

TO: Finance and Economic Resiliency Committee

FROM: Jimmy L. Morales, City Manager

DATE: May 22, 2020

SUBJECT: **PROPOSED MARINA PARK REDEVELOPMENT PROJECT (INCLUDING LONG-TERM LEASE, SALE OF AIR RIGHTS, DEVELOPMENT AGREEMENT, AND VACATION OF A PORTION OF THE ALTON ROAD RIGHT OF WAY).**

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On March 18, 2020, the Mayor and City Commission referred the proposed Marina Redevelopment Project item to the Finance and Economic Resiliency Committee ("Finance Committee"), thereby initiating the review process under Chapter 82 of the City Code with respect to the sale or lease of City-owned property.

On April 17, 2020, the Finance Committee heard an initial presentation with regard to the proposed redevelopment, and directed the Administration to commence negotiations and come back to the Finance Committee for its review of appraisals and consideration of proposed terms, in accordance with the requirements of Section 82-37 of the City Code.

On May 6, 2020, the Land Use and Development Committee ("LUDC") heard an initial presentation with two design studies for the proposed redevelopment. The LUDC strongly encouraged the development team to further study design options that would provide for a taller, but "leaner" and more attractive project, with the item to come back to the LUDC for further consideration at its May 26, 2020 meeting.

### **OVERVIEW OF THE PROPOSED MARINA PARK REDEVELOPMENT PROJECT**

The City is the owner of the property located at 300-344 Alton Road, the location of the Miami Beach Marina, folios # 02-4203-000-0010, 02-4203-009-9210 and 02-4203-009-9250. Miami Beach Marina Associates, Ltd., the current lessee of the Miami Beach Marina ("Lessee"), and Alton Road Mixed Use Investments, LLC ("ARMUI"), are proposing a public-private partnership with the City of Miami Beach to enter into a new lease of the Miami Beach Marina, for the purpose of developing and constructing:

- (1) a private luxury residential tower that would include approximately 60 residential units and approximately 275,000 gross square feet, with a maximum height of 385 feet; and
- (2) a new Marina building and enhanced neighborhood ground floor retail on the site of the current Marina building, with a total of approximately 45,000 gross square

feet of accessory restaurant, retail and office space, to upgrade the existing condition of the Marina facilities, which are dated and unattractive; and

(3) substantial green space, including an at-grade “Marina Park” of approximately 1 acre which will be open to the general public, as well as other improvements, including resiliency enhancements and improvements to the public baywalk along the Miami Beach Marina (collectively, (1) – (3) above, the “Project”).

The proposal would provide the City with a rare opportunity to negotiate a new lease with improved terms that shall deliver additional public benefits to the City, as the existing lease for the Miami Beach Marina (the initial term of which expires on January 1, 2020, but is subject to 30 more years of option periods) is otherwise in place for another thirty-two (32) years.

The proposed transaction is complex, as it will involve the negotiation, drafting and approval of various interrelated agreements to implement the Project and its various components, including the following:

(1) A **new lease agreement** for the Miami Beach Marina (with the leased premises more fully described below), with a term (including renewals) of 99 years proposed by a new lessee (the “New Lessee”) and improved financial and other terms (“New Lease”), which terms would permit a master sublease of the Area 1 property, described more fully below, (the “Master Sublease”), either to an affiliate of ARMUI or an affiliate of ARMUI and New Lessee (the “Master Sublessee”). In addition to the Project, the proposal provides a commitment to spend an additional \$50 million in improvements to Area 2 and the balance of the upland leased premises; and

(2) A **purchase and sale agreement** for the sale of the air rights for the private residential portion of the Project, with the purchaser, an affiliate of ARMUI (“Air Rights Purchaser”), paying to the City fair market value for the to-be-defined air space above the Area 1 property (“Air Rights Parcel”), with the final negotiated purchase price payable to the City at the closing (“Sale of Air Rights”). Negotiations regarding the purchase price are ongoing, as the City will be receiving two independent appraisals, discussed more fully below. Preliminary information from the appraisers has confirmed that the appraisals for the Air Rights Parcel will exceed **\$50 million**; and

(3) A **development agreement** governing the development, design and construction of the entire Project, including its (1) residential, (2) ground floor retail, and (3) green space and resiliency components. The Development Agreement will provide the developer with the right to use all of the available development rights for the underlying City-owned property that is the subject of the transaction (namely, all of the F.A.R. associated with the Area 1 property, described below) and the F.A.R. associated with the vacation of a portion of the Alton ROW, as described in (4) immediately below; and

