

EXHIBIT B

City Initial Comments on Marina Term Sheet

April 15, 2020

1. Timing – Election Issues, Public Hearings, Outreach

- a. Need to confirm July 31 deadline for submitting ballot questions will not change. Preliminary feedback from Elections Department is that the deadline will not change, but situation is fluid.
- b. Administration to advise whether there is sufficient time for community outreach and Commission vetting, given lack of in person public meetings into May, and focus on COVID and reopening of the economy.
- c. Another option is to call a special election at a later date. Need to consider cost, turnout issues, etc.

2. Transaction Documents. City's view of the necessary documents is a little different than as proposed in the term sheet. City proposes:

(1) a Development Agreement (with form of PSA for air rights sale and the form of the Reciprocal Easement Agreement included as exhibits); and

(2) an Amended and Restated Lease Agreement.

Both the lease and the air rights transaction will be contingent upon voter referendum approval. Once we agree on document structure, we could update the provisions re: termination, i.e. if one ballot question passes but another doesn't, do all agreements get terminated, etc.

3. Submerged Lands/Area 2. The City's current submerged land lease from the State of Florida expires in 2036. Accordingly, the extension of the term of the Marina Lease, as it relates to the submerged lands portion of the Marina leased premises, needs to be subject to and contingent upon State approval and the State's extension of the existing submerged lands lease with the City. We understand the State routinely approves extensions of submerged land leases, but City cannot have liability if State does not approve an extension of the lease.

4. Transaction Structure.

- a. The air rights sale means that if the underlying lease is ever terminated, City will get the land back, but City won't ever be able to build anything new on the site (i.e. once air rights are sold and residences built, City can't ever tear down the residential structure). Need to confirm that Administration understands the limitations inherent to the proposed structure.

- b. The term sheet proposes a vertical subdivision. Need to research and discuss to what extent this is possible for the individual residences themselves, or whether Developer's intent is for the residences to be condominiumized. Will this be a leasehold condominium? **Need to understand what interest the air rights holders will have in the underlying land via the proposed reciprocal easement agreement (REA), if any, and the impact on the City's underlying fee interest, if any.** Need to discuss and confirm how will this be done under Chapter 718, as Chapter 718 requires either a leasehold interest in underlying land or a fee interest. Lawyers to discuss structure separately.
 - c. Section 1(e) – partial assignments and “bifurcations” to affiliated entities is problematic. City needs to look to a SINGLE Lessee for purposes of the entire Leased Premises (submerged + upland).
 - d. Lease extension term should be negotiable.
5. **Total Available F.A.R. For the Project.** Staff, including the Planning Director and City Attorney's Office, need to review and determine the available F.A.R. for the Project.
6. **Lease of Portion of Alton Road ROW.** The Developer's term sheet has proposed an expansion of the leased premises to include portions of Alton Road. The Administration will need to determine if it will recommend a proposed expansion of the leased premises to include a portion of Alton Road. The concept of a lease (i.e., exclusive possession to lessee) appears incompatible with the purpose of a public ROW. More research and discussion is required before proceeding with a lease of any portion of Alton Road. (Note – this area needs to be included in Appraisal if leased).
7. **Appraisals.**
- a. The City is proceeding with 2 appraisals for air rights. What is the mechanism for reconciling the different appraisals? Do we go with the highest appraisal so long as both are within certain range of each other? Is intent to require City to accept the lower appraisal? Average? We should specify the approach to avoid any dispute.
 - b. In agreeing to a cap on reimbursement of City's transaction costs, City did not factor in the Developer's request for a second appraisal. The second appraisal should not count toward the cap.
 - c. Estimated \$50 million for air rights – should be a minimum.
 - d. City and Developer, along with the appraisers, need to determine the appraisal methodology, as the methodology could significantly impact the valuation.
 - e. Mark Milisits has asked for a lot of back up requested by appraisers. Need this ASAP if the extremely compressed proposed timeframes for rushing this

transaction will hold. City will not be able to maintain the timeline if all of the requested documents are not provided by April 20, 2020 at the latest.

