



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Jimmy L. Morales, City Manager
Raul J. Aguila, City Attorney

DATE: July 29, 2020

SUBJECT: **MARINA PARK PROJECT - (1) DEVELOPMENT AGREEMENT, (2) SALE OF PROPERTY, (3) NEW MARINA LEASE, AND (4) VACATION OF RIGHT OF WAY**

This consolidated Commission Memorandum has been prepared to provide the City Commission with a comprehensive understanding of the proposed Marina Park Project transaction and its interrelated elements. The four main components of the transaction, each of which will be considered on second reading, are as follows:

- (1) Development Agreement for the development of the entire Marina Park Project;
- (2) Purchase and Sale Agreement for the sale of the Residential Parcel;
- (3) Lease for the Miami Beach Marina; and
- (4) Vacation of a City Right-of-Way Area.

In addition, the Marina Park Project also contemplates proposed amendments to the City's Comprehensive Plan and Land Development Regulations, which are the subject of companion agenda items on the July 29, 2020 City Commission agenda, addressed more fully in the separate Commission Memorandum accompanying those items.

The proposed transaction is intended to maximize the performance of the Miami Beach Marina and upgrade its facilities, enhance the neighborhood through neighborhood-oriented commercial and retail spaces, improve resiliency with capital improvements focused on sustainability, provide a park with additional public green space in the City, and generate substantial lease and other revenues for the City.

If approved by a majority of the voters in a City-wide referendum, the Marina Park Project transaction will collectively result, among other terms, in the following benefits for the City:

- **Payment to the City of \$55 million** for the sale of the Residential Parcel, with Project restrictions to limit the building height to 385 feet, and a maximum of 60 residential units;
- Construction of a new Miami Beach Marina facility to replace the existing facility, at no cost to the City, with Developer to spend **a minimum of \$22.5 million in Marina facility improvements and additional public benefits**, including a 1.0 acre park, resiliency improvements and enhancements to the surrounding Baywalk and Alton Road areas;

- Except with respect to a 4-year construction rent period, **increased Minimum Annual Guaranteed Rent to the City of \$1.9 million**, adjusted each year for inflation, and with the City to annually receive *the greater of* the Minimum Annual Guaranteed Rent or Percentage Rent (as defined in the Lease, based on the revenues generated in connection with the operation of the Leased Premises); and
- **A minimum of \$40 million to be spent by the Marina Lessee on additional capital improvements** for the operation of the Marina, to upgrade the marina to world-class marina standards; and
- **Delivery to the City of a 1.0 acre public park** which, once constructed, will be owned and controlled by the City, separate from the Leased Premises, for the benefit of the general public.

The details of the proposed transaction are addressed more fully below.

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 City Commission’s June 24, 2020 agenda, and are briefly discussed below.

On June 23, 2020, the Planning Board unanimously approved the proposed vacation of the City Right-of-Way Area described more fully below, as required under Section 1.03(b)(4) of the City Charter, and voted to transmit the Development Agreement and the Proposed LDR Amendments to the City Commission with a favorable recommendation, in accordance with the City’s Land Development Regulations.

On June 24, 2020, the City Commission approved, on first reading, all of the elements of the proposed transaction (Development Agreement, Purchase and Sale Agreement, Lease Agreement, and vacation of the City Right-of-Way Area) as well as the Proposed LDR Amendments.

OVERVIEW OF THE PROPOSED MARINA PARK REDEVELOPMENT PROJECT

The City is the owner of the upland property located at 300-390 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 Residential, LLC, f/k/a Alton Road Mixed Use Investments, LLC ("Marina Park Residential"), 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 contiguous ground-level public park of at least 1 acre which will be owned and controlled by the City and dedicated as a public park for the benefit of 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 has provided 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 involves various interrelated agreements to implement the Project and its various components, including the following:

