

EXHIBIT A
DISCUSSION DRAFT 3/31/2020

Miami Beach Marina

**Proposed Lease Amendment, Air Rights Transfer, and Development
Agreement with City of Miami Beach**

I. Background.

- a. The property at issue is as follows: (1) the property known as the “Miami Beach Marina site” consisting of (y) an uplands area located at 300 - 344 Alton Road, Miami Beach, Florida, folios # 02-4203-000-0010, 02-4203-009-9210 and 02-4203-009-9250 (“Area 1”) and (z) a submerged land area immediately adjacent to Area 1 and leased by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida to the City of Miami Beach and the Miami Beach Redevelopment Agency (“Area 2;” collectively with Area 1, the “Existing Leased Premises”); (2) Lots 30 and 31 directly north of Area 1 (“Lots 30/31”); and (3) the Alton Road right of way adjacent to Area 1 and Lots 30/31 (the “ROW;” collectively with the Existing Leased Premises and Lots 30/31, the “Property”).
- b. Area 1 and Lots 30/31 are designated for “Public Facility” use under the City’s Comprehensive Plan.
- c. Area 1 and Lots 30/31 are zoned “GU” Civic and Government use.
- d. The parcels assigned Folios # 02-4203-000-0010 and 02-4203-009-9210 are owned by the Miami Beach Redevelopment Agency. The parcel assigned Folio # 02-4203-009-9250 is owned by the City of Miami Beach.
- e. Miami Beach Marina Associates, Ltd. (MBM) is the long-term lessee of the Existing Leased Premises under a lease document originally executed June 24, 1983, and subsequently amended through April 15, 1998 (the “Marina Lease”). MBM contemplates assigning the lease (as amended) to an entity (together with its successors in interest, the “Marina Lessee”) affiliated with MBM and Alton Road Mixed Use Investment, LLC (“ARMUI”), as such Marina Lease may thereafter be partially assigned and/or bifurcated to affiliated entities, to redevelop portions of Area 1, Lots 30/31 and the ROW.
- f. Marina Lessee has requested an extension of the current term of the Marina Lease, the initial term of which expires on January 1, 2022, to extend from

January 1st of the year after issuance of the first C.O. for the “Replacement Facilities,” as defined below and continue for a period of 99 years thereafter. (See Section II below).

- g. ARMUI has requested that the City of Miami Beach (City) convey to ARMUI or an affiliate (hereinafter, the “Air Rights Purchaser”) the air rights over Area 1 (the “Air Rights Parcel”), subject to the matters set forth in this term sheet.
- h. Marina Lessee and Air Rights Purchaser intend to develop and construct a mixed-use development on the Property, to include the following elements:
 - 1. Approximately 60 residential units, constructed within approximately 275,000 gross square feet of residential building development.
 - 2. Approximately 45,000 square feet of commercial/retail and office use uses, with all required parking spaces for the commercial/retail areas, and
 - 3. Approximately 2 acres of publicly accessible open green space, including a 1 acre at grade park (the “Green Space”) as described in section IV.c. below.

(hereinafter, the “Project”). The Project shall be further described through a series of actions and documents described below, including an amendment of the existing Marina Lease relating to the Property (Section II); the agreement for purchase and sale of the Air Rights Parcel to be negotiated between the City and Air Rights Purchaser (Section III); applicable land use approvals (Section IV); and a Chapter 163, Florida Statutes development agreement, to be negotiated between the City and Marina Lessee (Section V).

II. Lease Amendment.

Marina Lessee has requested that the City of Miami Beach (City) agree to a further amendment of the Marina Lease, as set forth herein.

a. *Lease Term.*

The Initial Term for Area 1 and the right to use Area 2 shall be modified to begin on January 1st of the year after issuance of the first C.O. for the “Replacement Facilities,” as defined below and shall continue for a period of 99 years thereafter.

b. *Rental Payment.* Upon completion of the Replacement Facilities, rent shall be the greater of:

- 1. Base Rent of \$1,000,000, or

2. Annual Percentage Rent of:

A. \$0.04 cents per gallon of gasoline or diesel;

B. 10% of all other Gross Receipts during each Lease Year throughout the Term of the Marina Lease and any extensions thereof that exceed the then applicable thresholds for applicability of percentage rent. With respect to areas that are subleased, the rent paid by subtenants to the Marina Lessee (and not gross revenues of the subtenants) shall be the "Gross Revenues."

c. Capital Improvements

As additional consideration for the Lease Extension Marina Lessee proposes to commit to a Capital improvement program of \$35 Million over 30 years (current lease term) to improve the resiliency of Area 2, modernize the appearance and infrastructure of Area 2, improve way finding and signage and otherwise retain market attractiveness to maximize the percentage rent return to the City with respect to the activities on Area 2.

d. Leased Premises.

