

RESOLUTION 2023-03-06

A RESOLUTION OF THE DOWNTOWN INVESTMENT AUTHORITY (“DIA”) RECOMMENDING CITY COUNCIL APPROVAL OF A DOWNTOWN PRESERVATION AND REVITALIZATION PROGRAM (“DPRP”) LOAN PACKAGE FOR REHABILITATION OF THE BUILDING LOCATED AT 333 E. BAY STREET (“PROPERTY”) PURSUANT TO A REDEVELOPMENT AGREEMENT WITH NIGHTLIFE INNOVATIONS, INC (F/K/A 327 E. BAY, LLC) OR ASSIGNS (“OWNER” OR “DEVELOPER”); FINDING THAT THE PLAN OF DEVELOPMENT IS CONSISTENT WITH THE DIA’S BUSINESS INVESTMENT AND DEVELOPMENT PLAN (“BID PLAN”) AND THE DOWNTOWN NORTHBANK COMMUNITY REDEVELOPMENT AREA PLAN (“CRA PLAN”); AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO NEGOTIATE THE CONTRACT AND ASSOCIATED DOCUMENTS AND FILING OF LEGISLATION WITH THE CITY COUNCIL REGARDING THE DPRP LOAN PACKAGE; TO EXECUTE THE CONTRACTS AND DOCUMENTS AND OTHERWISE TAKE ALL NECESSARY ACTION IN CONNECTION THEREWITH TO EFFECTUATE THE PURPOSES OF THIS RESOLUTION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Nightlife Innovations, Inc. (f/k/a 327 E. Bay, LLC) is the owner of the Property and the building located on the Property, which has been designated a local historic landmark by the Jacksonville City Council in Ordinance 2022-260-E and is a contributing building located within the National Historic District of Downtown and within the boundaries of the Downtown Northbank CRA; and

WHEREAS, the Developer proposes to rehabilitate the Property to provide a proposed minimum of 38,835 square feet of leasable space as a commercial use property within City Center of Downtown Jacksonville; and

WHEREAS, the increased private capital investment totaling not less than \$2,965,492 in real property improvements will increase the county ad valorem tax base over the useful life of the assets, will add to the commercial/retail tenancy options in Downtown Jacksonville; and

WHEREAS, the Strategic Implementation Committee of the Downtown Investment Authority (“DIA”) met on March 9, 2023, to consider the recommendation of DPRP Program Forgivable Loans in accordance with the program guidelines established by City Council in accordance with the terms contained in the term sheet attached hereto as Exhibit A and recommended that the DIA Board adopt Resolution 2023-03-06; and

NOW THEREFORE, BE IT RESOLVED, by the Downtown Investment Authority:

Section 1. The DIA finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. The DIA instructs the Chief Executive Officer of the Downtown Investment Authority to take all necessary actions necessary, including the filing of legislation before the City Council, to seek a commitment for DPRP funding up to \$1,655,000 pursuant to the Downtown Preservation and Revitalization Program guidelines in accordance with the terms set forth on the term sheet attached hereto as Exhibit A.

Section 3. The Chief Executive Officer is hereby authorized to execute the contracts and associated documents and otherwise take all necessary action in connection therewith to effectuate the purposes of this Resolution.

Section 4. The Effective Date of this Resolution is the date upon execution of this Resolution by the Chair of the DIA Board.

WITNESS:

DOWNTOWN INVESTMENT AUTHORITY

Carol Worsham, Chairman

Date

VOTE: In Favor: _____ Opposed: _____ Abstained: _____

Exhibit A:

**DOWNTOWN PRESERVATION AND REVITALIZATION PROGRAM
TERM SHEET**

**333 E Bay Street
333 E Bay Street, Jacksonville, FL 32202**

Project: The project comprises the redevelopment of the historic property located at 333 E. Bay Street in City Center of Downtown Jacksonville, utilizing funding through the Downtown Preservation and Revitalization Program (“DPRP”).

The historic two-story building at 333 E. Bay Street, RE# 073363-0000, comprises 40,178 gross square feet, originally constructed in 1908 (per the Landmark designation legislation, Ordinance 2022-260-E). Upon completion, the building will provide approximately 38,835 square feet of commercial space with proposed use as an entertainment, food and beverage venue on each floor under related ownership. The rehabilitation efforts will be centered primarily on the second floor, although repairs to exterior and the structure itself will help preserve and protect the property for many years to come.