(1) 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

(2) A **purchase and sale agreement** for the sale of up to .3 acres of the 3.51 acre Development Site, and the air parcel within which the residential portion of the Project would be constructed ("Residential Parcel"), with the purchaser, Marina Park Residential, LLC ("Residential Parcel Purchaser"), paying to the City **\$55 million** ("Purchase Price") for the Residential Parcel

("Sale of Residential Parcel"), with additional non-cash consideration memorialized in the Development Agreement and New Lease, as set forth more fully in this Memorandum; and

(3) 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 between the City and MB Marina Park, LLC, 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 for the construction of the Project (the "Master Sublease"), to Marina Park Commercial, LLC (the "Master Sublessee" or "Marina Park Commercial"). In addition to the Project, the terms provide for the New Lessee to spend **\$40 million in improvements for the operation of the Marina** ("Marina Improvements"); and

(4) The **vacation of the western half of the Alton Road right-of-way** abutting the City-owned parcels along 300-390 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. In addition, pursuant to Section 1.03(b)(4) of the City Charter, the vacation of the City Right-of-Way Area requires approval by the Planning Board (which approval was obtained on June 23, 2020), and a 6/7ths vote of the City Commission.

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 300-390 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:

Year	Total Revenue to City:
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	\$ <u>1,742,512</u>
	\$ <u><u>11,381,315</u></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,
- Murano Grande Condominium,
- Murano at Portofino Condominium, and
- Icon Condominium.

(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**.

APPRAISAL REPORT

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 May 20, 2020 appraisal valued the Residential Parcel at \$80 million, and Walter Duke's June 2, 2020 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.

On June 24, 2020, at first reading/public hearing of the proposed transaction, the City Commission requested that both appraisers evaluate the changes to the residential development since it was first proposed in March, 2020 (i.e., with the increased height and narrower tower) to determine if such changes resulted in a material change to the appraisals. The CBRE appraisal concluded that the taller tower resulted in a change from \$80 Million to \$87 Million, and the Walter Duke appraisal concluded that the taller tower does NOT result in any change to the appraised value of \$70 Million. Both appraisers' valuations regarding the proposed lease remained unchanged. The following chart provides a comparison of the updated values determined by the appraisers:

	<u>CBRE</u>	<u>Walter Duke</u>
Sale of Residential Parcel	\$87,000,000	\$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>

The CBRE and Walter Duke appraisals of Sale of the Residential Parcel and the New Lease as well as the updated appraisals for the Sale of the Residential Parcel are attached hereto as **Exhibit “7”**.

THE VARIOUS AGREEMENTS RELATED TO THE MARINA PARK PROJECT

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 proposed Development Agreement is attached hereto as **Exhibit “3.”** Marina Park Residential (the Residential Parcel Purchaser) and Marina Park Commercial (Master Sublessee), jointly and severally, would be the “Developer” under the Development Agreement. The Developer would be responsible for the development, design and construction of the entire Project (including the residential, commercial and park elements). The Development Agreement would include all of the Project requirements and restrictions, including the obligation to deliver a new Marina facility and additional public benefits consisting of at least \$22,500,000, 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. The proposed Public Benefit Improvements for the Project are summarized in **Exhibit “8.”**

Marina Park Commercial’s (the Master Sublessee) obligations under the Development Agreement for the financing and redevelopment the Area 1 commercial, retail and office improvements (collectively, the “Upland Redevelopment”) are incorporated into the New Lease and will also be incorporated in the Master Sublease between MB Marina Park, LLC (Lessee) and Marina Park Commercial (Master Sublessee), thereby aligning the Developer’s obligations under the Development Agreement with the obligations in the New Lease and Master Sublease.

Purchase and Sale Agreement. The proposed Purchase and Sale Agreement is attached hereto as **Exhibit “4.”** The Purchase and Sale Agreement (“PSA”), between the City and the Marina Park Residential (Residential Parcel Purchaser), 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 15, 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, Marina Park Residential (the Residential Parcel Purchaser), jointly and severally with Marina Park Commercial (the Master Sublessee), would be the Developer under the Development Agreement, thereby aligning the Residential Parcel Purchaser’s rights under the PSA and Reciprocal Easement Agreement (as described below) with Marina Park Commercial’s obligations relative to the Project under the Development Agreement, to collectively cover all of the respective obligations for delivery of the residential, commercial, and park components of the Project. As set forth in the Development Agreement, until the Developer has satisfied all conditions for Commencement of Construction, the City shall require that the deed for the Residential Parcel must be re-conveyed to the City in the event of the termination of the DA and unwinding of the transaction.

