating verified by credit reporting agencies and other sources of verification as required by Lender.
- V. All other instruments, documents, opinions, or assurances which are:
 - (a) Required hereby
 - (b) Affect the property
 - (c) Relate to Borrower's capacity and authority to execute the loan documents and accept the loan documents and accept the loan.
 - (d) Required by Lender or its Closing Agent, and are customary for such commitments.
- W. A No Lien Affidavit.
- X. An Environmental Review prepared and dated within the past 12 months.

The Lender must approve any changes made to the Lender's standard documents in writing.

At or prior to all draws, Lender shall have received:

- (a) The approval by the Lender's designated inspector.
- (b) All appropriate, executed lien waivers and/or other documentation required by the Lender to request a draw.
- (c) Updates to title, as required by Lender, if applicable.

At or prior to the Final Draw, Lender shall have received:

- (a) Final Owner's Affidavit.
- (b) Final Lien Waiver.
- (c) Final Contractor's Affidavit.
- (e) A Certificate of Occupancy from the appropriate governmental authority. Satisfactory evidence that all necessary permits, approvals and certificates have been obtained from all applicable boards, agencies and/or departments.
- (f) A fire, extended coverage and other perils insurance policy and (adequate flood insurance policy, if required), issued by an acceptable company with a standard mortgagee clause, in an amount equal to the full insurable value of the improved property.
- (g) Certification from the architect and/or engineer that the construction was performed in accordance with the plans and specifications and complied with all applicable building, Fire Marshall and underwriter codes.
- (h) A certified list of all subcontractors and executed final releases of lien from all subcontractors and all other persons who may have a right to file any claim of lien against the property.

Construction Phase: The following conditions apply to the construction phase.

- A. No materials shall be placed on the property or construction commenced prior to the proper execution and recording of the security instrument and notice of Commencement of Notice of Completion.
- B. Borrower agrees to commence construction of the improvements on or before the Commencement Date and to complete construction on or before Completion Date.
- C. All construction shall be done in accordance with the approved Plans and Specifications, City of Gainesville Rental Rehabilitation Program and the existing building codes and regulations of governing authorities.
- D. Prior to and during construction, Borrower will determine and fulfill all government regulation requirements.
- E. It is understood that the Lender is not responsible for quantity or quality of workmanship and material incorporated in the construction; any inspections made solely for the Lender's benefit; the inspector's or consultant's representations shall not be binding on the Lender; Lender and Borrower shall not be considered joint ventures or partners with respect to the construction of the improvements.
- F. It is not the responsibility of the Lender and/or its consultants to determine the applicable building requirements and the Lender's review does not imply it.

- G. The funding for draws shall be for completed work only; no deposits or stored materials will be paid by the Lender.

Disbursements/Draws: All disbursements or draw requests are subject to the Lender's receipt of the appropriate documentation and are made at the Lender's discretion. Lender will require that an inspection of the property be made, by an inspector selected and/or approved by the Lender prior to each disbursement of funds.

Payments of all inspection fees will be the responsibility of the Borrower and will be collected at the closing of the loan or monthly as inspections occur. Borrower will be charged for any "partial" draws and for all re-inspections requested by Borrower.

- A. Borrower's Cash Equity must be committed at closing and will be disbursed as the initial funds.
- B. The Borrower's Equity Deposit and Loan proceeds will be disbursed, according to the Draw Schedule, upon Borrower's request, and upon Lender's approval.
- C. Disbursement Programs:
 - 1) Disbursements made when construction reaches specific "stages". Interest payments deferred until completion of the Construction improvements.
 - 2) Disbursements made on form acceptable to the Lender, with required certifications. A five percent (5%) holdback will be retained until completion of construction and funding of final loan proceeds. First Monthly Payment is due 30 days after date of project completion.

Lender shall be permitted to maintain financing signage on the project during the construction period.