(4) The **vacation of the western half of the Alton Road right of way** abutting the City-owned parcels along 300-344 Alton Road, as described more fully in Exhibit “1” hereto, consisting of approximately 25,500 square feet (“Alton ROW”). Upon the vacation, fee ownership of the Alton ROW would revert to the City, with the associated development rights to be incorporated for use as part of the Project to permit the Project to be realized, as contemplated above. Currently, as to the Alton ROW, the City holds a right of way dedication, which confers on the public an exclusive right of use, so long as the Alton ROW is used for the purpose of the dedication (namely, for pedestrian and vehicular access). By operation of law, once the City vacates the Right of Way, the underlying fee interest in the Alton ROW reverts to the current abutting property owner (which in this case, is the City, as owner of a portion of Lot 1 and all of Lots 22-31, as described in Exhibit “1”). Accordingly, the proposed vacation of the Alton ROW differs from prior vacations approved by the City because the City would be vacating a right of way in favor of itself, and the vacated Alton ROW would remain under the City’s complete control, both before and after the vacation is effectuated.

(5) Amendments to the City’s **Comprehensive Plan** and **Land Development Regulations**, which are summarized as follows:

- a. Amendments to the PF future land use regulations in the Comprehensive Plan, to permit public-private marina redevelopments (requiring significant publicly accessible green open space; and permitting retail sales and service establishments, commercial uses including business and professional offices, eating and drinking establishments, apartment residential uses, and recreational uses); and
- b. Amendments to the CPS-4 district regulations in the Land Development Regulations that would only apply to public-private marina mixed-use redevelopments, including an increase to the maximum height; increase to the height for allowable height exceptions; amendments to minimum setbacks; and a text amendment to permit non-use screening of parking floors (including landscape buffering and physical design elements, as opposed to commercial and residential uses) on all frontages except the Alton Road frontage.

### **BACKGROUND ON THE EXISTING LEASE FOR THE MIAMI BEACH MARINA**

In 1983, the Mayor and City Commission adopted Resolution No. 83-17385, approving the initial lease agreement for the Miami Beach Marina, to be used solely as a boat port, marina and recreation facility offering dockage, mooring and other marina related services for use by the general public, which lease has been amended on four separate occasions over the years, with the most recent amendment being executed in 1998, over 22 years ago (collectively, as amended, the “Marina Lease” or “Lease”).

The property commonly referred to as the “Miami Beach Marina” that is the subject of the Lease, and/or to which the Lessee has easement rights, consists of the following:

(1) the upland properties located at 300-344 Alton Road owned by the City, consisting of the platted Lots 22 through 29, and the northerly ten (10) feet of Lot 21 in Block 111 of the Ocean Beach Florida Addition No. 3 Plat, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County (“Area 1”); and

(2) a submerged land area leased to the City and the RDA by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida (“TIIF”) (“Area 2”).

(collectively, Area 1 and Area 2, the “Existing Leased Premises”).

In addition, the City owns the property consisting of Lots 30 and 31 in Block 111 of Ocean Beach Florida Addition No. 3 Plat as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County (“Lots 30-31”), and has granted to the Lessee a non-exclusive easement to use Lots 30-31 for, among other purposes, ingress and egress to both the Marina and parking located within the Murano Grande and Icon parking garages and surface parking located in Area 1. The City has separately granted the Lessee two (2) non-exclusive easements covering the baywalk adjacent to Area 2.

Collectively, Area 1, Area 2, and Lots 30-31 shall be hereinafter referred to as the “Miami Beach Marina”). The Miami Beach Marina, Easements and Marina Parking (as defined below), as well as the Alton ROW that is proposed to be vacated, are identified in **Exhibit “1”**.

## **THE MARINA LEASE**

The current Lessee of the Miami Beach Marina is Miami Beach Marina Associates, Ltd. The Lease provides for an initial term expiring on January 1, 2022, and provides the Lessee with the right to renew three (3) times, for a period of ten (10) years for each renewal term, through January 1, 2052.