- f. **Appraisal of lease rent.** Need to confirm the lease extension portion is being appraised. Do we need 2 appraisals of this too?
 - g. Lessee's rent proposal has not changed much from existing lease. Administration to advise if this is acceptable or if appraiser will be providing a valuation of the leasehold interest as well.
 - h. As to proposed rent and the 4 cents per gallon of fuel, as this is 99 years, need to build in alternative to fuel charges, i.e. if the industry rolls out electric charging stations for boats, we need a % of the charging station revenue
8. **Closing.** The desire to expedite this \$50+ million transaction for economic recovery purposes is thoughtful and community focused. However, the Developer's proposed closing provision safely places a closing at FY2022 or later, if at all. Administration may want to negotiate an expedited closing date.
- a. Is it reasonable for final non-appealable land use approvals to be a condition of closing on the air rights sale?
 - b. It may not be reasonable to wait to close until after Developer has obtained building permits. Building permits as a condition of closing may not be an industry standard.
 - c. Administration may want to consider outside date for deposit to go hard and/or to close.
9. **Capital Improvements over Area 2.**
- a. Need much more description and specificity. Cannot spread out over 30 years; need phases and outside dates.
 - b. Need to incorporate State approval of improvements over Area 2/submerged lands.
10. **Section II.e.**
- a. II.e.1 - Rent during demolition/construction of upland area. Better to specify a fixed amount. Should not be current fiscal year, as pandemic dramatically reduced revenues for this FY.
 - b. Will entire Marina be closed during renovation, or will certain operations continue? Is it possible to continue operations under existing permits if there are no restrooms, laundry facilities etc?
 - c. II.e.2 – full service bar - is that indoors? Not clear.

- d. The elevated green space of 45,000 sq. ft. becomes a perpetual public access easement and the one acre at grade parcel along but not including the baywalk should remain under the control of the City.
11. **Parking.** City wants Lessee to assume all obligations, including, without limitation, payment obligations, under the four separate condo parking agreements that provide Marina parking, including assessments for capital improvements, insurance, taxes, etc. Not just the 80 spaces in Section II.e.4. Also, the Administration may want to negotiate reimbursement to City of prior costs incurred with respect to those agreements.
 12. **Security/Maintenance.** Need to incorporate updated maintenance and public appearance/cleanliness standards (including parking garage maintenance standards for striping, etc), with penalties in lieu of default for failure to maintain.
 13. **Docking Facility for future taxi/ferry.** City may want to have right to designate area for future water taxi/ferry.
 14. **REA.** Need to understand the impact on City's underlying fee interest and how this will work.
 - a. Section III.g – why do we need FAR determinations in an easement agreement.
 - b. Why does Marina lessee need to be a party to the REA
 15. **Transfers.** Why would the developer need to transfer the PSA to an affiliate PRIOR to Closing? Why would we permit a foreclosure transfer prior to Closing? What is there to be foreclosed on prior to Closing?
 16. **Use restrictions.** Can they commit to height limitation? Term sheet silent. This is material. Does Administration have other project requirements it would like to include?
 17. **LDR Amendments.** Need Tom/Jeff/Nick input as to the proposed zoning code changes. Does 225 ft height unless increase is approved by DRB make sense? Height is material. Need to consider further.
 18. **Tolling.** Tolling language is from Alton D.A.s but term sheet is silent on proposed duration of D.A. What is the baseline from which we are tolling?
 19. **City Indemnity for Lawsuits.** Language re tolling for lawsuits is from Alton 500 D.A. but term sheet is missing indemnity in favor of City for third party lawsuits related to the Project. This appears to be an oversight that should be corrected.
 20. **Outside dates for construction.** The Administration may want to consider outside dates for construction of the project. This is a high traffic residential area along the public Baywalk. Administration may want to consider parameters in an effort to avoid open-ended indefinite construction activity in this area.

21. Delays to Hotel Project and Alton 500. The Administration may want to confirm progress continues to be made on Developer's existing projects with the City as it proceeds with a new project for the voters' consideration.

22. Executive Lease Summary for CC.

- a. For the May Finance Committee, we would recommend a brief summary of the existing Lease be developed, with a table showing existing lease terms on one column and proposed changes on separate column. Developer could use its lease abstract to prepare draft for our review.