Rehabilitation efforts proposed include, but are not limited to, the following:

- Demolition of the remaining interior spaces
- Repair structural damage throughout
- Repair the roof; increase waterproofing in other areas
- Make needed repairs to exteriors, brick, etc.
- Plumbing / Electrical / HVAC on the second floor
- Reframe interior walls, increasing load capacity
- Replace doors, frames, casings, and windows
- All new interior walls and ceilings
- Install elevator
- Bring staircases up to code
- Address all safety codes (fire sprinklers, etc.)
- Address ADA compliance

Developer/ Applicant / Borrower: Liberty Bay Properties, LLC or commonly owned entity (“Borrower”)

Total Development Costs (gross):	\$7,486,104
Total Development Costs (as underwritten):	\$7,412,104
Equity (proposed):	\$1,425,086

City Funding: No more than **\$1,655,000** (through the City of Jacksonville Downtown Investment Authority), as follows:

	Historic Preservation, Restoration, and Rehabilitation Forgivable Loan (HPRR)	Code Compliance Forgivable Loan (CCR)	DPRP Deferred Principal Loan	TOTAL
TOTAL	\$549,000	\$775,000	\$331,000	\$ 1,655,000

The proposed funding amount equals 53% of the Total Budget Amount, and 22% of Total Development Cost as defined in DPRP Guidelines and detailed below. At this level of funding and structure, the incentives proposed are subject to further approvals by the Jacksonville City Council with funding upon completion requiring further appropriation also by City Council.

To be eligible for funding, all work has been reviewed and approved by the Planning and Development Department for consistency with the United States Secretary of Interior Standards and applicable design guidelines during application processing and for verification upon completion and request for funding under terms defined further herein.

Budget. The construction budget reviewed and approved by the DIA in the total amount of \$3,094,535 (the “Total Budget Amount”), which includes Construction Costs to be incurred in each of the funding categories (each, a “Funding Category”) and in the minimum amounts (each a “Funding Category Minimum”) set forth in the table below:

Funding Category	Funding Category Minimum
Interior Rehabilitation	\$1,682,327
Interior Restoration	\$ 0
Exterior	\$ 108,132
Code Compliance	\$1,062,902
General Requirements/Other	\$ 112,131
N/A ¹	\$ 129,043
Total Budget Amount:	\$3,094,535

1 The category “N/A” is not required to be met as a Funding Category Minimum for reimbursement of other categories under the DPRP. For further clarity, there will be no reimbursement for expenditures categorized as “N/A” in the construction budget.

Minimum Expenditures: In order to be eligible for the maximum amount of the DPRP Loan, the Borrower must provide evidence and documentation prior to the applicable DPRP Loan closing sufficient to demonstrate to the DIA, in its sole but reasonable discretion, the following:

- (i) a total equity capital contribution of at least ONE MILLION FOUR HUNDRED TWENTY-FIVE THOUSAND EIGHTY-SIX DOLLARS AND NO/100 (\$1,425,086) (the “Required Equity”);
- (ii) Total Development Costs incurred of at least SEVEN MILLION FOUR HUNDRED TWELVE THOUSAND ONE HUNDRED FOUR DOLLARS AND NO/100 (\$7,412,104), which shall include the value of the property shown by appraisal to be \$3,700,000 and hard and soft construction costs in the redevelopment of the property but shall exclude holding costs, tangible

personal property (IT, FF&E), marketing, third party costs for risk management, and loan fees (the “Minimum Total Development Costs”);

- (iii) Minimum Eligible Construction Costs incurred of TWO MILLION NINE HUNDRED SIXTY-FIVE THOUSAND FOUR HUNDRED NINETY-TWO DOLLARS AND 00/100 (\$2,965,492), calculated as the Total Budget Amount less costs classified as “N/A” (the “Minimum Eligible Construction Costs”), and
- (iv) Construction Costs incurred of at least the Funding Category Minimum with respect to each respective Funding Category.

Notwithstanding the foregoing,

- 1) the required Minimum Total Development Costs of \$7,412,104 (which shall not include costs allocated for funding under the FAB-REP program) may be reduced by a maximum of ten percent (10%) overall, as determined by the DIA in its sole and absolute discretion, without affecting the Borrower’s eligibility for funding under the DPRP.
- 2) the required Minimum Eligible Construction Costs of \$2,965,492 may be reduced by a maximum of ten percent (10%) overall, as determined by the DIA in its sole and absolute discretion, without affecting the Borrower’s eligibility for funding under the DPRP.
- 3) any Funding Category Minimum may be reduced by a maximum of ten percent (10%) on a stand-alone basis, as determined by the DIA in its sole and absolute discretion; provided that, in such event, there shall be a pro rata reduction in any or each of the related DPRP Loans, as required. Eligibility for funding under any Funding Category shall be eliminated if the corresponding Funding Category Minimum is reduced by more than ten percent (10%).

The DIA shall have the authority, without further action by City Council, to approve reduced DPRP Loan amounts provided the Total Development Costs incurred are not less than \$6,670,894, including Minimum Eligible Construction Costs incurred of not less than \$2,668,943.

Infrastructure: No City of Jacksonville infrastructure improvements are contemplated.

Land: No City of Jacksonville land is committed to the project.

Loans: Commercial tenants, including those related to the Owner, leasing space within this property have applied for funding up to \$200,000 under the FAB-REP program to be submitted for approval independently.

No costs may be submitted for duplicative funding under more than one DIA incentive program. However, costs incurred by the DPRP Applicant may count towards their required contribution under the Retail Enhancement Program to the extent such costs are directly attributable to space that would be occupied by the FAB-REP Grant Applicant.

