

COMMISSION MEMORANDUM

TO: Mayor Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: July 31, 2019

SUBJECT: **1. A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, TO CONSIDER APPROVAL, FOLLOWING SECOND READING/PUBLIC HEARING, OF A DEVELOPMENT AGREEMENT AS AUTHORIZED UNDER SECTION 118-4 OF THE CITY CODE, AND SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, BETWEEN THE CITY AND 7400 OCEAN TERRACE, LLC, 7410 OCEAN TERRACE, LLC, 7420 OCEAN TERRACE INVESTMENT, LLC, 7436 OCEAN TERRACE, LLC, 7450 OCEAN TERRACE, LLC, 7441 COLLINS AVENUE INVESTMENT, LLC, 7439 COLLINS AVENUE INVESTMENT, LLC, 7433 COLLINS AVENUE INVESTMENT, LLC, 7421 COLLINS AVENUE INVESTMENT, LLC AND 7409 COLLINS AVENUE INVESTMENT, LLC (COLLECTIVELY, THE “DEVELOPER”), WHICH DEVELOPMENT AGREEMENT: (1) DELINEATES CONDITIONS FOR THE DEVELOPMENT OF THE PROPERTIES LOCATED AT 7409, 7421, 7433, 7435, 7437, 7439, 7441, AND 7449 COLLINS AVENUE, AND 7400, 7410, 7420, 7430, 7436, AND 7450 OCEAN TERRACE (COLLECTIVELY, THE “DEVELOPMENT SITE”), WITH SUCH DEVELOPMENT SITE TO BE DEVELOPED IN ACCORDANCE WITH THE REQUIREMENTS OF THE CITY’S OCEAN TERRACE OVERLAY DISTRICT, AS SET FORTH IN SECTIONS 142-870 AND 142-870.1 OF THE CITY CODE; (2) MEMORIALIZES THE CONDITIONS FOR VACATING THE CITY’S RIGHT-OF-WAY AT OCEAN TERRACE, BETWEEN 74TH STREET AND 75TH STREET, AS WELL AS PORTIONS OF 74TH STREET AND 75TH STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE (COLLECTIVELY, THE “CITY RIGHT-OF-WAY AREAS”); (3) GRANTS TO THE CITY A PERPETUAL EASEMENT OVER, ACROSS AND UNDER THE VACATED CITY RIGHT-OF-WAY AREAS FOR UTILITIES AND PUBLIC VEHICULAR, PEDESTRIAN AND RECREATIONAL USE AND ACCESS; (4) PROVIDES FOR THE DEVELOPER’S DESIGN AND CONSTRUCTION OF CERTAIN PUBLIC PARK AND STREETScape IMPROVEMENTS IN THE VICINITY OF OCEAN TERRACE, BETWEEN 73RD STREET AND 75TH STREET, AT DEVELOPER’S COST AND EXPENSE (WITH THE EXCEPTION OF CERTAIN CITY FEES); AND (5) WITH THE FOREGOING SUBJECT TO AND CONTINGENT UPON DEVELOPER’S SATISFACTION OF THE CONDITIONS SET FORTH IN THE DEVELOPMENT AGREEMENT AND THE CITY COMMISSION’S VACATION OF THE CITY RIGHT-OF-WAY AREAS AND ENACTMENT OF CERTAIN AMENDMENTS TO THE CITY’S FUTURE LAND USE MAP AND ZONING MAP, AT ITS SOLE DISCRETION.**

Supplemental Item

ANALYSIS

In the Commission Memorandum that accompanies this Agenda item, I indicated that the City and the Developer were continuing their discussions as to a proposed solution with respect to transfers or assignments effecting a sale of the private portion of the Proposed Development, prior to its completion. On this issue, City's core interest in connection with this transaction is to ensure that any successor owner of the private project delivers on the vision for the project that has been embraced by the community, a vision that includes activation of Ocean Terrace with a mixed use project that includes a substantial hotel element.

As indicated in my memorandum, the Developer has already agreed that it will not transfer or assign its responsibility for delivery of the Park/Streetscape Improvements – the core public benefit associated with this Development Agreement, prior to completion thereof. Separately, the Development Agreement also obligates Developer to deliver, at Closing, a surety bond to provide additional security to the City, to guarantee that the City could step in to complete the Park/Streetscape Improvements, should the Developer fail to do so.

