

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 23, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 20-0376. Development Agreement for Marina Park Project at 300-400 Alton Rd**

PB 20-0376. Development Agreement for Marina Park Project at 300-400 Alton Rd. Review by the Planning Board, pursuant to Section 142-423 of the City's Land Development Regulations, 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 Marina Park, LLC (or one or more affiliates thereof) (the "Developer"), which Development Agreement: (1) delineates conditions for the development of the City-owned properties located at 300-400 Alton Road, the current upland site of the Miami Beach Marina (Folio nos. 02-4203-009-9210, 02-4203-000-0010, and 02-4203-009-9250) (collectively, the "Development Site"), with such Development Site limited to a maximum Floor Area of approximately 320,000 square feet (of which there shall be a maximum of approximately 275,000 square feet for residential uses and approximately 45,000 square feet for retail, restaurant, office and marina uses), with the building constructed thereon limited to up to 385 feet in height, with up to 60 residential units, and which shall include an at-grade park consisting of at least 1.0 acres (the "Marina Park Project"); (2) memorializes the conditions for the City's sale to Marina Park, LLC (or an affiliate thereof) of a portion of the Development Site and air parcel within which the approximately 275,000 square foot residential portion of the Marina Park Project is to be constructed ("Sale of Air Parcel"), and the City's 99 year lease to an affiliate of Suntex Marina investors, LLC, of the Development Site (excluding the air parcel) and associated lease of submerged lands for marina use (the "Marina Lease"); (3) memorializes conditions for vacating the western half of the City's Right-of-Way at Alton Road adjacent to the Development Site, pursuant to Section 82-37 of the City Code and Section 1.03(b)(4) of the City Charter (collectively, the "City Right-of-Way Area"); (4) provides for the Developer's design, permitting, and construction of the Marina Park Project, including resiliency enhancements and other capital improvements, at Developer's sole cost and expense; and (5) with the foregoing subject to and contingent upon approval of the Marina Lease and the Sale of the Air Parcel by a majority of the voters voting in a City-wide referendum, pursuant to Section 1.03(b)(1) of the City Charter.

RECOMMENDATION

Transmit the proposed development agreement to the City Commission with a favorable recommendation, pursuant to Section 142-424 of the City Code.

BACKGROUND

On March 18, 2020, the Mayor and City Commission referred the proposed Marina Redevelopment Project 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.

On May 22, 2020, the Finance Committee favorably recommended the proposed redevelopment, and directed the Administration to continue its negotiations and bring to the City Commission for first reading a proposed (1) development agreement; (2) purchase and sale agreement; (3) lease agreement; and (4) vacation resolution for the City Commission's consideration.

On May 26, 2020, the Land Use and Sustainability Committee favorably recommended the proposed amendments to the City's Comprehensive Plan and Land Development Regulations to permit public-private marina redevelopments (including residential and other uses), increase the maximum building height, and amend other design regulations (collectively, the "Proposed LDR Amendments"). The Proposed LDR Amendments are the subject of companion agenda items on the Planning Board's June 23, 2020 agenda, and are discussed below.

OVERVIEW OF THE PROPOSED MARINA PARK REDEVELOPMENT PROJECT

The City is the owner of the upland property located at 300-400 Alton Road, the location of the Miami Beach Marina, Folio Nos. # 02-4203-000-0010, 02-4203-009-9210 and 02-4203-009-9250 (the "Development Site" or "Miami Beach Marina Site"). The Development Site is described more particularly below and in the attached **Exhibit "1"**.

Suntex Marina Investors, LLC, an affiliate of Miami Beach Marina Associates, Ltd., the current lessee of the Miami Beach Marina ("Lessee"), and Marina Park, LLC, f/k/a Alton Road Mixed Use Investments, LLC, ("Marina Park, LLC"), are proposing a public-private partnership with the City for the purpose of developing and constructing:

(1) a private luxury residential tower that would include approximately 60 residential units and approximately 275,000 square feet, with a maximum height of 385 feet;

(2) a new Marina building and enhanced neighborhood retail uses on the site of the current Marina building, with a total of approximately 45,000 square feet of accessory restaurant, retail and office space, to upgrade the existing condition of the Marina facilities, which are dated and unattractive;

(3) substantial green space, including a ground-level 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, 2022, 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 an affiliate of Suntex Marina Investors, LLC (the “New Lessee”) and improved financial and other terms (“New Lease”), which terms would permit a master sublease of the Development Site (the “Master Sublease”), either to an affiliate of Marina Park, LLC or an affiliate of Marina Park, LLC and New Lessee (the “Master Sublessee”). In addition to the Project, the proposal provides a commitment to spend an additional \$35 million in improvements to the submerged lands area known as “Area 2” and \$15 million for the upland Development Site; and

