

City Council Meeting of:

4-23-2012



City Manager Department
201 Westward Drive
Miami Springs FL 33166
305-805-5010

TO: Honorable Mayor Garcia and Members of the City Council

FROM: Ron Gorland, City Manager

A handwritten signature in cursive script, appearing to read "Ron", is written over the name "Ron Gorland" in the "FROM:" line.

DATE: April 20, 2012

RECOMMENDATION: For Council to Approve the Main Street America Group Term Sheet as a Replacement for the Previously Approved FTL Term Sheet Regarding the \$738,320 Curtiss Mansion National Historic Tax Credit Investment Transaction

DISCUSSION:

FTL, the original Council approved investor, when approached regarding possible improvements to their term sheet, decided to no longer participate in the proposed transaction. A replacement investor, NGM Insurance Co., stepped in to replace FTL, in the transaction as originally agreed to by FTL (term sheet attached).

In addition to, but not part of the term sheet, is the possibility that one or more of the following may be needed to close the transaction:

- A commitment that the net proceeds from this transaction will be used toward completion of the Curtiss Mansion parking lot, and may require that the funds be placed in a separate bank account
- A commitment that the City will do whatever is necessary to obtain a Temporary Certificate of Occupancy within a specified period (ex. 2 years); and a Certificate of Occupancy within a specified period (ex. 4 years)
- A commitment that the City will cover any shortfalls required to obtain a Certificate of Occupancy

Both Jan Seiden, City Attorney, and Robert Chaves, City tax attorney, have reviewed the attached term sheet.



THE MAIN STREET AMERICA GROUP

NGM Insurance Company • Old Dominion Insurance Company
Main Street America Assurance Company • MSA Insurance Company
Great Lakes Casualty Insurance Company
Grain Dealers Mutual Insurance Company



April 20, 2012

From: Richard Schultz, CPA
Vice President and Chief Accounting Officer
NGM Insurance Company

RE: Federal Historic Tax Credit Term Sheet for the Curtiss Mansion

Dear: Mr. Gorland:

Based on financial and other information provided by you on the proposed rehabilitation of the Curtiss Mansion (the "Project") in Miami Springs, FL; NGM Insurance Company ("Investor") is delighted to consider making a Federal Historic Rehabilitation Tax Credit ("FHTC") equity investment to facilitate the Project's completion. The proposed terms of such investment with Curtiss Mansion Landlord, LLC ("Developer") are outlined below.

Except for the obligations set forth in the section titled Transaction Costs, the following term sheet does not constitute or create, and shall not be deemed to constitute or create, any legally binding or enforceable obligation on the part of any party and is for discussion purposes only and should not be construed as a commitment to invest in the Project. Should such terms be acceptable to you, approval through Investor's internal review process and definitive documentation will be pursued as quickly as possible.

PROPERTY INFORMATION AND ASSUMPTIONS:

The rehabilitation of the Project consists of the renovation of the building at 500 Deer Run, Miami Springs, and Florida into a community and event center.

This proposal assumes the following about the Project:

1. That the Developer receives approval of Parts I and II applications for the Historic Preservation certification from the National Park Service (NPS) before closing;
2. That part III approval from NPS is made before any substantial capital contribution is made for the FHTC
3. Total Development Costs of approximately \$4,470,000
4. Estimated Qualified Rehabilitation Expenditures (QRE) of Approximately \$4,195,000 and that a Cost Certification Audit (Audit) determining qualified costs will be provided by a third-party accounting firm before any substantial amount of capital contribution is made for FHTC;
5. No portion of the Project has been placed-in-service;
6. Closing of this transaction will occur prior to the project being placed-in-service;

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7. All of the FHTCs may be claimed when the project is placed-in-service prior to the last quarter of 2012;
8. Satisfactory review of all construction, environmental and insurance matters and underwriting of the Project and guarantors; and
9. A Temporary Certificate of Occupancy (TCO) is provided before any substantial capital contribution is made for FHTC.

TAX CREDIT TERMS

FEDERAL HISTORIC TAX CREDIT EQUITY CAPITAL CONTRIBUTION:

The Investor envisions providing equity capital for the FHTCs and receiving 99.9% of all FHTCs generated by the QREs. Should Investor receive less than 99.9% of the FHTCs, the net investment will be adjusted accordingly. A master lease will be put in place in order for the Investor to recognize the credits and the Investor will pay in the FHTC equity via the master tenant in the master lease.