Performance Schedule:

- A) Redevelopment Agreement to be approved for filing with City Council within 30 days following presentation and negotiation.
- B) Redevelopment Agreement to be executed within thirty (30) days of the Bill Effective Date which shall establish the Redevelopment Agreement Effective Date.
- C) Commencement of Construction: Within six (6) months following the Redevelopment Agreement Effective Date, Applicant commits to commencement of construction, meaning receipt of all

required approvals, permitting, and closing on all required financing to allow the start of construction activities and has actually broken ground to begin work.

- D) Substantial Completion: Within eighteen (18) months following Commencement of Construction as defined above.
- E) The DIA CEO will have the authority to extend this Performance Schedule, in the CEO's discretion, for up to six (6) months for good cause shown by the Borrower / Applicant. Any extensions to the Commencement Date shall have the same effect of extending the Completion Date simultaneously.

Additional Commitments:

- A) Recommendation as to the eligibility of the approved scope of work on the Properties by the Planning and Development Department shall be required prior to DIA Board approval of any program funding. Such recommendation by the Planning and Development Department may be conditional on further review and approvals by the State Historic Preservation Office ("SHPO") and/or the National Park Service ("NPS") as may be required.
- B) Upon completion and request for funding, all work on the Properties must be inspected by the Planning and Development Department or designee for compliance with the approved application prior to funding under any DPRP loan component.
- C) Funding under the DPRP will be secured by a stand-alone, subordinate lien position on the Property behind any senior secured, third-party lender providing construction, mini-perm, or permanent financing, as long as such subordination does not alter the DIA approved maturity date of any DPRP Loan.
- D) Each DPRP loan will be cross defaulted with one another.
- E) Payment defaults, or other defaults that trigger legal actions against the Applicant that endanger the lien position of the City, shall also be a default on the subject facilities.
- F) As the Borrower will be utilizing a combination of HPRR Forgivable Loans, Retail Enhancement Grant and CCR Forgivable Loans, the maturity of each of these Forgivable Loans will be five (5) years. Principal outstanding under each note will be forgiven at the rate of 20% annually on the anniversary date of each such funding, so long as each Forgivable Loan is not in default per loan documents.
- G) Standard clawback provisions will apply such that:
 - a) In the event the Borrower sells, including without limitation a capital lease transaction, or otherwise transfers the Historic Building during the first five (5) years after the disbursement of the Forgivable Loans, the following amounts of any Forgivable Loan shall be due and payable at closing of the Sale:
 - i. 100% if the Sale occurs within 12 months after disbursement of the Forgivable Loan;
 - ii. 80% if the Sale occurs after 12 months but within 24 months of disbursement of the Forgivable Loan;
 - iii. 60% if the Sale occurs after 24 months but within 36 months of disbursement of the Forgivable Loan;
 - iv. 40% if the Sale occurs after 36 months but within 48 months of disbursement of the Forgivable Loan; or
 - v. 20% if the Sale occurs after 48 months but within 60 months of disbursement of the Forgivable Loan.
 - b) Changes in the proposed intended use of the property must continue to contribute towards the relevant Redevelopment Goals and Performance Measures of the DIA and shall be presented to the DIA for further approval not less than 90 days in advance of such changes,

and such approval shall not be unreasonably withheld. In the event Borrower or any lessee or assignee of the Borrower uses the Project or the Historic Property or Properties for any use not contemplated by this Agreement at any time within five years following the disbursement of the Forgivable Loan or Loan without such approval, the full amount of the amounts awarded, together with all accrued but unpaid interest thereon, may be declared by the DIA to become due and payable by the Borrower.

- H) Funding in the amount of the DPRP Deferred Principal Loan component (if any) will have a stated maturity date of ten years from the Funding Date. The loan balance is due in full upon maturity, sale, or refinancing of the property prior to maturity, subject to terms of the disposition and value of the property at the time of such event.
- I) The DPRP Deferred Principal Loan component (if any) requires fixed annual interest payments equal to the total principal outstanding multiplied by the prevailing Ten-Year Treasury Note Rate at the time established for closing.
- J) Partial Principal reductions on the DPRP Deferred Principal Loan (if any) may be made after the fifth anniversary with no prepayment penalty; however, a minimum of 50% of the initial loan balance must remain outstanding through the loan maturity date unless the Property or Properties are sold or refinanced during that period, subject to DIA approval.
- K) DIA reserves the right to approve any sale, disposition of collateral property, or refinance of senior debt prior to the forgiveness or repayment of any DPRP Loan.
- L) All Property, business, and income taxes must be current at the time of application and maintained in current status throughout the approval process, the term of the Redevelopment Agreement, and through the DPRP loan period.
- M) Minimum insurance requirements as established by the City of Jacksonville Risk Management Department must be met prior to closing and maintained throughout the term of the development agreement.
- N) Payment defaults, bankruptcy filings, or other material defaults during the DPRP loan period will trigger the right for the City of Jacksonville to accelerate all amounts funded and outstanding under any or all programs at such time, plus a 20% penalty of any amounts amortized or prepaid prior to that date.

There will be additional terms, conditions, rights, responsibilities, warranties, and obligations for both parties which shall be determined in a later negotiated mutually agreeable written contract (or multiple written contracts as is deemed necessary).