(2) **A purchase and sale agreement** for the sale of a portion of the Development Site and the air parcel within which the residential portion of the Project would be constructed (“Residential Parcel”), with the purchaser, an affiliate of Marina Park, LLC (“Residential Parcel Purchaser”), paying to the City **\$55 million** (“Purchase Price”) for the Residential Parcel (“Sale of Residential Parcel”), and additional non-cash consideration consisting of the \$15 million referenced in the preceding section for improvements to the Development Site (the upland leased premises) which will be memorialized in the New Lease; and

(3) **A development agreement** governing the development, design and construction of the entire Project, including its (1) residential, (2) commercial, and (3) green space and resiliency components (“Development Agreement” or “DA”). 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 Development Site, described below) and the F.A.R. associated with the vacation of the City Right-of-Way Area, 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 300-400 Alton Road, as described more fully in **Exhibit “1”** hereto, consisting of approximately 25,500 square feet (“City Right-of-Way Area”). Upon the vacation, fee ownership of the City Right-of-Way Area would revert to the City, with the associated development rights to be incorporated as part of the unified development site for the Project, to permit the Project to be realized, as contemplated above.

(5) The Proposed LDR Amendments, which are summarized as follows:

a. Amendments to the Public Facility: Government Use (“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.

Pursuant to Section 1.03(b)(1) of the City Charter, **both the New Lease and the Sale of Residential Parcel** are subject to approval by a majority of the voters voting in a City-wide referendum. For this reason, the City Charter and City Code does not require Planning Board review or approval of those elements of the Project.

PLANNING ANALYSIS

The Planning Department's analysis, as required pursuant to Sections 118-51(11) and 82-38 of the City Code, is attached hereto as **Exhibit "2"**.

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 300-400 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, the entirety of 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 City Right-of-Way Area 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, with the Lessee having the right to renew three (3) times, for a period of ten (10) years for each renewal term, through January 1, 2052, at Lessee's sole option and discretion.

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:

		Total Revenue to City
Year		
2011	\$	714,625
2012	\$	908,735
2013	\$	1,013,453
2014	\$	1,182,440
2015	\$	1,298,631
2016	\$	1,340,762
2017	\$	1,512,976
2018	\$	1,667,181
2019	\$	1,742,512
	\$	<u>11,381,315</u>

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:

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

*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 (BOT File No. 130765469). 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 TERMS FOR THE MARINA PARK REDEVELOPMENT PROJECT.

Since the April 17, 2020 and May 22, 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.

City's draft of the proposed Development Agreement is attached hereto as **Exhibit "3."**

As set forth more fully below, the proposed development includes other important, interrelated components of the project that are not before the Planning Board, including a new 99 year lease for the Miami Beach Marina, and a proposed sale of the Residential Parcel, as defined below, both of which are subject to voter referendum approval pursuant to the City's Charter. However, **in order to provide the Planning Board with a comprehensive understanding of the proposed development agreement and its interrelated elements, the principal terms of the entire transaction are addressed more fully below.**

Throughout this memorandum, the City has noted several items which, as of the agenda print

date, are the subject of the parties' continued negotiations. As these discussions are taking place in "real time," some items may not yet be updated in the underlying drafts. For ease of reference, the main items under discussion are also summarized in this Memorandum, and in the Update on Terms and Open Issues in Exhibit "4" attached hereto. All issues, of course, will need to be resolved prior to second reading.

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 Residential Parcel and the fair market rental value for the New Lease including the Area 2 and approximately 45,000 gross square feet of accessory restaurant, retail and office space located in Area 1.

CBRE's appraisal valued the Residential Parcel at **\$80 million**, and Walter Duke's appraisal valued the Residential Parcel at **\$70 million**. Additionally, both appraisers' 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, the New Lease would result in increased rent to the City. The following chart provides a comparison of the values determined by the appraisers:

	<u>CBRE</u>	<u>Walter Duke</u>
Sale of Residential Parcel	\$80,000,000	\$70,000,000
Marina Lease - Fair Market Rate	Areas 1 & 4: 10% of Gross Sales; Area 2: 10% of Gross Sales; Parking: 35% of revenue; Fuel Sales: \$0.04 per gallon	Areas 1 & 4: 10% of Gross Sales; Area 2: 10% of Gross Sales; Parking: 35% of revenue, Fuel Sales: \$0.04 per gallon
Marina Lease - Net Present Value Over 32 Years	\$35,200,000*	\$43,871,073*
Marina Lease - Net Present Value Over 99 Years	\$48,800,000*	\$95,669,363*

	<i>*Utilizing a 3% Growth Rate and a 7% Discount Rate. Does not include reversion value or capital investments by Lessee.</i>	<i>*Utilizing a variable Growth Rate and a 4% Discount Rate. Does not include reversion value or capital investments by Lessee.</i>
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The CBRE and Walter Duke appraisals of the Sale of Residential Parcel and the New Lease are attached hereto as **Exhibit "5"**.