In the event that more or fewer FHTCs are awarded, the FHTC equity would be adjusted based on the price per credit as detailed below:

| <u>Credit Type</u> | <u>QRE Amount</u> | <u>Credit Amt.</u> | <u>Price Per Credit</u> | <u>Equity</u> |
|--------------------|-------------------|--------------------|-------------------------|---------------|
| Federal Historic | \$4,195,000 | \$839,000 | \$0.88 | \$738,320 |

**Estimate. Final cost certification to certify final amount of credits.*

*** Investor will make additional FHTC equity capital available (to an amount up to 10% more than the amount projected if additional FHTCs are available), and Investor has the option for all available FHTCs from the Project.*

| Timing of Pay in | Equity from Investor | | % of Total |
|--|-----------------------------|-------------|-------------------|
| 1. At Closing | \$10,000 | around 5/21 | 1.35% |
| 2. Delivery of 2012 Federal FHTCS; Lien-Free Construction Completion and down dated endorsements to the title insurance policies; All Temporary Certificates of Occupancy; Cost Certification Audit; Receipt of Part III from NPS; Receipt of prior year's tax returns and K- 1, if applicable, and filed Pass-Through Election; and Delivery of (a) estoppel certificates from lenders (if any) and landlord and (b) bring down certificate. | \$728,320 | around 8/12 | 93.65% |
| 1. 60 months following completion date | \$36,916 | around 6/17 | 5% |

In addition to the receipt of tax credits, Investor will require a 2% annual preferred return on the amount of FHTC equity invested in the Project for 5 years beginning the first year for which a K-1 must be provided. Also, the Investor will have the option to Put its interest in the Master Tenant back to the Developer or one of its affiliates in exchange for an amount equal to 5% of its contributed FHTC equity. This option may be exercised beginning after the FHTC compliance period. The Investor may at its discretion require the funds needed to pay the priority return be placed in a reserve account after the Investor makes its second capital contribution as detailed above.

DEVELOPER FEES:

Developer Fees may not exceed 20% of the Qualified Rehabilitation Expenditures (excluding Developer Fees) or such lesser amount as Investor is advised by tax counsel.

DEAL STRUCTURE:

For the purpose of allocating the FHTCs from the project level to the Investor, a "sandwich lease structure" (also known as a pass-through structure) will be used with the Investor as a 99.9% Member in the Master Tenant to be formed. The Landlord/Owner will elect to pass-through the earned FHTCs to a "Tenant" legal entity that enters into a lease of the property from the "Landlord" entity all of which shall be subject to tax counsel approval. The Master Tenant is expected to have an ownership interest in the Landlord of 10%.

ECONOMIC BENEFITS:

Depreciation, Profits and Losses: Profits and losses (including depreciation) at the Owner/Landlord level shall be allocated to the Managing Member and the Master Tenant pursuant to their ownership interests in the Owner/Landlord.

Cash Flow: The Investor will, for its investment in the Master Tenant, receive a percentage of net cash flow – prior to master lease payments to Owner/Landlord – equal to 2% of its outstanding capital investment amount on an annual basis (the 2% priority return).

CASH FLOW PRIORITY (MASTER/TENANT):**Cash flow at the Master/Tenant level will be distributed in the following order:**

1. Operating expenses and management fees.
2. 2% priority return to the Investor on the current paid-in amount of FHTC equity.
3. Tax equivalence payment to the Investor, if applicable.
4. Lease payment (from Master Tenant entity to the Owner/Landlord entity).
5. Entity reserve requirements, if applicable.
6. Balance distributed according to ownership interests.

CASH FLOW PRIORITY (OWNER/LANDLORD):**Cash flow at the Owner/Landlord level will be distributed in the following order:**

1. Approved operating expenses, debt service, lease payments, management fees and required reserves.
2. Deferred Developer Fees.

3. 90% to Managing Member of Landlord and 10% to Master Tenant (subject to tax counsel approval).

PLACED IN SERVICE DATE:

The Project is expected to be placed in service, as defined by the FHTC tax regulations, before June 15, 2012. Should the project not be completed and placed in service by September 15, 2012, the Project shall be in default. The Guarantors shall make a payment to Investor for the amount of FHTC equity contributed to date, plus an annual interest rate of 10% and any and all legal or accounting costs incurred by Investor.

ADJUSTER:

If placed in service is delayed beyond July 15, 2012, the price per FHTC shall be reduced by 3% per quarter until September 15, 2012 (after which Investor shall have no further obligation to make additional equity capital available to the Project).

CNDA:

It is assumed that lessor to the Project will agree to sign a Consent, Non-Disturbance and Attornment ("CNDA") agreement that will allow the Master Lease(s) to remain in place in the event of a default by the Landlord and even if the Master Tenant is in monetary default.

AUDIT & TAX PREPARATION COSTS:

The Owner/Landlord and Master Tenant, at their own cost, shall also deliver a tax return including form K-1 and an annual audited financial statement each year within 90 days and drafts within 75 days after the end of the calendar year.

Investors 'PUT OPTION':

The Investor shall have the option to exercise a Put for six months after the FHTC compliance period (the "Put Period") which will require the remaining Member(s) in the Master Tenant to acquire such interest. This Put option price is expected to be the greater of: (a) the taxes involved in the sale of Investor's membership interest, or (b) 5% of Investor's FHTC equity.