The Lessee’s annual rent payment to the City pursuant to the Lease is the greater of the Minimum Annual Guaranteed Rent in the amount of \$320,000 or the Annual Percentage of Rent calculated as: (1) \$0.02 per gallon from the sale of gasoline and diesel fuel at the Marina, which generated approximately \$25,000 to the City in 2019; (2) 10% of Gross Receipts generated from the submerged lands; and (3) 10% of the Gross Receipts generated from the upland areas. The Annual Percentage of Rent has exceeded the Minimum Annual Guaranteed Rent since approximately 2008. The total revenue to the City from 2011 to present from the Lease is identified in the chart below:

<b>Year</b>	<b>Total Revenue to City</b>
2011	\$ 714,625.00
2012	\$ 908,735.00
2013	\$ 1,013,453.00
2014	\$ 1,182,440.00
2015	\$ 1,298,631.00
2016	\$ 1,340,762.00
2017	\$ 1,512,976.00
2018	\$ 1,667,181.00
2019	\$ 1,742,512.00
	<b>\$ 11,381,315.00</b>

### **THE PARKING AGREEMENTS FOR THE MIAMI BEACH MARINA**

In accordance with the Lease, the City is required to provide the Lessee with parking, permanent laundry, lavatory and shower facilities to support the Marina. Due to the lack of surface parking and municipal garages near the Existing Leased Premises to meet the parking needs of the Marina, the City and the RDA currently lease space within the parking garages of the following buildings, pursuant to separate parking leases with each of the condominium associations:

- Yacht Club Condominium (115 parking spaces),
- Murano Grande Condominium (142 parking spaces),
- Murano at Portofino Condominium (108 parking spaces), and
- Icon Condominium (206 parking spaces).

(collectively, the “Marina Parking”). The Lessee is responsible to provide maintenance, repairs, and security for the Marina Parking in accordance with the December 1, 1999 Parking Facility Operations and Maintenance Agreement.

Pursuant to the City’s Marina Parking leases with the condominium associations, the City is responsible for the real estate taxes, certain utility fees, stormwater fees, and annual rent associated with each of the leases for the parking garages located within the four condominiums, as set forth below:

<b><u>Condominium</u></b>	<b><u>Stormwater Fee</u></b>	<b><u>Real Estate Taxes</u></b>	<b><u>Base Rent</u></b>	<b><u>Total</u></b>
Icon	\$27,497	\$56,616	\$138,548*	<b>\$222,661</b>
Murano Grande	\$20,261	\$39,625	\$100,328*	<b>\$106,214</b>
Yacht Club	\$14,761	\$25,205	\$ 50,858*	<b>\$90,824</b>
Murano at Portofino	\$13,604	\$30,137	\$ 45,000 (Estimated)	<b>\$88,641</b>
			<b><u>TOTAL:</u></b>	<b><u>\$562,440</u></b>

\*Base Rent is annually adjusted for CPI

### **THE SUBMERGED LAND (AREA 2) LEASE**

As further described above, Area 2 is leased to the City and the RDA by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. The City's annual rent payment for 2020 was \$207,731, which rent is subject to annual CPI adjustments in accordance with Florida Administrative Code Section 18-21.011. The term for the Submerged Land Lease commenced on April 28, 2010 and expires on January 21, 2036.

### **THE CITY'S MARINA LEASE NET REVENUE FOR 2019**

As set forth above, the City's expenses for 2019 in connection with Marina Lease for the Submerged Land Lease and the Marina Parking was approximately \$770,000, and the City's gross revenues for 2019 totaled \$1,742,512. Accordingly, the City's net revenue for 2019 in connection with the Marina Lease was approximately **\$972,000**.

### **UPDATED TERM SHEET FOR THE MARINA PARK REDEVELOPMENT PROJECT.**

Since the April 17, 2020 Finance Committee, the City and the Developer have engaged in numerous meetings to address the transaction structure and the proposed terms for the various agreements. The Lessee's and Developer's proposed updated term sheet is attached hereto as **Exhibit "2"**. The updated term sheet reflects the status of negotiations to date, and remains subject to change as the City desires to continue discussions with the Lessee and Developer, to improve and refine terms. The principal terms for each agreement, and status of negotiations, is addressed more fully below.

### **APPRAISAL REPORT**

As set forth above, the City engaged two independent appraisers, namely CBRE, Inc. ("CBRE") and Walter Duke + Partners, Inc. ("Walter Duke"). The appraisers were directed to independently estimate the fair market value of the development rights in connection with the Sale of Air Rights associated with Area 1 and the fair market rental value for the New Lease including Area 2, approximately 45,000 gross square feet of accessory restaurant, retail, and office space located in Area 1, and parking revenue in connection with Areas 3 & 4.

The City has received preliminary information from both CBRE and Walter Duke which has confirmed that the appraised values for the Sale of Air Rights will exceed **\$50 million**.