In addition to Developer retaining responsibility for completion of the Park/Streetscape Project, to address City's concern that any subsequent owner deliver on the vision of the project, as currently contemplated, the Developer has agreed to **an additional Project restriction, to ensure that the Project must include at least 75 hotel units, and may only include one tower in excess of 125 feet** (namely, one main use residential building, which must not exceed 235 feet in height, pursuant to the Ocean Terrace Overlay District requirements set forth in Section 142.870.1(c) of the City Code).

The foregoing Project restriction, to ensure a mixed-use project with a minimum number of hotel units, and height restrictions, as provided in the City Code for the Ocean Terrace Overlay District, would be binding on any successor owner, and would help ensure that the City's economic development objectives of the transaction are met.

Finally, Developer has agreed to an additional restriction, to clarify that the City shall not issue a final certificate of occupancy (C.O.) for the private Proposed Development, until Developer has delivered a final C.O. for the entire Park/Streetscape Project (this language provides greater protection for the City, as Section 25 of the Development Agreement currently provides that City would not issue a final C.O. for the Proposed Development until substantial completion of Phase 2 of the Park).

The proposed amendments to the pertinent sections of the Development Agreement are attached hereto as **Exhibit "1."**

Based on the foregoing, I am more comfortable with the proposed approach on transfers/assignments, as the Development Agreement includes (1) restrictions on transfer or assignment of the delivery of the Park/Streetscape Improvements, the core public benefit being provided to the City; (2) a surety bond to be delivered as a condition of Closing, to secure the completion of the Park/Streetscape Improvements; (3) additional language to ensure that the City will not issue a final C.O. for the entire Proposed

Development until a final C.O. for the Park/Streetscape Improvements is in place; (4) additional Project restrictions to bind any subsequent owner of the private portion of the Proposed Development to the vision for the project to a minimum number of hotel units; and (5) other provisions to protect the City and the public, such as the irrevocable, perpetual easement in favor of the City, which easement is a covenant running with the land and is binding on successor owners of the project, to ensure the City's and the public's continued use of the vacated right of ways for utilities, recreational, pedestrian, and vehicular use are not disturbed.

Conclusion

For these reasons, the Administration recommends approval of the Development Agreement, on second reading, as amended herein.

JLM/EC

Exhibit “1”

Proposed Changes to Development Agreement

Agenda Item R7A1, July 31, 2019 City Commission Meeting

Replace Section 3.43 of the Development Agreement (page 773 of Agenda), with the following Section 3.43

3.43. “Project” shall mean the development, design and construction of the Development Site (including, after the Closing, the Developer’s right, title, and interest in and to the City Parcel) consistent with the City’s Land Development Regulations for the Ocean Terrace Overlay District and the underlying CD-2 and MXE zoning districts, as the same may be amended from time to time, but subject to Section 28 of this Agreement, and provided that the Project must include at least 75 hotel units and may only include one tower in excess of 125 feet.

Replace Section 25 of the Development Agreement (page 793 of Agenda), with the following Section 25:

25. Conditions Precedent to Issuance of Certificate of Occupancy. The Developer acknowledges that conveyance of the Park/Streetscape Improvements Parcel and completion and conveyance of the Park/Streetscape Improvements is additional and essential consideration for the City’s vacation of the City Parcel. Accordingly, (i) the City shall not issue a temporary certificate of occupancy and/or a temporary certificate of completion for the Project (in whole or in part), until the Developer has Substantially Completed construction of Phase 1 of the Park/Streetscape Improvements, or the City receives any funds under the Surety Bond (or the Recognition Agreement, as applicable) or under the Payment Bond and/or Performance Bond, whether or not construction of Phase 1 of the Park/Streetscape Improvements has been completed by the City; and (ii) the City shall not issue a final certificate of occupancy and/or a final certificate of completion for the Project (in whole or in part) ~~until the Developer has Substantially Completed construction of Phase 2 of the City has issued a final certificate of occupancy and/or a final certificate of completion for both Phases of the Park/Streetscape Improvements, or the City receives any funds under the Surety Bond (or the Recognition Agreement, as applicable) or under the Payment Bond and/or Performance Bond, whether or not construction of Phase 2 of the~~ until the City has issued a final certificate of occupancy and/or a final certificate of completion for both Phases of the Park/Streetscape Improvements, or the City receives any funds under the Surety Bond (or the Recognition Agreement, as applicable) or under the Payment Bond and/or Performance Bond, whether or not construction of Phase 2 of the Park/Streetscape Improvements has been completed by the City.