Fees:

Borrower shall pay all loan closing costs which may include, but are not limited to, Lender's Closing Agent Fee, recording costs, filing fees, mortgage title, insurance premiums, endorsement premiums, surveys, engineering expenses, inspection fees, documentation preparation fees, appraisals, underwriting fees, review fees, tax service fees, insurance fees and costs, consultant's expenses, architectural fees, and all other taxes or costs imposed by governmental authorities on this transaction, the Property, or the documents. This covenant shall survive any cancellation or termination of this Commitment.

Defaults:

Default under this Commitment or any paragraph hereof shall also be a default under the Note and Security Instrument.

Borrower will be in default and this Commitment will not be funded if:

- a) This Commitment is made exclusively to the named Borrower and cannot be sold, transferred or assigned without the express written consent of the Lender. Any attempt

to sell, transfer or assign this Commitment without the prior written consent of the Lender shall constitute default by the Borrower.

- b) Borrower fails to pay any fee or cost.
- c) Any material adverse change in Borrower or Guarantor's financial circumstances or improvement of the security occurs.
- d) Borrower fails to execute or provide any required documents, reports, certificates, or an acceptable appraisal.
- e) Borrower fails to comply with any provision of this Commitment or the other Loan Documents.
- f) In the event construction of the improvements ceases for a period of 45 days, it shall be a default of the Borrower under this Commitment. It is the responsibility of the Borrower to determine the applicable building regulations, to comply with them, and insuring that the construction is not in violation thereof .

Hazardous/Toxic Wastes: To the best of Borrower's knowledge, the Property and the Intended improvements have not and will not be used for the handling, storage, transportation or disposal of hazardous or toxic materials. Borrower will indemnify the Lender and hold it harmless from any loss, damage, cost , fee, or attorney fee incurred by the Lender as a result of past, present or future placement on the Property or in the Intended Improvements of hazardous or toxic materials.

Prior to Closing, the Lender, at the Lender's sole option, may obtain at Borrower's expense, a report from a reputable environmental consultant of the Lender's choice as to whether the Property and the improvements have been or are presently being used for the handling, manufacturing, storage, transportation, or disposal of hazardous or toxic materials.

If the report indicates such past or present use, manufacture, handling, storage, transportation or disposal, Lender may require that all violations with respect to hazardous or toxic materials be corrected and/or that the Borrower obtain all necessary environmental permits before the Lender shall fund the loan hereunder.

All documents, instruments, reports, surveys, studies, permits, insurance policies, bonds, and other representations received by and required by Lender must be acceptable in form, content, and amount. All documentation required for the Firm Loan Commitment is subject to approval by the Lender prior to closing.

All matters relating to this loan, including all instruments and documents required, are subject to Lender's policies and procedures in effect, and applicable governmental regulations and statutes, and approval by Lender. All persons responsible for document preparation and/or execution and delivery and all Obligor's thereunder, are subject to Lender approval. This Firm Loan Commitment is subject to cancellation if the Borrower knowingly makes a false statement, a misrepresentation, or omits pertinent information in the application for assistance, or causes such a false statement, misrepresentation or omission to be made.

The terms and conditions of this Commitment not incorporated into the loan documents shall, to the extent applicable, survive the loans closing and remain binding on the parties hereto unless otherwise agreed in writing signed by all parties hereto. Accordingly, default under this

Commitment or any other covenant hereof shall constitute default under each of the loan documents including without limitation, the Note and Mortgage.

The Closing of this Loan is contingent upon the Lender receiving the above information. If the terms and conditions of this Commitment are satisfactory, please indicate your approval and acceptance by signing below and returning the original of this Commitment. This Commitment cannot be modified either in whole or part without the prior written agreement of all parties named herein and duly signed by said parties.

ACCEPTANCE

The foregoing terms and conditions are hereby accepted and agreed to this _____ day of _____, 20_____.

BORROWER
KBR Investments, LLC

LENDER
City of Gainesville

Ken Kraus
President

Russ Blackburn
City Manager