Additionally, both appraisers' preliminary reports have determined that the current fair market annual rate of the Marina Lease to be 10% of gross sales for the Area 1 and Area 2 marina operations, 35% of parking revenue, and \$0.04 per gallon for fuel sales, which is commensurate with the current negotiated terms for the New Lease. As the City's 10% percentage rent in 2019 under the existing Lease amounted to approximately \$1,740,000, the City anticipates that once the Project is completed, with new tenant space and additional capital improvements, an increase in the City's gross revenues from the Miami Beach Marina could reasonably be realized with percentage rent of 10%.

CBRE and Walter Duke have requested an extension of time to finalize and refine the appraisals. We believe that this additional time spent by the appraisers is in the City's best interest, and trends

positively in favor of the City.

## **THE PARTIES TO THE VARIOUS AGREEMENTS AND PROJECT OBLIGATIONS**

As noted above, the transaction involves a New Lease, Purchase and Sale Agreement for the Sale of Air Rights, a Development Agreement (which would contemplate the vacation of a portion of the Alton Road and use of the associated development rights). The following is a breakdown of the parties to each agreement and relationships among the parties relative to the overall development of the Project.

The Development Agreement. The Air Rights Purchaser and Master Sublessee, jointly and severally, would be the “Developer” under the Development Agreement and would be responsible for the development, design and construction of the entire Project. The Development Agreement would include all of the Project requirements and restrictions, and would provide the Developer with the rights to use the development rights associated with Area 1 and the vacated Alton ROW for the purpose of building the Project.

The Master Sublessee’s obligations under the Development Agreement for the financing, redevelopment and operation of the Area 1 ground floor commercial, retail and office improvements (collectively, the “Upland Redevelopment”) would be incorporated into the New Lease and the Master Sublease, thereby aligning the Developer’s obligations under the Development Agreement with the obligations of the New Lessee under the New Lease.

Purchase and Sale Agreement. The form of the Purchase and Sale Agreement (“PSA”), between the City and the Air Rights Purchaser, would be an exhibit to the Development Agreement. The PSA would be effective following voter referendum approval of the Sale of Air Rights. At the Closing of the Sale of Air Rights, the Air Rights Purchase would own the fee interest in the Air Rights Parcel upon which the residential portion of the Project would be built. As noted above, the Air Rights Purchaser, jointly and severally with the Master Sublessee, would be the Developer under the Development Agreement and would be under common control with the Master Sublessee, thereby aligning the Air Rights Purchaser’s rights under the PSA and REA (as described below) with the Master Sublessee’s obligations relative to the Project under the Development Agreement and the Master Sublease.

Reciprocal Easement Agreement. The PSA would include the form of a Reciprocal Easement Agreement among the City, the New Lessee and the Air Rights Purchaser as an exhibit thereto, which would be effective upon the Closing of the Sale of Air Rights, to accomplish the “vertical subdivision” of Area 1 to create two separate fee parcels: the fee interest in the Air Rights Parcel to be owned by the Air Rights Purchaser and the fee interest in the underlying land of Area 1, which would remain owned by the City at all times (and leased to the New Lessee under the New Lease). The REA would also grant necessary easements including those of support, ingress and egress and utilities and contain covenants with respect to cost-sharing and maintenance between the New Lessee with respect to the Upland Redevelopment and the Air Rights Purchaser and successor owners with respect to the Air Rights Parcel. The REA would survive the expiration or earlier termination of the New Lease.

Upon the Closing of the Sale of the Air Rights and subsequent construction of the residential portion of the Project in accordance with the Development Agreement, the Air Rights Purchaser

would have the right to further subdivide the Air Rights Parcel pursuant to a declaration of condominium to create individual residential units for purchase and sale. Following completion of construction of the entire Project in accordance with the Development Agreement, the City would be unable to interfere with, and would be limited by, the terms of the REA with respect to the rights of the Air Rights Parcel owner(s) (i.e., if the New Lease was terminated and the demised premises reverted to the City, the City would be restricted in its ability to redevelop such premises, having sold the Air Rights Parcel).