The Existing Leased Premises shall be contracted to exclude the Air Rights Parcel and shall be expanded to the north to include Lots 30/ 31 and the ROW.

e. Redevelopment.

1. As part of the redevelopment of Area 1, as contracted to exclude the Air Rights Parcel and expanded to include Lots 30/31 and the ROW (Area 1, as so contracted and expanded, "Revised Area 1"), the Marina Lessee shall be authorized to demolish the existing improvements on Revised Area 1, subject to the Marina Lessee agreeing to pay to the City not less than the same amount of percentage rent generated from the existing improvements on Area 1 during the last lease year prior to the demolition of the existing improvements on Area 1 throughout the construction period for the redevelopment of Revised Area 1 until the Certificate of Occupancy for the Replacement Facilities as described below is issued.

2. Redevelopment of Revised Area 1 shall be approximately 45,000 SF of replacement revenue producing upland facilities containing a mix of uses that may include marina and or neighborhood oriented retail uses, cafes and/or restaurants, office and similar uses, but shall not include any free-standing outdoor bars, night clubs or other uses prohibited by the Marina Lease, new Green Space (the "Replacement Facilities"). Nothing in the Marina Lease will prohibit or limit a restaurant from having a full-service bar within its leased space.
3. The Replacement Facilities shall also include approximately 80 parking spaces to replace the existing spaces and shall include appropriate drop off and valet and service facilities necessary to serve Area 2.
4. The Marina Lessee and/ or the Air Rights Purchaser shall remain responsible, in accordance with the Marina Lease and the Parking Agreements, as each has been amended, for the maintenance and operation of the parking facilities serving Revised Area 1, adjacent Baywalk, and the Replacement Facilities to be developed on Revised Area 1 including but not limited to the Green Space and access ways.
5. The Marina Lessee and/ or Air Rights Purchaser shall be solely responsible for all costs and work associated with the Green Space improvements (including, without limitation, the design, permitting and construction), which improvements shall include, but not be limited to, resurfacing, drainage, landscaping, hardscaping, sidewalks, irrigation, signage, and lighting.
6. The Air Rights Purchaser and/or Marina Lessee shall be responsible for the safety, security and maintenance of the Green Space.
7. The City, the Marina Lessee and Air Rights Purchaser shall enter into the REA (as such term is hereafter defined).

III. Air Rights Purchase.

- a. ARMUI has proposed a purchase price to the City in connection with the Air Rights Parcel transfer at full Fair Market Value (hereinafter the "Purchase Price"), estimated to be approximately \$50 Million.
- b. The City shall obtain two (2) independent appraisals of the Fair Market Value of the Air Rights Parcel, with such appraisers to be selected by the City Manager or

his designee, at his sole and reasonable discretion, and paid for by Air Rights Purchaser, to confirm that the Purchase Price is substantially the same as the fair market value of the Air Rights Parcel based on its development potential as a 275,000 gross square feet residential building with approximately 60 dwelling units.

- c. The City and Air Rights Purchaser shall enter into a purchase and sale agreement regarding the Air Rights Parcel (the "Air Rights PSA"), but acknowledge and agree that the Air Rights PSA will be subject to approval of a Ballot Question(s) by a majority vote of the voters in a City-wide referendum. The "Ballot Question(s)" are the following: amendment and extension of the Marina Lease, the Air Rights Parcel transfer, and, if necessary, any clarification of the site FAR. The Air Rights PSA shall provide for an escrow deposit in the amount of \$1,000,000 to be paid at signing ("PSA Deposit").
- d. The sale of Air Rights Parcel shall be subject to, and comply with, Ch. 82, Article II, Sections 82-36 through 82-40, of the City Code (entitled "Sale or Lease of Public Property").
- e. City will convey fee simple interest to the Air Rights Parcel to Air Rights Purchaser upon Closing, at which time Air Rights Purchaser will pay to the City the Purchase Price for the Air Rights Parcel.
- f. The Closing will occur within ninety (90) days following satisfaction of the following conditions: (i) the issuance of all necessary final, non-appealable development approvals and permits for the Project, including, without limitation, building permits; and (ii) the City Commission's adoption of the Comprehensive Plan and Zoning Code Changes described in Section IV below.
- g. Since the improvements to be constructed within the Air Rights Parcel shall not be located at ground level and instead shall be located above a portion of the retail components of the Project, at Closing a vertical subdivision shall be created and City, the Marina Lessee and Air Rights Purchaser shall enter into a reciprocal easement and operating agreement (the "REA") granting reciprocal easements, imposing covenants addressing the respective needs of the City, the Marina Lessee and Air Rights Purchaser, and providing that FAR determinations and other zoning and land-use approvals/rights with respect to the Air Rights Parcel shall survive termination/expiration of the Marina Lease, including, but not limited to:
 - 1. Access, ingress and egress easements, including, without limitation, pedestrian, vehicular and service;
 - 2. Parking easements;