The Promissory Note and Mortgage in Favor of the City. The Purchase and Sale Agreement will provide for an initial installment payment of \$5 million due at Closing, with the \$50 million balance due in installments, evidenced by a Promissory Note (which shall be non-interest bearing until the date specified below) and secured by a First Mortgage in favor of the City. The Note will be non-interest bearing until the earlier of (y) ninety (90) days after the Project Approvals (Design Review Board and Planning Board) are obtained or (z) fifty four (54) months after the Effective Date, subject to extension as provided in the Agreement, and shall thereafter accrue interest at a rate equal to one percent (1.0%) above the LGIP Index Rate, as published by FLCLASS, and, commencing two years thereafter, the rate shall increase by 0.5% above the Interest Rate previously in effect, and shall continue to increase by 0.5% each year thereafter above the Interest Rate previously in effect, through the Maturity Date. The Purchase Money Promissory Note and the Purchase Money Mortgage and Security Agreement, each in substantial form, are attached hereto as part of **Exhibit “4,”** as exhibits to the PSA.

Reciprocal Easement Agreement. The PSA includes, as an exhibit, in substantial form, the Reciprocal Easement Agreement, 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 (up to 0.3 acres of land, and the air parcel, within which the 275,000 sq. ft. residential portion of Project will be built) 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 MB Marina Park, LLC (the New Lessee) under the New Lease) (“REA”). The REA would 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. The REA, in substantial form, is attached as part of **Exhibit “4”** as an exhibit to the PSA.

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, Marina Park Residential (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. The proposed New Lease is attached hereto as **Exhibit “5.”** Subject to voter referendum approval, the New Lease between the City and MB Marina Park, LLC, would be executed at Closing and effective as of the date of Closing, with the Term commencing 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 is MB Marina Park, LLC (the “New Lessee”), an affiliate of Suntex Marina Investors, LLC, the entity controlling the current Lessee and operator of the Marina. 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 Marina Park Commercial (Master Sublessee). To facilitate the financing of the Area 1 improvements, the City would agree to grant to Marina Park Commercial (the Master Sublessee) and its lender a recognition and non-disturbance agreement (with the Master Sublease Recognition Agreement, in substantial form, attached hereto as part of **Exhibit “4”** as an exhibit to the PSA), 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. 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 Guaranteed 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 \$1,250,000 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 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.

Additional Capital Improvements. The 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. The City has negotiated an increase in the capital improvement commitment to \$40,000,000 for Marina Improvements, with \$15 million in years 1-10, \$12.5 million in years 11-20, and \$12.5 million in years 21-35; which amounts are separate from the \$22,500,000 which will be committed by the Developer for the new Marina facility and public benefit improvements. If the minimum spends cannot be completed in the time periods set forth above, New Lessee shall escrow all unspent amounts with the City, with the escrowed funds to be spent on Marina Improvements in the next period (subject to caps on the amounts that could be escrowed (described more fully in the table below), to ensure capital improvements are implemented within each time period above.