The New Lease. Subject to voter referendum approval, the New Lease would be effective either at Closing, or Jan. 1, 2022, following the expiration of the current Lease. The leased premises subject to the New Lease will be comprised of the Existing Leased premises and Lots 30-31. The lessee under the New Lease will be an entity controlled by or affiliated with the current Lessee. The New Lessee will be responsible for all of the obligations under the New Lease. The New Lease will permit the sublease of the Area 1 upland area to the Master Sublessee. To facilitate the financing of the Area 1 improvements, the City would agree to grant to the Master Sublessee and its lender a recognition and non-disturbance agreement providing that in the event of any termination of the New Lease, the Master Sublease would continue as a direct lease between the City, as landlord, and the Master Sublessee, as tenant, and the City would thereafter have all rights and privileges of the “landlord” under the Master Sublease, including the right to exercise those remedies under the Master Sublease that are triggered upon default by the Master Sublessee of its obligations under the Master Sublease (which obligations will include the Upland Redevelopment obligations under the Development Agreement) that remains uncured after the expiration of applicable grace and cure periods.

Updated Rent Terms for New Lease. The Developer’s proposal currently provides that, except with respect to a 4 year construction period, the rent will be the greater of (1) \$1,500,000, adjusted annually to the greater of CPI or a to-be-determined escalator minimum (“Annual Minimum Base Rent”); or (2) 10% of the Gross Revenues, \$.04 per gallon for all fuel sales, and 35% of revenues generated from parking. During the proposed 4-year construction period, the City would receive reduced base rent in the amount of \$1 million annually. For any areas that are subleased by Lessee (to a third party other than Master Sublessee) or sub-subleased by Master Sublessee to third parties, Gross Revenues shall not include gross revenues of such subtenants or sub-subtenants, as applicable, but instead the rent paid by such subtenants or sub-subtenants shall be Gross Revenues. Further, if Lessee operates a restaurant or retail establishment within the Leased Premises, Gross Revenues will not be based on gross revenues but instead based on the fair market rental value of the restaurant or retail premises.

Additional Capital Improvements. The Developer’s initial proposal to the City included a commitment to undertake \$35,000,000 in capital improvements for Area 2 over the course of 30 years. Following multiple meetings with the development team since the April 17, 2020 Finance Committee meeting, the City has negotiated an increase in the capital improvement Upland Redevelopment commitment to \$50,000,000, further providing that (1) \$35,000,000 will be committed to capital improvements towards Area 2 (\$15m in years 1-10, \$10m in years 11-20, and \$10m in years 21-30); and \$15,000,000 will be committed for Area 1 improvements, including resiliency components in the park and bay walk to cover items above base park and base tenant improvements (\$5m in years 1-10, \$5m in years 11-20, and \$5m in years 21-30). The Developer’s initial list of proposed resiliency improvements is attached as **Exhibit “3”**.



A table describing the principal terms of each agreement, and the status of the negotiations, is set forth below:

**Marina Lease**

<b>TERMS AND CONDITIONS OF LEASE AGREEMENT</b>	<b>EXISTING LEASE</b>	<b>INITIAL TERM SHEET</b>	<b>MOST RECENT TERM SHEET AND CURRENT STATUS</b>
Leased Premises	Lots 22-29, plus 10 feet of Lot 21, with non-exclusive easement rights over Lots 30/31 and Baywalk.	Same as Existing Lease, but with removal of the air space to be sold to the Air Rights Purchaser (see Sale of Air Rights below).	Same as under Existing Lease, plus Lots 30/31. Parties discussing possibility of excluding the to-be-constructed 1.0 acre park from the boundaries of the Leased Premises.
Term	Current term expiring December 31, 2021, with 3 separate 10 year renewal periods, at the Lessee's option, expiring Dec. 31, 2051.	99 years, commencing on the January 1 <sup>st</sup> after issuance of C.O. for the "Replacement Facilities".	Developer proposes New Lease effective January 1, 2022, with initial term of 30 years (but with many of the obligations in the New Lease, i.e. for capital improvements, contingent upon Closing).  If the Closing on Sale of Air Rights takes place, the term would be automatically extended for additional 69 years and all capital improvement obligations apply.  City Attorney's position is that entire New Lease would need to be effective upon Closing. Parties continuing to discuss.
Base Rent	\$320,000	\$1M, without a CPI escalator.	\$1.5M, plus minimum of CPI or agreed escalator, subject to further discussion.
Percentage Rent	\$0.02 per gallon of gasoline and diesel fuel.  35% of gross parking fee revenues.  10% of Gross Receipts	\$0.04 per gallon of gasoline and diesel fuel.  35% of gross parking fee revenues.  10% of all other Gross Receipts, but with respect to areas sub-leased by Master Sublessee, rent paid by sub-subtenants (and not gross revenues) would be included in Gross Receipts. If Marina Lessee or Master Sublessee operates a retail or restaurant establishment, fair market rent for the restaurant or retail establishment will be	Same as initial term sheet, however; if Marina Lessee or Master Sublessee operates a ship store, fair market rent for ship store will be included in Gross Receipts.  Rent amounts are subject to appraisals and continuing negotiations.