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 Residential Parcel, 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 Residential Parcel 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 the Development Site and the vacated City Right-of-Way Area for the purpose of building the Project, as part of a unified development site. City's draft of the proposed Development Agreement is attached as **Exhibit "3"**.

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

Purchase and Sale Agreement. The form of the Purchase and Sale Agreement ("PSA"), between the City and the Residential Parcel Purchaser, would be an exhibit to the Development Agreement. The PSA would be effective following voter referendum approval of the Sale of Residential Parcel and the New Lease in accordance with the City Charter. At the closing of the Sale of Residential Parcel, which would take place by March 30, 2021 (the "Closing"), the Residential Parcel Purchaser would own the fee interest in the Residential Parcel upon which the residential portion of the Project would be built. As noted above, the Residential Parcel 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 Residential Parcel Purchaser's rights under the PSA and Reciprocal Easement Agreement (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, as an exhibit, the form of a Reciprocal Easement Agreement among the City, the New Lessee/Master Sublessee and the Residential Parcel Purchaser, which would be effective upon the Closing of the Sale of Residential Parcel, to

accomplish the subdivision of the Development Site to create two separate fee parcels: the fee interest in the Residential Parcel to be owned by the Residential Parcel Purchaser and the fee interest in the balance of the Development Site, which would remain owned by the City at all times (and leased to the New Lessee under the New Lease) ("REA"). Depending on the outcome of the parties' ongoing discussions, the New Lessee may not need to be a party to the REA. 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/Master Sublessee with respect to the Development Site and the Residential Parcel Purchaser and successor owners with respect to the Residential Parcel. The REA would survive the expiration or earlier termination of the New Lease.

Upon the Closing of the Sale of Residential Parcel and subsequent construction of the residential portion of the Project in accordance with the Development Agreement, the Residential Parcel Purchaser would have the right to further subdivide the Residential 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 Residential 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 Residential Parcel).

The New Lease. Subject to voter referendum approval, the New Lease would be executed at Closing, and effective on Jan. 1, 2022, immediately upon the expiration of the Existing Lease. The leased premises subject to the New Lease will be comprised of the Existing Leased premises and Lots 30-31, less the Residential Parcel. 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 remain 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) \$1,900,000 (consisting of \$1,650,000 for Area 1 and Area 2, and \$250,000 as a parking contribution), adjusted annually by CPI ("Annual Minimum Base Rent"), with the year of commencement for the annual CPI increase subject to continued discussions ; 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 \$1,250,000 annually, adjusted by CPI (with the year of commencement for the CPI increase subject to continued discussion). 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 or

any affiliate thereof operates a restaurant or retail establishment within the Leased Premises, rent shall be based on the fair market rental value of the restaurant or retail premises instead of gross revenues (which may, depending on outcome of ongoing discussions, be based on the rent paid by other tenants).

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 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 as part of the non-cash consideration for the sale of the Residential Parcel, as set forth in the Purchase and Sale Agreement, \$15,000,000 will be committed by the Lessee for Area 1 improvements, including resiliency components in the park and bay walk to cover items above base park and base tenant improvements (\$7.5M in years 1-10, and \$7.5m in years 11-20). Developer has proposed for a TBD portion of the \$15 million to be applied to Area 2 improvements; this is an open issue subject to ongoing discussions. The Developer's proposed resiliency improvements are summarized in **Exhibit "6"** hereto.

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

Development Agreement Governing Project

TERMS AND CONDITIONS OF DEVELOPMENT AGREEMENT	TERMS AND CURRENT STATUS
Developer	Developer shall be an affiliate of Marina Park, LLC (same entity as the Master Sublessee) and Residential Parcel Purchaser (also an affiliate of Marina Park, LLC), jointly and severally.
Project Restrictions	<ul style="list-style-type: none"> • Approximately 275,000 square feet of residential, with up to 60 residential units; • Approximately 45,000 square feet of commercial, retail and office space (inclusive of space required by the New Lessee for the operation of the Marina); • Maximum height of 385 feet for the Project; • No free-standing outdoor bars, night clubs; • Approximately 1 acre ground-level Park; • Restrictions on short-term rentals • Resiliency improvements; and • Parking for the commercial/retail areas.
Vacation of Western Half of Alton Road Right of Way Abutting the City-Owned Properties (Lots 21-31)	Developer has requested that the City vacate the west half of the City Right-of-Way Area (consisting of approximately 25,500 square feet), which vacated area shall continue to be used as a right-of-way for pedestrian/vehicular travel and owned at all times by City. City Right-of-Way Area and Development Site would be joined via a covenant in lieu of unity of title, and the associated development rights would be incorporated within the Project as part of the unified development site for 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.