SPONSOR'S 'CALL OPTION':

After the expiration of the Put Period, the Managing Member of the Master Tenant shall have the option to purchase Investor's interest in the Master Tenant for an amount equal to the amounts owed to Investor plus the Fair Market Value of the interest for a period of six months.

GUARANTEES AND PROJECT RESERVES:

Any other required guarantors ("Guarantor") (as required and approved by Investor) shall provide the following joint and several guarantees:

Operating deficits and completion guaranty -- Guarantor will fund 100% of any operating deficits incurred during the Historic Tax Credit compliance period, 100% of any amounts necessary to complete the rehabilitation of the property, and 100% of payments under the sublease from the Master Tenant.

Recapture and "Make Whole" -- In the event of a recapture or disallowance of the FHTCs received by Investor, the Guarantor shall reimburse Investor on an after-tax basis for 1) any recaptured or disallowed FHTCs plus any related interest, penalties or additional taxes due, and 2) the net benefit of any other economic or tax benefit that would have been received by Investor if such event of recapture had not occurred.

Priority Return and Put Guarantee -- Guarantor shall guarantee the payment of the put option payment and priority return payments. Guarantor shall provide a guarantee against Investor incurring any net tax liability for 50(d) income upon exit or post-exit.

Environmental -- Guarantor shall indemnify and hold harmless Investor, and all Investor entities participating in this transaction, for environmental conditions, claims, etc. relating to the property.

General Obligation -- Guarantor shall guaranty all obligations of the Managing Member of the property ownership entity and the Master Tenant entity, including but not limited to payment of the priority return and repayment of equity resulting from the availability of fewer than the projected amount of FHTCs (a "Downward Adjuster"). In the event of a Downward Adjuster, this obligation shall be due within 30 days after receipt of the Cost Certification.

If necessary, alternative forms of security and guaranty-equivalency will be considered in whole or part along with traditional guarantees to provide the Investor with the requisite security needed to undertake the contemplated investment.

FUNDING SOURCES:

These terms are subject to the commitment and availability of the funding sources necessary to account for all costs associated with the completion of the project. The project will not have any foreclosable debt.

FEDERAL REHABILITATION TAX CREDITS:

The Investor will review all FHTC related documents and structuring matters, including necessary approvals of development plan prior to closing.

UNDERWRITING AND OPERATIONS/CONSTRUCTION BUDGET ADJUSTMENTS:

Final budget (sources and uses) and pro-forma operating numbers are subject to the Investor's review and approval. These terms are subject to final underwriting and required internal approvals. The terms of investment identified in this term sheet are subject to modification or rescission in whole or in part by the Investor at any time during the course of its review and underwriting of the Project or if it fails to obtain necessary internal approvals.

TRANSACTION COSTS:

General Partner and Guarantors agree to pay all expenses associated with the Investors proposed investment and the investment closing *whether the investment closes or not* including all accountant's fees, Investor's legal fees or other third-party expenses incurred.

CONDITIONS:

Investor shall perform such due diligence and legal review of the transactions contemplated herein as it deems necessary, including but not limited to the following:

1. All real estate documentation (plans, specs, contracts, etc.);
2. All organizational documents for all entities involved in these transactions;
3. Financial statements on all entities involved in these transactions;
4. Final financial projections
5. All terms and conditions of all agreements, documents and similar items affecting the financing of the Project; and
6. All matters deemed necessary by Investor, as applicable.

TIMING OF CLOSING:

This Term Sheet must be executed by end of day April 27, 2012, or it shall be null and void. Should the transaction not close by May 21, 2012, Investor shall have no obligation to consummate this transaction. All transaction costs incurred by such date shall be immediately due and payable by the [Developer and its affiliates]. Investor has the sole right to extend this commitment.

CONFIDENTIALITY:

The terms and conditions of this Term Sheet shall be confidential and shall not be disclosed to any third party without the consent of the Investor and the undersigned ('Parties'), except that the Parties may disclose the terms and conditions described in this Term Sheet, including its existence, to their respective officers, directors, employees, attorneys and other advisers, provided that such persons agree to the confidentiality restrictions contained herein.

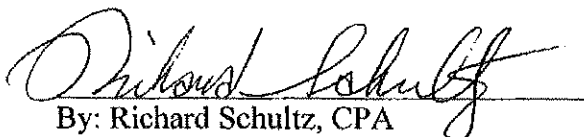
Thank you for giving us an opportunity to present these terms for a tax credit financing for the redevelopment of the Curtiss Mansion in Miami Springs, FL. While these terms are subject to required internal approvals and underwriting, we will seek such approval quickly in order to meet your timeline.

Accepted this _____ day of _____ 2012

By:

City of Miami Springs, FL

Accepted this 20th day of April 2012



By: Richard Schultz, CPA
Vice President, Chief Accounting Officer
NGM Insurance Company