TERMS AND CONDITIONS OF LEASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	MOST RECENT TERM SHEET AND CURRENT STATUS
		included in Gross Receipts.	
Submerged Land Lease Rents	Lessee is not responsible for rents due under the Submerged Lands Lease (SLL).	Same as Existing Lease	Same as Existing Lease.  City proposed that Lessee would pay all rents due under SLL and be permitted to deduct those amounts from Gross Receipts paid to City (i.e., to make the Lease more of a "net" Lease for the City). Lessee instead agreed to increase Base Rent to \$1,500,000 in lieu of Lessee covering the SLL rent and parking expenses.
Capital Improvements	None	35M over 30 years for Area 2 improvements only.	\$50 million over 30 years for Area 2 and TBD components of Area 1 to be phased as follows:  - \$15M dedicated to enhancements to Park, upland tenant improvements and submerged lands lease area, \$5M contributed every 10 years during first 30 years of lease term; and  - \$35M dedicated solely to submerged lands lease area (Area 2), contributed every 10 years during first 30 years of lease term, \$15M, \$10M, and \$10M, respectively.
Rent During Construction Period	N/A	Same percentage rent amount generated from existing Area 1 during the last lease year prior to the demolition of Area 1.	A fixed annual rent of \$1,000,000 for a period limited to 4 years (whether or not construction complete within 4 years). At conclusion of 4 year reduced rent period, the new Base Rent would apply.
Sublease of Area 1	Permitted with City approval.	Initial term sheet proposed a bifurcated structure, which City staff could not recommend. City Administration and City Attorney's Office have worked with Lessee on the proposed structure, which retains City's strong preference to look to the Marina operator as the master Lessee to fulfill all of the	Lessee will be a new entity controlled by or affiliated with the current Lessee.  Subject to City approval, the Lease would authorize a Master Sublease over Area 1 to a Master Sublessee entity controlled by or affiliated with ARMUI or ARMUI / New Lessee. Master Sublessee will be under common control with Air Rights Purchaser.  City non-disturbance agreement, to permit financing of Area 1, separate

TERMS AND CONDITIONS OF LEASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	MOST RECENT TERM SHEET AND CURRENT STATUS
		obligations under the Lease.	from any other financing obtained by Lessee. Notwithstanding the Master Sublease, the Lessee will be responsible for all of the obligations under the Lease, and City will look to only one party – the Lessee – for compliance with all Lease terms.
Maintenance and Operation of Parking Areas, With Fines in Lieu of Default	<p>Lessee to operate and maintain all City owned or leased parking needed to serve the marina.</p> <p>In exchange for Lessee's operation and maintenance of parking, no fees or rent due</p>	Not in initial term sheet.	<p>Same as Existing Lease, subject to City-prescribed first-class standard and any failure to maintain subject to fine by the City.</p> <p>City will want the new maintenance standards for parking to be approved by each of the condominiums and incorporated as part of the Parking Leases for each condominium.</p> <p>City proposed that Lessee pay all City expenses City under the Parking Agreements (and deduct such expenses from calculation for Percentage Rent). Lessee instead proposes to increase Base Rent to \$1,500,000 in lieu of paying parking expenses and SLL rent.</p> <p>City expenses in conjunction with rent amounts above are subject to appraisals and continuing negotiations. Parties continuing to discuss, including possible revenue sharing for parking for validated retail and office use.</p>
Maintenance and Security Standards of Leased Premises, with Fines in Lieu of Default	Lessee to maintain the Leased Premises in good condition and repair and operate marina as high-grade first-class marina.	Not in initial term sheet.	Same as Existing Lease, subject to City-prescribed first-class standard and any failure to maintain subject to fine by the City.
Transfers/Assignment	Permitted with approval of the City Manager	Transfers restricted prior to payment in full to the City for the Air Rights purchase price.	The Development Agreement shall require that, until a temporary certificate of occupancy/completion is issued for the Area 1 Replacement Facilities (the 45,000 sq. ft. retail/office improvements that are part of the New Lease, excluding the residential portion of the Project), one or more of the principals of Air Rights Purchaser

TERMS AND CONDITIONS OF LEASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	MOST RECENT TERM SHEET AND CURRENT STATUS
			<p>shall maintain control of the Air Rights Purchaser, except for transfers due to lender foreclosure or deeds/assignments-in-lieu of foreclosure.</p> <p>Discussions are ongoing between the parties. City's desire is to limit transfers prior to completion of entire Project, not just the Replacement Facilities under the Lease.</p>
Termination	City may terminate the Lease following any Event of Default	Same as Existing Lease.	