TERMS AND CONDITIONS OF DEVELOPMENT AGREEMENT	TERMS AND CURRENT STATUS
Effective Date	Subject to voter referendum approval, the later of (1) thirty days after the date the City Commission certifies the results of the November 3, 2020 election or (2) January 31, 2021.
DRB Approval Deadlines	Developer to apply for DRB Approval within 6 months after the Effective Date and to obtain final DRB approval not later than 54 months following the Effective Date (subject to extensions for force majeure events and tolling for Lawsuits as defined below (for a maximum tolling period for Lawsuits of 42 months).
Outside Date for Commencement of Construction	18 months following final DRB approval (subject to extension for Force Majeure, City Delays, and tolling for lawsuits as provided above).
Outside Date for Completion of Project	The Developer is required to Complete Construction of the Project within 48 months from the Commencement of Construction
Transfers Prior to C.O.	Transfers by Developer prior to C.O. shall be limited to entities satisfying City's "Acceptable Owner" criteria and involuntary transfers (such as mortgage foreclosure), encumbrances in favor of lenders, transfers of minority interests and transfers for estate planning purposes. Parties continuing to discuss; at a minimum, David Martin and/or a "Martin Entity" shall control day-to-day development of the Project and retain a 10% ownership interest until CO of the Project.
Duration of Development Agreement	The Development Agreement shall have a term of 12 years from the Effective Date, subject to extension for Force Majeure and City Delays. After the expiration of the Agreement, the Parties shall have no further obligations under the Agreement except for those obligations that expressly survive the expiration of this Agreement, including, for example, the Developer's indemnity obligations to the City.
Indemnity of City / Project Challenges - Lawsuits	<p>During the pendency of any lawsuit challenging the Project (or any component thereof, including the Sale of Residential Parcel, New Lease, Project Approvals, or the Development Agreement) ("Lawsuit"), Developer shall defend the Lawsuit at its sole cost and indemnify the City against any damages relating to the Lawsuit.</p> <p>If the New Lease is successfully challenged (i.e., through final appeals) such that the New Lease does not become effective or is voided, the existing Lease shall have been deemed renewed and shall continue in effect on its terms. Residential Parcel Purchaser shall deed back the Residential Parcel to the City, and City shall retain all installment payments (\$15 million), but existing Lease would otherwise continue in effect (with no obligation to construct a Replacement Facility for the Marina). Parties continuing to discuss credits against rent for remainder of the term for the \$15 million paid to the City.</p> <p>If New Lease is not successfully challenged (and New Lease is in effect), but DRB approval cannot be obtained, either due to a Lawsuit or for any other reason, either party may terminate the Development Agreement and Residential Parcel Purchaser shall deed back the Residential Parcel to the City. City to retain the \$15 million paid to City; however, the \$15 million Area 1 improvements under the New Lease would no longer apply (thereby crediting the New Lessee for the \$15 million installment payments previously made to the City.. New Lease to otherwise remain in effect, including with respect to Lessee's obligation to design and construct a new Alternate Replacement facility for the Marina ("Replacement Facility"), subject to City Commission approval of the new concept design, programmatic elements and additional terms to be discussed. Parties discussing whether there are</p>

TERMS AND CONDITIONS OF DEVELOPMENT AGREEMENT	TERMS AND CURRENT STATUS
	any other options for Residential project to proceed if Existing Lease remains in place. In all events above, City to be fully indemnified for all costs incurred by the City, including in connection with any Lawsuit.
Termination	City shall have the right to terminate for Material Events of Default that remain uncured (i.e., failure to make an installment payment for the Residential Parcel, failure to indemnify the City, failure to obtain the Project approvals by the outside date therefor; breach of the Transfer restrictions prior to CO of the Project, and the like). The parties continue to discuss specific material events of default. . . Developer has also proposed eliminating cross-defaults once the commercial portion of the Project and the park are completed; parties continuing to discuss. Any termination of the PSA for the Residential Parcel automatically terminates the Development Agreement and vice versa. (Whether this provision is limited to prior to Closing or after Closing (i.e., for failure to pay installment payments, etc., is an open issue subject to continuing discussions.) See "Indemnity of City / Project Challenges" Section above, for termination, if due to challenges to the Project.
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 Residential Parcel and New Lease, subject to a maximum cap, which the Parties continue to discuss.
OPEN ISSUES	See Update on Terms and Open Issues in Exhibit "4."