A detailed Summary of Key Milestones, Payments and Project Contingencies in the respective agreements is attached hereto as **Exhibit “6.”**

In addition, a table describing the principal terms of each agreement is set forth below:

I. Development Agreement Governing Project (Exhibit “3”)

Developer	Marina Residential, LLC (the Residential Parcel Purchaser) and its affiliate Marina Park Commercial, LLC (the Master Sublessee), 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/entertainment, in accordance with City Code; • A minimum of 1 acre contiguous ground-level Park (to be owned and controlled by the City after completion thereof); • Restrictions on short-term rentals; 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 / Public Benefits	<p>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.</p> <p>Developer has agreed to spend a minimum of \$22.5 million to deliver the Baseline Commercial Building and Public Benefit Improvements for the Project, consisting of: (1) a minimum of \$17.5 million for the Baseline Commercial Building for the Project, of which not less than \$5 million shall be expended for upgrades to the Commercial Retail Improvements (such as higher ceilings, better quality finishes, and more architectural features); and (2) a minimum of \$5 million for Public Benefit Improvements, which include park enhancements, resiliency improvements, Alton Road right-of-way enhancements, Baywalk enhancements, and additional art in excess of the required Art in Public Places contribution, as more fully described in Exhibit “8.”</p>
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 / Planning Board Deadlines	Developer to apply for Project Approvals within 6 months after the Effective Date and to obtain final Project Approvals not later than 54 months following the Effective Date (subject to extensions for Unavoidable Delays, City Delays and tolling for Lawsuits as defined below (for a maximum tolling period for Lawsuits of 42 months).

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<p>Target Date for Project Approvals and Commencement of Construction</p>	<p>2 years from Effective Date for Target Date for Project Approvals, and 4 years from Effective Date for Target Date for Commencement of Construction.</p>
<p>Outside Date for Issuance of Building Permit</p>	<p>6 years from the Effective Date, subject to liquidated damages in favor of the City of \$1,000 per day for failure to achieve building permit prior to the Outside Date.</p>
<p>Outside Date for Commencement of Construction</p>	<p>8 years from the Effective Date (subject to extension for Unavoidable Delays, City Delays, and tolling for lawsuits as provided above). Failure to achieve Outside Date for Commencement of Construction is a material event of default that could give rise to termination.</p>
<p>Outside Date for Completion of Project</p>	<p>The Developer is required to Complete Construction of the Project within 48 - months from the Commencement of Construction, with an additional period of up to 6 months granted for early Commencement of Construction each month prior to 8 year outside date.</p>
<p>Transfers Prior to final Certificate of Occupancy (CO)</p>	<p>Transfers by Developer prior to CO 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. At a minimum, David Martin and/or a "Martin Entity" shall retain a 10% ownership interest and control day-to-day development of the Project until CO of the Project.</p>
<p>Duration of Development Agreement</p>	<p>The Development Agreement shall have a term of 12 years from the Effective Date, subject to extension for Unavoidable Delays, City Delays (and tolling for Lawsuits as provided above). 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.</p>
<p>Indemnity of City / Project Challenges - Lawsuits</p>	<p>During the pendency of any lawsuit challenging the Project (or any component thereof, including, without limitation, 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, but existing Lease would otherwise continue in effect (with no obligation to construct a Replacement Facility for the Marina). City would refund the installment payments paid to City (of up to \$15 million) via a rent credit to be amortized over a period of 10 years, provided that if the rent credit exceeds \$10 million, the amortization period would be extended to 15 years, so that the rent credit would not exceed \$1 million in any given year.</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. New Lessee would have the obligation under the New Lease to design and construct a new Marina facility (Alternate Replacement Facility) and park based on the parameters (Mandatory Project Elements) set forth in the New Lease, subject to City approval of the new concept design. The first \$5 million of the installment payments paid to the City would be non-refundable. With respect to any remaining installment payments previously paid, City would use 50% of the installment payments for public benefit improvements within the Project (such as park improvements in excess of Baseline Park</p>

	<p>and resiliency improvements, with the remaining 50% to be reimbursed to New Lessee as credit against Lessee's obligation to build a \$22.5 million Alternate Replacement Facility. New Lease to otherwise remain in effect.</p> <p>In all events above, City to be fully indemnified for all costs incurred by the City, including in connection with any Lawsuit.</p>
Termination	<p>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, failure to commence construction by Commencement Construction Date, or complete construction of the Project 4 years after Completion of Construction Date). Any termination of the PSA for the Residential Parcel automatically terminates the Development Agreement and vice versa. See "Indemnity of City / Project Challenges" Section above, for termination, if due to challenges to the Project.</p>
Reimbursement of City's Project Transaction Costs	<p>Developer agrees to reimburse the City for all its out-of-pocket costs and expenses incurred in the negotiation of the Development Agreement, the PSA for the Residential Parcel and New Lease, through second reading. Standing alone, each of the DA, PSA and Lease would be a large transaction, made more complex by the various interrelationships. For this reason, the City's transaction costs approximate \$300,000.</p>