### **Purchase and Sale Agreement (PSA) for Air Rights Parcel**

TERMS AND CONDITIONS OF PSA	TERMS AND STATUS
Purchase Price	Not less than \$50M, subject to appraisals. City has received two appraisals, with one appraisal valuing the Air Rights Parcel at <b>\$85 million</b> and one appraisal valuing the Air Rights Parcel at <b>\$54 million</b> .
DRB Approval Deadlines	Developer to apply for DRB Approval within 6 months after voter approval and to obtain within a to-be negotiated outside date thereafter. Parties continuing to discuss outside dates
Closing	90 days after DRB approval, subject to a to-be-agreed outside closing date. Outside dates would be subject to tolling for a to-be agreed period in the event of any force majeure, challenges to approvals, delays in obtaining permits, or for any lawsuit challenging the Project (provided the tolling period for a lawsuit would be a maximum of 42 months). Parties continuing to discuss tolling and outside date.
Escrow Deposit	<p>- \$1M due 30 days after City Commission approval, refundable if no voter approval at referendum.</p> <p>- Additional \$4M due 30 days after voter approval, refundable if no closing of PSA subject to Developer's use of good faith, diligent efforts to obtain DRB approval.</p> <p>Parties continuing to discuss when and what portion of deposit may become non-refundable.</p>
Reciprocal Easement Agreement (REA)	City's fee parcel will be subdivided into an Air Rights Parcel and the underlying land fee parcel pursuant to the REA. The REA would grant easements of support, ingress and egress and utilities and contain covenants with respect to cost-sharing between the New Lessee, with respect to the Upland Redevelopment and the Air Right Purchaser.
Termination	<p>If Closing does not occur by to-be-agreed outside date (subject to tolling), either party may terminate.</p> <p>Any termination of the Development Agreement automatically terminates the PSA and vice versa.</p>

TERMS AND CONDITIONS OF PSA	TERMS AND STATUS
	Outside dates for DRB approval, closing and tolling events currently under discussion.

### **Development Agreement Governing Project**

TERMS AND CONDITIONS OF DEVELOPMENT AGREEMENT	TERMS AND CURRENT STATUS
Developer	Developer shall be the Master Sublessee and Air Rights Purchaser, jointly and severally
Project Restrictions	<p>Development Rights would be limited to the Project (as described above), with</p> <ul style="list-style-type: none"> <li>• 275,000 gross square feet of residential, with up to 60 residential units;</li> <li>• 45,000 square feet of commercial, retail and office space (inclusive of space required by the Marina Lessee for the operation of the Marina);</li> <li>• Maximum height of 280-380 feet for the Project;</li> <li>• Shall not include any free-standing outdoor bars, night clubs or other uses prohibited by the current Marina Lease;</li> <li>• Minimum 1 acre "at grade" Park;</li> <li>• Resiliency improvements; and</li> <li>• Parking for the commercial/retail areas.</li> </ul> <p>Developer to provide additional information relating to resiliency improvements, and discussions are ongoing regarding further Project restrictions.</p>
Vacation of Western Half of Alton Road Right of Way Abutting the City-Owned Properties (Lots 21-31)	ARMUI has requested that the City vacate the west half of the ROW (consisting of approximately 25,500 square feet), to be incorporated for use in the Project.
Project Costs	Developer to develop, design and construct Project at Developer's sole expense. City shall have no obligation to expend any City funds for any portion of the Project.
Outside Date for Commencement of Construction	TBD
Outside Date for Completion of Project	Parties continuing to discuss.
Transfers Prior to C.O.	<p>Transfers by Developer prior to C.O. are restricted except involuntary transfers (such as mortgage foreclosure), encumbrances in favor of lenders, transfers of minority interests and transfers for estate planning purposes. Developer initially proposed having additional transfer rights after making a to-be-determined payment to the City.</p> <p>Parties continuing to discuss.</p>
Duration of Development Agreement	<p>Developer proposes initial term of 8 years to complete Park and Upland Redevelopment, with an extension for completion of the Air Rights Parcel subject to timely completion of Park and the Area 1 Upland Redevelopment (excluding the residential portion).</p> <p>Parties continuing to discuss.</p>