Purchase and Sale Agreement (PSA) for Residential Parcel

TERMS AND CONDITIONS OF PSA	TERMS AND STATUS
Purchase Price	\$55 million, plus an additional \$15 million in capital improvements for Area 1 to be memorialized in the New Lease. (See "Capital Improvements" section in New Lease table below.)
Closing	Prior to March 31, 2021. Outside dates would be subject to extensions for force majeure or tolling for any Lawsuit (as defined above) (provided the tolling period for a Lawsuit would be a maximum of 42 months).
Escrow Deposit	A deposit of \$1 million is due 30 days after City Commission approval of the PSA, refundable if no voter approval at referendum. An additional \$4 million is due the later of January 31, 2021 or 30 days after the Effective Date (being the same Effective Date as for Development Agreement). . If Purchaser defaults under the PSA, the City shall retain the \$5 million deposit, and the PSA may be terminated.
Payment Schedule	\$5 million at Closing, with the balance due in installments, evidenced by a Promissory Note (which shall be non-interest bearing) and secured by a First Mortgage in favor of the City. The installment payments against the Promissory Note shall be as follows: \$5 million, on or before January 1, 2022; \$5 million, on or before September 30, 2022; and \$40 million balance, due on the earlier of (a) ninety (90) days after Purchaser has obtained the Project Approvals or (b) fifty-four (54) months after the Effective Date of the PSA (the date the City Commission certifies the results of the November 3, 2020 election). Payments shall be subject to tolling for Lawsuits (for maximum period of 42 months, as provided above).

TERMS AND CONDITIONS OF PSA	TERMS AND STATUS
Reciprocal Easement Agreement (REA)	City's fee parcel will be subdivided into two separate fee parcels pursuant to the REA, one for the fee interest in the Residential Parcel, and one for the City's fee interest in the balance of the Development Site. The REA would grant easements of support, ingress and egress, and utilities, and contain covenants with respect to cost-sharing between the New Lessee or Master Sublessee (depending on outcome of parties' continued discussions), with respect to the Upland Redevelopment and the Residential Parcel Purchaser.
Termination	Each party may terminate the PSA for the other party's failure to perform (following notice and cure period). As noted above, parties continuing to discuss termination rights pre-Closing and post-Closing. Any termination of the Development Agreement automatically terminates the PSA and vice versa.
OPEN ISSUES	See Exhibit 4 - Update on Terms and Open Issues.

Marina Lease

TERMS AND CONDITIONS OF LEASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	MOST RECENT TERM SHEET AND CURRENT STATUS
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 Residential Parcel.	Same as under Existing Lease, plus Lots 30/31 (less the Residential Parcel). Parties discussing possibility of excluding the to-be-constructed 1.0 acre park from the boundaries of the Leased Premises.
Term	Current term expiring January 1, 2022, with 3 separate 10 year renewal periods, at the Lessee's option, expiring Jan. 1, 2052.	99 years, commencing on the January 1 st after issuance of C.O. for the "Replacement Facilities".	Developer proposes New Lease effective January 1, 2022, contingent upon Closing.
Base Rent	\$320,000	\$1M, without a CPI escalator.	\$1,650,000, plus \$250,000 for parking costs, and minimum of annual CPI escalator. Base Rent would be \$1,250,000 in first 4 years to account for construction period.
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	Same as initial term sheet and consistent with the appraisals. Rent amounts are consistent with the appraisals received and subject to continuing negotiations.

TERMS AND CONDITIONS OF LEASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	MOST RECENT TERM SHEET AND CURRENT STATUS
		Lessee or Master Sublessee operates a retail or restaurant establishment, fair market rent for the restaurant or retail establishment will be included in Gross Receipts based on average of what the other tenants are paying.	
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 \$1,650,000 + \$250,000 for parking, 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, \$7.5M contributed in Years 1-10 and \$7.5M in Years 11-20; 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 \$1,250,000, with annual CPI adjustments, for a period limited to 4 years (whether or not construction complete within 4 years). CPI during construction period subject to continued discussions. 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	Lessee will be a new entity controlled by or affiliated with the current Lessee. The Lease would authorize a Master Sublease over Area 1 to a Master

TERMS AND CONDITIONS OF LEASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	MOST RECENT TERM SHEET AND CURRENT STATUS
		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 obligations under the Lease.	<p>Sublessee entity controlled by or affiliated with Marina Park, LLC or Marina Park, LLC / New Lessee. Master Sublessee will be under common control with Residential Parcel Purchaser, to be executed concurrently with the New Lease.</p> <p>City non-disturbance and recognition agreement, to permit financing of Area 1, separate 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. For clarity, all development and construction obligations would be in the D.A., with Developer having the overall responsibility for delivery of the Project. Developer has proposed eliminating cross-defaults between the Development Agreement and Lease once the commercial portion of the Project and park are completed.</p>
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 proposed that Lessee pay all City expenses under the Parking Agreements (and deduct such expenses from calculation for Percentage Rent). Lessee instead proposes to increase Base Rent to \$1,650,000 + \$250,000 for parking, in lieu of paying parking expenses and SLL rent.</p> <p>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.