3. Easements of structural support and foundation easements;
 4. Utility easements;
 5. Easements for all required back of house support facilities for each party; and
 6. Covenants for the long-term operation, maintenance and cost sharing of all applicable areas, and creation of association(s) or other entity through which such operation, maintenance and cost sharing shall occur.
- h. Air Rights Purchaser will pay all Closing costs (including, without limitation, the City's outside counsel fees for the transaction) related to the Air Rights PSA.
- i. Except as to involuntary transfers (as shall be defined in the Air Rights PSA) which will include, without limitation, foreclosure transfers and transfers in lieu of foreclosure), and except for transfers to affiliates of the Air Rights Purchaser, Air Rights Purchaser shall not be entitled to assign or transfer its rights under the Air Rights PSA until the payment in full to the City of the Purchase Price. Any such transferee of the Air Rights PSA shall assume all remaining obligations of the Air Rights Purchaser under the Air Rights PSA.

IV. City Actions.

- a. The parties acknowledge and agree that, as a condition to the Closing of the Air Rights Parcel purchase and commencement of the Marina Lease amendment, the City Commission, acting in its regulatory capacity, shall, at its discretion, consider certain actions to accommodate the proposed development plan and design for the Project (collectively, the "Project Approvals"). The Project Approvals include the following:
1. Comprehensive Plan Changes.
 - A. An amendment to the 2040 Comprehensive Plan to modify the text of the Public Facility: Governmental Use (PF) designation.
 - B. The following changes would be made to Policy RLU 1.1.17 of the Comprehensive Plan Resilient Land Use and Development Element:

Policy RLU 1.1.17 Public facility: Governmental uses (PF)

Purpose: To provide development opportunities for existing and new government uses, as well as public-private redevelopments.

Uses which may be permitted: Government uses, parking facilities, affordable or workforce housing, various types of commercial uses including business and professional offices, retail sales and service establishments, and eating and drinking establishments, and public-private marina redevelopments.

Public-private marina redevelopments shall include significant publicly accessible green open space and may permit the following uses: Retail sales and service establishments; commercial uses, including business and professional offices; eating and drinking establishments; apartment residential uses; and recreational uses.

Intensity Limits: Intensity may be limited by such set back, height, floor area ratio and/or other restrictions as the City Commission acting in a legislative capacity determines can effectuate the purpose of this land use category and otherwise implement complementary public policy. However, in no case shall the intensity exceed a floor area ratio of 3.5.

2. Zoning Code Change.

An amendment to Section 142-425 of the Land Development Regulations to read as follows:

Sec. 142-425. - Development regulations.

The development regulations (setbacks, floor area ratio, signs, parking, etc.) in the GU government use district shall be the average of the requirements contained in the surrounding zoning districts as determined by the planning and zoning director, which shall be approved by the city commission. Notwithstanding the above, public-private marina mixed-use redevelopments incorporating City-owned marina property, and including residential dwelling units and significant publicly accessible green open space, in the City's Public Facility (PF) comprehensive plan designation may be developed as follows:

Floor Area Ratio: Maximum of 2.5

Maximum building height: 225 feet. Notwithstanding the above, the design review board or historic preservation board, in accordance with the applicable review criteria, may allow additional height, as measured from the base flood elevation plus maximum freeboard, to the top of the second floor slab.

- b. The City's Design Review Board shall consider certain actions to accommodate the proposed development plan and design for the Project. Such actions include the following:
 1. Approval of the Project and the Green Space.
 2. Any associated variances for the Project and the Green Space.
- c. The application to the Design Review Board for Project approval shall include design plans for the Green Space. The Green Space shall consist of landscaping and hardscape improvements; lighting; irrigation for landscaping; outdoor seating and other outdoor furniture (if requested by the City); bay-walk improvements; upgraded City-approved wayfinding and signage such as directional signage, access signage and similar signs (excluding private signage); and other accessory facilities. The Green Space shall be open to the public no later than the date a CO is issued for the Project.
- d. The City's Planning Board, shall consider approval of a conditional use for new construction of structures 50,000 square feet and over, as well as any other conditional uses necessary for the Project. Planning Board review is the first step in the process before Design Review Board review.
- e. The City Commission, Design Review Board and the Planning Board shall have no obligation to take any (or all) of the above stated actions; provided, however, that if the above stated City actions are not taken, then:
 1. Marina Lessee may, at its discretion, elect to terminate the Development Agreement (as defined in Section V, below), without liability to Marina Lessee. In the event of such termination, however, Marina Lessee shall be responsible for any attorney's fees incurred by the City with respect to the Development Agreement up to the date of termination; and
 2. Air Rights Purchaser may, at its discretion, elect to terminate the Air Rights PSA, without liability to Air Rights Purchaser. In the event of such

termination, however, Air Rights Purchaser shall be responsible for any attorney's fees incurred by the City with respect to the Air Rights PSA, up to the date of termination and shall be entitled to the return of its PSA Deposit.