TERMS AND CONDITIONS OF DEVELOPMENT AGREEMENT	TERMS AND CURRENT STATUS
Indemnity of City	During the pendency of any lawsuit challenging the Project (or any component thereof, including the Sale of Air Rights, New Lease, Project Approvals, or the Development Agreement), Developer shall defend the lawsuit at its sole cost and indemnify the City against any damages relating to the lawsuit. If a Lawsuit is pending for more than 42 months following voter referendum approval, the City or Air Rights Purchaser may elect to terminate the PSA and DA, with a refund of the PSA, provided the Marina Lease shall remain in effect, unmodified.
Reimbursement of City's Project Transaction Costs	Developer to reimburse the City for its out-of-pocket costs and expenses incurred in the negotiation of the Development Agreement, the PSA for the Air Rights Parcel and New Lease. Parties continuing to discuss.
Termination	City shall have the right to terminate following an event of a default by Developer. Any termination of the PSA for the Air Rights Parcel automatically terminates the Development Agreement and vice versa.

## **FINANCIAL IMPACT/ECONOMIC DEVELOPMENT**

Preliminary information provided by the appraisers has demonstrated that the current Marina Lease at 10% of gross revenue is consistent with the market value in South Florida. The extension of the lease, along with the increase in guaranteed minimum lease payments, will bring about a significant long-term increase in the revenue to the City. In addition, the Developer's commitment to contribute \$50M in capital improvements will keep the asset positioned to be a premier facility generating significant revenue for many years to come. The City continues to negotiate the City's expenses related to the operation of the facility in an attempt to obtain a net lease payment; however, the increase in the minimum payments and the annual rent escalation may offset those costs.

The upland improvements, including a publicly accessible green space, will significantly enhance social benefits in addition to the payments for the Sale of Air Rights. The proceeds from the Sale of Air Rights would come to the City incrementally, \$1M will be due 30 days after City approval (refundable if no voter approval at referendum), an additional \$4M due 30 days after voter approval (refundable if no closing of PSA), and the remainder of the more than \$50M at closing, which Developer recently proposed would take place on an accelerated schedule, within 24 months after referendum approval.

As a cumulative deal, the New Lease makes significant financial improvements to the current Marina Lease. The significant public investments along with the significant cash payments will result in more than \$100 M of value to the City. That value, coupled with job creation and increased ad valorem tax, will result in a major economic gain to the City related to the New Lease and Sale of Air Rights.

## **THE APPROVALS REQUIRED FOR THE VARIOUS PROJECT ELEMENTS**

The New Lease and Sale of Air Rights. Pursuant to Section 82-37 of the City Code, the **New Lease** and the **Sale of Air Rights** would each require two readings before the City Commission, with the second reading being a public hearing. As the New Lease and Sale of Air Rights would

require the waiver of competitive bidding under Section 82-39 of the City Code, the New Lease and Sale of Air Rights would be subject to approval by a 5/7 vote of the City Commission.<sup>1</sup> As required by Section 82-39 of the City Code, the City is obtaining independent appraisals for the New Lease and Sale of Air Rights. The appraisals are discussed more fully below.

Development Agreement for the Project. The Development Agreement would require two readings/public hearings before the City Commission, as well as review by the Planning Board, which review is currently anticipated for June 23, 2020. The Development Agreement may be approved on a 4/7<sup>th</sup> vote of the City Commission.

Vacation of Alton ROW. The vacation of a portion of the Alton ROW, which would be accomplished pursuant to Section 82-37 of the City Code and Section 1.03(b)(4) of the City Charter, would require approval by a 4/7ths vote of the Planning Board, and approval by a **6/7ths** vote of the City Commission, following two readings, with the second reading being a public hearing.

Voter Referendum Requirement. Finally, in addition to the heightened City Commission supermajority approval requirements set forth above, the **New Lease** and **Sale of Air Rights** will each require approval by a majority of the voters voting in a Citywide referendum pursuant to Section 1.03(b)(1) of the City Charter.

## **CONCLUSION**

Based on the foregoing, the Administration recommends that the Finance Committee authorize the Administration to continue its negotiations, for further consideration of the Project and the terms at first reading.

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<sup>1</sup> A waiver of bidding pursuant to Section 82-39 of the City Code is the only possible option for this transaction at this time, as the Lessee has an existing Lease with 32 years remaining in the term, and the Lessee and its affiliated entities are the only parties to which the City is able to negotiate with prior to the expiration of the existing lease.