TERMS AND CONDITIONS OF LEASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	MOST RECENT TERM SHEET AND CURRENT STATUS
Transfers/Assignment	Permitted with approval of the City Manager	Transfers subject to City Manager approval and additional restrictions to be agreed in the Marina Lease; provided that the Master Sublease to the Master Sublessee is expressly permitted.	Parties continuing to discuss restrictions on transfers, assignments and subleasing.
Termination	City may terminate the Lease following any Event of Default	Same as Existing Lease.	
OPEN ISSUES			See Exhibit 4 - Update on Terms and Open Issues.

EXISTING SUBLEASES

As referenced above, the Development Site is currently subject to the Existing Marina Lease and the associated commercial, retail and restaurant subtenants, including Monty's Sunset, LLC ("Monty's"). In 2011, the City granted Monty's a non-disturbance agreement, which provides that in the event the Existing Marina Lease is terminated, Monty's may continue its tenancy pursuant to the same terms and conditions of its current sublease (provided that Monty's is not in default thereof).

The City, however, is not a party to the Monty's sublease. For this reason, the City is not involved in any manner in, and is not a party to, the ongoing litigation between the Lessee and Monty's, in the pending case, *Miami Beach Marina Assoc., Ltd. v. Monty's Sunset, LLC*, Case No. 2019-033590-CA-01.

The Monty's sublease expires on December 31, 2021, provided, however, that if the Lessee exercises its ten-year renewal option, then Monty's would similarly be entitled to a renewal of its sublease for the same ten-year renewal period exercised by the Lessee. However, if the Lessee, at its sole discretion, does not exercise its right of renewal under the existing Lease, then the existing Lease would expire on January 1, 2022 (and the Monty's sublease would expire on December 31, 2021, in accordance with its terms), before the New Lease takes effect, on Jan. 1, 2022, immediately upon the expiration of the Existing Lease.

As noted above in the chart outlining the Development Agreement and PSA terms, the DA and PSA provide for a closing on the Sale of Residential Parcel or before March 31, 2021. Additionally, the DA and PSA provide for contingencies in the event the New Lease is successfully challenged and is terminated, voided or otherwise deemed ineffective by a court of competent jurisdiction. Specifically, in such event, the Lessee shall be deemed to have exercised its option to renew the Existing Marina Lease as of March 31, 2021, and the first ten (10) year renewal term of the Existing Marina Lease conclusively shall be deemed to have commenced as of January 1, 2022.

In the event that the New Lease is successfully challenged and the Existing Marina Lease remains in effect, the Project might not be able to proceed. Accordingly, the remaining agreements would be terminated, and the Residential Parcel would be deeded back to the City. As noted above, Developer has proposed that it retain the right to pay the Purchase Price and retain the deed, even if the DRB approvals are not obtained (this is an open issue subject to continuing discussions). The City, in turn, would retain all installment payments (\$15 million) paid to the City or otherwise due for the sale of the Residential Parcel pursuant to the PSA ("Installment

Payments”), and may provide Lessee with a rent credit to amortize the Installment Payments over a to-be-negotiated period of time (to be memorialized in an amendment thereto). As noted above, rent credit remains subject to the parties’ ongoing discussions. However, in the event Lessee fails to diligently pursue and exhaust all appeals, the City shall be entitled to retain the Installment Payments, with no rent credit to be provided to the Marina Lessee.

In addition, if the Project proceeds and Developer successfully obtains the Project approvals, the Developer is required, prior to the commencement of construction, to provide the City with evidence of either: (a) the termination of all current subleases and/or releases from sublessees in favor of the City, or (b) amendments to all unterminated subleases, evidencing the applicable sublessees’ agreement to vacate the Development Site prior to commencement of construction, to permit the Project to be constructed. Developer has proposed having an option to proceed by providing City an indemnity for any claims by sublessees; this is an open issue subject to ongoing discussions.

Ultimately, it is the responsibility of the existing Lessee and the New Lessee to make all appropriate arrangements with then-existing sublessees, as the City is not in privity of contract with respect to the subleases. To this end, Developer and Lessee have agreed to fully indemnify, defend, and hold harmless the City in connection with any of the foregoing.

THE PROPOSED VACATION OF THE CITY RIGHT-OF-WAY AREA

Although the portion of Alton Road that lies north of 5th Street is considered a state road owned and maintained by the Florida Department of Transportation, the portion of Alton Road that is located south of 5th Street is a City road.

As described above, the Developer has requested that the City vacate a portion of Alton Road, namely the City Right-of-Way Area which consists of the western half of Alton Road that lies adjacent to the City-owned properties that are part of the Development Site (Folio Nos. 02-4203-009-9210, 02-4203-000-0010, and 02-4203-009-9250). Currently, as to the Right-of-Way Area, the City holds a right of way dedication, which confers on the public an exclusive right of use, so long as the City Right-of-Way Area is used for the purpose of the dedication (namely, for pedestrian and vehicular access).