Any such Termination of the Air Rights PSA shall automatically terminate the Development Agreement, and any such termination of the Development Agreement shall automatically terminate the Air Rights PSA. In such event the Marina Lease shall remain in effect, unmodified.

- f. Marina Lessee and Air Rights Purchaser will be responsible for submitting any required applications for development approvals, with City as co-applicant, if and as necessary, for the Project (i.e., City Commission, Design Review Board, and Planning Board approvals), and for securing any and all final, non-appealable development approvals and permits for the Project.

V. Development Agreement. The above terms and other matters (other than the Air Rights Parcel transaction) will be incorporated into a Development and Ground Lease Agreement (the "Development Agreement"), which will provide for development of the Replacement Facilities and an amendment and restatement of the Marina Lease, to include, at a minimum, the following additional terms:

- a. Marina Lessee and Air Rights Purchaser will be responsible for submitting and obtaining any and all final, non-appealable development approvals for the Project (e.g., City Commission, Design Review Board, and Planning Board). Marina Lessee and Air Rights Purchaser acknowledge and agree that any such development approvals are subject to, and conditioned upon, approval by applicable development boards, in their sole and reasonable discretion.
- b. Except as to (i) involuntary transfers (as shall be defined in the Development Agreement and which will include, without limitation, foreclosure transfers and transfers in lieu of foreclosure), (ii) mortgages and pledges in favor of senior and mezzanine lenders that are "Institutional Lenders" (as shall be defined in the Development Agreement), (iii) transfers of direct/indirect ownership provided the principals of Marina Lessee and/or Air Rights Purchaser, in the aggregate, maintain control and majority ownership and (iv) transfers for estate planning purposes or as the result of death provided the transferor (or the applicable heir) retains control of the transferred interest, Marina Lessee shall not be entitled to assign or transfer its rights under the Development Agreement until after the earlier of (1) issuance of a CO for the Project, or (2) the payment of _____. Any such transferee shall assume all remaining obligations of Marina Lessee under the Development Agreement, including without limitation, Marina Lessee's obligation to improve the Green Space as set forth in Section III, above.

c. Time periods will be tolled due to force majeure (strikes, lockouts, acts of God, and other causes beyond the control of either party); appeals or other judicial or administrative challenges to Project approvals; and delays in obtaining permits from other governmental agencies. Notwithstanding the foregoing, in the event that a third party (unrelated or unaffiliated with the City, Air Rights Purchaser or the Marina Lessee) files a Lawsuit challenging the validity of the Air Rights Parcel transfer, the Air Rights PSA, the Project Approvals or the Development Agreement, then Air Rights Purchaser shall not be required to close under the Air Rights PSA; and the City shall not be required to effectuate the Air Rights Parcel transfer, nor shall the terms of the Development Agreement become effective, until thirty (30) days after the Lawsuit has been completed and finally disposed of in a manner that sustains the validity of the challenged actions. If the Lawsuit is still pending for more than thirty-six (36) months after approval of the Development Agreement, Air Rights Parcel transfer, Air Rights PSA, and the Project Approvals, then:

1. any party to the Development Agreement or the Air Rights PSA, at its option, may elect to terminate the Development Agreement or the Air Rights PSA, without cause;
2. City shall return to Air Rights Purchaser PSA Deposit;
3. the Air Rights Parcel transfer shall not be effectuated; and
4. the City and Air Rights Purchaser shall have no further obligation and/or liability to each other, and the City and the Marina Lessee shall have no further obligation and/or liability to each other.

Any such Termination of the Air Rights PSA shall automatically terminate the Development Agreement, and any such termination of the Development Agreement shall automatically terminate the Air Rights PSA. In such event the Marina Lease shall remain in effect, unmodified.

VI. Outside Counsel Review. Marina Lessee and Air Rights Purchaser agree to reimburse the City for any attorney's fees incurred by the City for outside counsel's review and negotiation of the Development Agreement, the Air Rights PSA, and related agreements, not to exceed reasonable amounts, as mutually agreed upon by the Parties (which counsel shall be selected and approved by the City Attorney).