

# **EXHIBIT 4**

**UPDATE ON TERMS AND OPEN ISSUES – MARINA PARK TRANSACTION**  
**As Of June 12, 2020**

As set forth in the Memorandum, there are several items which, as of the agenda print date, are the subject of the parties' continued negotiations. The main items are briefly summarized below.

1. **Outside Date for DRB Approval / Payment of Final Purchase Price.** Parties have agreed to outside date of 54 months for both the DRB approval and payment of the \$40 million balance of the Note. Time period shall run from the Effective Date (not the Closing Date). Time periods subject to extension for force majeure and tolling for Lawsuits.
2. **Termination of Development Agreement for "Material Defaults" Only.** Parties are identifying material defaults that would give rise to City ability to terminate the Development Agreement (i.e., failure to make payment obligations, failure to obtain Project approvals by outside date, failure to adhere to transfer restrictions, failure to indemnify and the like). Parties continuing to discuss the foregoing, in addition to appropriate cross-defaults between the pertinent agreements, as reasonably necessary to protect City's interests. Parties also discussing remedies for non-material defaults.
3. **Extension to 4 Year Construction Period.** Parties to clarify extensions for unavoidable delays and notification to the City thereof.
4. **Park Elements.** Parties continuing to discuss whether the 1 acre park is part of the leased property, subject to use rights for access to general public, or separate from the leased property and City owned/controlled. With either option, at all times, the rights of the public to use the park shall be protected. Maintenance of restroom in park is an open issue, which depends on outcome of the issues relating to ownership/control.
5. **Financial and "In Balance" provisions.** Parties agree to certain financial provisions requiring Developer to show that the Project is "In Balance" and that Developer has the availability of funds to complete the Project. This provision is important to the City to minimize risk of an uncompleted tower on the property for lack of funds. Parties finalizing terms.
6. **Transfers.** Parties discussing City's transfer restrictions prior to CO of the Project. Developer agrees to a restriction that David Martin (or a "Martin Entity," in the event of Mr. Martin's death or incapacity) control the development of the Project and maintain 10% ownership until C.O., subject only to transfers in connection with foreclosures of the construction loan or mezzanine loan. Parties continuing to discuss details, i.e., City's provisions requiring Major Proposed Transferees to meet City's Acceptable Owner criteria (i.e., no felony convictions, bankruptcies in last 5 years, lawsuits against City in last 5 years, and the like).
7. **Closing/Unwinding.** Parties are clarifying various eventualities in connection with Closing and how to structure an unwinding of the transaction if it becomes necessary to do so, including:
  - a. In the event the Closing does not take place, City would keep the \$5 million deposit if failure to close is due to Developer's default; Developer would receive refund of deposit if Closing does not occur for failure of conditions unrelated to a Developer default.
  - b. If the Closing takes place, but final non-appealable Project approvals are not obtained (i.e. due to a lawsuit challenging the Project approval), the PSA is unwound,

Residential Parcel is re-conveyed to the City, the REA is terminated and the Marina Lease is amended to include the land portion of the Residential Parcel. New Lease would remain in effect, with obligation to build an Alternate Replacement Facility per the terms of the Lease. City retains \$15 Million Installment Payments, but \$15 million in Area 1 improvements would not apply.

- c. If the Closing takes place, but the New Lease is successfully challenged, Existing Lease would remain in place. Parties discussing any available options, if any, for the residential Project to proceed if Existing Lease remains in place. If an alternative option cannot be agreed upon, the Residential Parcel would be re-conveyed to the City, and City would retain the \$15 million Installment Payments, but Parties continuing to discuss amortized rent credit over period of time to account for the \$15 million Installment Payments.
  - d. Discussions with respect to the foregoing are ongoing; may include additional options.
8. **City Approval of Final Plans and Specs and Project General Contractor.** Parties continuing to discuss. Although the Project will include a private residential element not owned by the City, this is the site of the City's only public marina, and City has a proprietary interest in design and quality of the Project.
  9. **City Inspection Rights.** City must retain inspection rights in Development Agreement and Lease.
  10. **Environmental Matters.** Parties discussing Developer's responsibility for environmental matters and overlaps with Lease responsibilities.
  11. **Maintenance of Site/Self-Help.** Parties continue to discuss provisions to ensure the construction site is kept clean and that Developer provides ingress/egress access for baywalk, etc. at all times during construction. Parties discussing City's right to step in and keep these areas safe if the Developer fails to do so. City is amenable to limiting its remedies to damages/self-help for these defaults, and not treating these defaults as Material Defaults that give rise to termination.
  12. **Art in Public Places.** Applicability of AIPP requirements to the commercial portion of the Project is under review. If applicable, the code provides that the City Commission could waive the AIPP requirements for any given project, by a 5/7ths vote. This is an open issue.
  13. **Lease Issues Under Discussion Following Lessee's Initial June 10, 2020 Draft:**
    - a. Whether the park area is part of leased property or outside of leased property;
    - b. Process, timing and parameters for the Alternate Replacement Facility, if Project ultimately cannot proceed;
    - c. Timing and scope for the Area 1/2 improvements and the Area 2 Improvements;
    - d. Parameters and requirements for Replacement Facility, including separate TCO and CO of the commercial component vs. the residential component of the Project;
    - e. General construction timing for capital improvements, and construction related items, including completion dates, performance/payment bonds, and the like;
    - f. Cap on time period for claiming Economic Force Majeure;
    - g. Criteria to define the expected standards Lessee shall operate and maintain the marina as a "First Class" or "Class A" marina;

- h. Criteria for ongoing maintenance and security standards and indexes for upkeep of the premises, including the bay walk, parking garages, and park. Discuss fines in lieu of default;
- i. Update the required parking spaces to be provided by the City (to conform to the parking being provided as part of the Project), and ongoing maintenance obligations of parking garages that service marina;
- j. Lessee's and City's obligations regarding the Area 2 submerged land lease;
- k. Events of default, materiality, cure rights and certain events that may cause a cross-default of the various agreements to the transaction;
- l. Contingencies in the event of challenges to the Lease; and
- m. Transfers and City's Acceptable Owner criteria.