The vacation of a right-of-way is a legislative act within the exercise of the City Commission’s discretion, if the City Commission determines the vacation is in the public interest. See, e.g., *Robbins v. White*, 42 So. 2d 841 (1907); *City of Temple Terrace, Fla. v. Tozier*, 903 So. 2d 970 (Fla. 2d DCA 2005). If approved, the vacation would be effectuated by the City Commission’s adoption of a resolution authorizing the vacation. By operation of law, once the City vacates the City Right-of-Way Area, the underlying fee interest vests with the current abutting property owner. See, e.g., *Servando Bldg. Co. v. Zimmerman*, 91 So. 2d 289 (Fla. 1956); *Smith v. Horn*, 70 So. 435 (Fla. 1915); *Hurt v. Lenchuk*, 223 So. 2d 350 (Fla. 4th DCA 1969) (“When a street is lawfully vacated, title to the area vacated vests in the adjoining property owners.”)

Accordingly, once the City vacates the Right of Way, the underlying fee interest in the City Right-of-Way Area reverts to the City, as the current abutting property owner of the Development Site. For this reason, the proposed vacation of the City Right-of-Way Area materially differs from prior vacations approved by the City Commission. Here, the City would be vacating a right of way *in favor of itself* as the owner of the abutting property. It is vitally important to note that under this construct the entirety of Alton Road south of 5th Street -- including the vacated City Right-of-Way

Area -- would remain under the City's complete control. This remains true both before and after the vacation is effectuated. Under the terms of the contemplated transaction, the vacated City Right-of-Way Area would be a stand-alone parcel. It will carry a separate metes and bounds description designed to ensure that this area remains under the City's direct control and is separate from the Development Site. As such, the proposed vacation raises no concern about public access whatsoever, as the City would retain complete ownership and control of Alton Road at all times, and the rights of the public to the continued use of Alton Road will not be diminished or altered in any way.

The proposed vacation of the City Right-of-Way Area would result in the City vacating approximately 25,500 square feet of existing right of way. By vesting the City with the fee interest in the City Right-of-Way Area, the vacation would permit the City, pursuant to the Development Agreement, to structure the transaction to include the vacated City Right-of-Way Area and the upland Development Site as part of a unified development site, and to aggregate the vested development rights on the unified abutting parcels through a covenant in lieu of unity of title, as permitted by Section 1.03(c) of the City Charter (without referendum) and Section 118-5 of the City Code, which provides that property owners with fee simple title to abutting parcels may execute a covenant in lieu of unity of title, to aggregate its development rights on those unified abutting parcels.

The 25,500 square feet associated with the City Right-of-Way Area are accounted for within the appraisals set forth in **Exhibit "5"**, as each appraiser assumed a developable project of 275,000 square feet of residential, and 45,000 square feet for the commercial components of the Project, which otherwise cannot be accomplished without the City Right-of-Way Area.

The foregoing benefit to the Developer associated with the proposed vacation would only be available if the City Commission approves the Project, including the (1) Development Agreement, (2) Sale of Residential Parcel, and (3) New Lease. **In addition, as the Project cannot proceed without voter referendum approval of the Sale of Residential Parcel and the New Lease pursuant to the City's Charter, the proposed vacation would be subject to and contingent upon approval of the Sale of Residential Parcel and New Lease by a majority of the voters voting in a Citywide referendum. Accordingly, if the voters do not approve any component of the Project, the proposed vacation would not be effectuated.**

FLOOR AREA RATIO CALCULATIONS.

For clarity now and in the future administration of this transaction, the parties believe it best to explicitly set forth the manner and method of calculating the available floor area to be included within the overall Project, as follows:

1. The Development Site. As set forth above and in Exhibit "1", the Development Site would consist of Area 1 (north 10 feet of lot 21 and all of lots 22-29) Lots 30-31 ("Lots 30/31"), and the City Right-of-Way Area. Area 1 contains 122,983 square feet. Previously, 174,388 feet of residential floor area from Area 1 was transferred from Area 1 to the SSDI South Site for inclusion within a residential project, pursuant to the terms of the SSDI Development Agreement dated April 17, 1986 ("SSDI DA"). At the time of the transfer, 3.5 was the maximum residential FAR on the Marina Site. That FAR yielded 430,440 square feet of floor area from which 174,388 was subtracted and transferred pursuant to the SSDI DA leaving a remaining balance of 256,052 of developable floor area. With respect to Lots 30-31, all of the developable floor area from Lots 30-31 was previously transferred for inclusion within another residential project. Accordingly, as

Lots 30-31 do not add any available floor area that may be included within the Project, there is a total remaining balance of **256,052 of developable floor area**.

2. The City Right-of-Way Area. As set forth above and in Exhibit "1", the to-be vacated City Right-of-Way Area consists of 25,500 square feet. At an FAR of 2.5, the City Right-of-Way Area yields 63,750 square feet of available floor area.

3. Total Project Floor Area. If the City Commission approves the proposed vacation and the Developer satisfies the conditions of the Vacation Resolution, the total floor area of the Project would represent the sum of (1) and (2), in the amount of **319,802** square feet of developable floor area.

FINANCIAL IMPACT/ECONOMIC DEVELOPMENT

The appraisals, attached as **Exhibit "5"**, have demonstrated that the current Marina Lease which provide that the City is entitled to 10% of gross revenue is consistent with the market value in South Florida. The extension of the lease, along with the increase in minimum lease payments, will bring about a significant increase to the net present value of the Lease, and **guarantee** a revenue stream that is higher than the highest yield of any year to date. In addition, the proposed \$50M in capital improvements will keep the asset positioned to be a premier facility generating significant revenue for many years to come. Since the initial term sheet offer to increase the base rent from \$300,000 to \$1 million per year, the City has been able to negotiate an aggregate guaranteed minimum base rent of \$1.9 million per year, plus annual CPI increases. The foregoing \$1.9 million per year is inclusive of a \$250,000 annual contribution toward the City's existing annual parking expenses, which collectively amounts to a much better net revenue position for the City.

The development of Area 1, including a publicly accessible green space, will have significant public benefits, in addition to the \$55 million in cash payments for the Sale of Residential Parcel. As set forth above, if approved by the voters in a citywide referendum, the proceeds from the Sale of Residential Parcel would come to the City incrementally, with \$5 million deposit due by January 31, 2021, and paid to City at closing (March 30, 2021), \$5 million due on or before January 1, 2022, \$5 million due on or before September 30, 2022 (with dates subject to extension/tolling as outlined above), and the balance due within 90 days following DRB approval of the Project, with all payments, except the \$5 million paid at closing, evidenced by the promissory note that is secured by a first mortgage on the Residential Parcel, pursuant to the PSA.

As a cumulative deal, this Project and New Lease makes significant financial improvements to the Existing Marina Lease. The public investments, along with the cash payments, results in more than \$100 million of value to the City. That, value coupled with job creation, increased ad valorem tax base, and what will likely be another more than \$62 million in net present value according to the appraised lease terms, will result in a major economic gain to the City related to this proposed Project.

THE APPROVALS REQUIRED FOR THE VARIOUS PROJECT ELEMENTS

The New Lease and Sale of Residential Parcel. Pursuant to Section 82-37 of the City Code, the **New Lease** and the **Sale of Residential Parcel** would each require two readings before the City Commission, with the second reading being a public hearing. As the New Lease and Sale of Residential Parcel would require the waiver of competitive bidding under Section 82-39 of the City Code, the New Lease and Sale of Residential Parcel would be subject to approval by a 5/7 vote

of the City Commission.¹

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. The Development Agreement may be approved on a 4/7th vote of the City Commission.

Vacation of City Right-of-Way Area. The vacation of a portion of the City Right-of-Way Area, 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.

The Proposed LDR Amendments. The Proposed LDR Amendments require two readings, with the second reading being a public hearing, and approval by a 5/7ths vote of the City Commission.

Voter Referendum Requirement. Finally, in addition to the heightened City Commission supermajority approval requirements set forth above, the **New Lease** and **Sale of Residential Parcel** 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.

The Proposed Comprehensive Plan Amendments. The Proposed Comprehensive Plan Amendments require two readings and public hearings, and approval by the City Commission.

CONCLUSION

The Administration recommends that the Planning Board favorably recommend the proposed Development Agreement and approve the proposed vacation of the City Right-of-Way Area, with the vacation conditioned upon the City Commission's approval of (1) the Development Agreement, which shall include the terms and conditions for the design, permitting and construction of the Marina Park Project, at the Developer's sole cost and expense, including resiliency and other capital improvements; (2) the City's Sale of the Residential Parcel within which the approximately 275,000 square foot residential portion of the Marina Park Project is to be constructed; and (3) the City's 99 year New Lease for the Marina; provided that the proposed vacation shall also be subject to and contingent upon approval of the New Lease and the Sale of Residential Parcel by a majority of the voters voting in a city-wide referendum, pursuant to section 1.03(b)(1) of the City Charter.

Attachments:

- Exhibit 1** – Development Site Survey/Legal Description
- Exhibit 2** – Planning Analysis
- Exhibit 3** – City's Draft Development Agreement and Purchase/Sale Agreement
- Exhibit 4** – Update on Terms and Open Issues
- Exhibit 5** – Independent Appraisals (CBRE, Inc. and Walter Duke)
- Exhibit 6** – Resiliency Features

¹ 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.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Consistent – The proposal will improve the resiliency of the City with respect to sea level rise due to proposed mitigation enhancements.

- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

Consistent – The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed development agreement to the City Commission with a favorable recommendation.