II. Purchase and Sale Agreement (PSA) for Residential Parcel (Exhibit "4")

Purchase Price	<p>\$55 million cash. Additional \$ 22.5 million in capital improvements memorialized in the Development Agreement (consisting of \$5 million for the Public Benefit Improvements (see Exhibit "8") and \$17.5 million for the Baseline Commercial Building for the Project, of which not less than \$5 million shall be expended for upgrades to the Commercial Retail Improvements, such as higher ceilings, better quality finishes, and more architectural features), and not including the value to the City of ownership and control of the 1.0 acre park upon completion of Park portion of the Project, or the additional \$5 million increase in the minimum spend for Marina Improvements in the New Lease, for a total of \$40 million in Marina Improvements.</p>
Closing	<p>On or before March 15, 2021.</p>
Escrow Deposit	<p>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 30 days following City Commission's adoption of resolution certifying election results, or January 31, 2021, whichever is later. If Purchaser defaults under the PSA, the City shall retain the \$5 million deposit, and the PSA may be terminated.</p>
Payment Schedule	<p>\$5 million at Closing, with the balance due in installments, evidenced by a Promissory Note (which shall be non-interest bearing until date specified below) and secured by a First Mortgage in favor of the City. The installment payments against the Promissory Note shall be as follows:</p> <p>\$5 million, on or before January 1, 2022; \$5 million, on or before September 1, 2022; and \$40 million balance, due on the date on which all of the Construction Commencement Conditions have been satisfied. Payments shall be subject to tolling for Lawsuits (for maximum period of 42 months, as provided above).</p>

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/Master Sublessee, 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). Any termination of the Development Agreement automatically terminates the PSA and vice versa.

III. New Marina Lease (Exhibit "5")

TERMS AND CONDITIONS OF EASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	FINAL AGREEMENT
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). Upon completion of construction of 1.0 acre Park, the Park would be removed 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".	New Lease to be executed at Closing (on or before March 15, 2021), and contingent upon the Closing taking place, with the Term commencing on January 1, 2022, immediately upon the expiration of the Existing Lease.
Minimum Annual Guaranteed Rent	\$320,000	\$1M, without a CPI escalator.	\$1,900,000, plus annual CPI escalator throughout Term, with the exception of Years 1-4 of the Term, during which the City would receive Construction Rent, to account for the reduced revenue to be generated during the construction period (see Construction Rent Period section below).
Percentage Rent	<p>\$0.02 per gallon of gasoline and diesel fuel.</p> <p>35% of gross parking fee revenues.</p> <p>10% of Gross Receipts</p>	<p>\$0.04 per gallon of gasoline and diesel fuel.</p> <p>35% of gross parking fee revenues.</p> <p>10% of all other Gross Receipts, but with respect to areas sub-subleased by Master Sublessee, rent paid by sub-tenants (and not gross revenues) would be included in Gross Receipts. If Marina Lessee or Master Sublessee operates a retail or restaurant</p>	Same as initial term sheet and consistent with the appraisals. Rent amounts are consistent with the appraisals.

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TERMS AND CONDITIONS OF EASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	FINAL AGREEMENT
		<p>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.</p>	
<p>Construction Rent Period</p>	<p>N/A</p>	<p>Same percentage rent amount generated from existing Area 1 during the last lease year prior to the demolition of Area 1.</p>	<p>During the first four years of the Term, the City would receive Construction Rent, consisting of the greater of either: (i) Minimum Annual Guaranteed Construction Rent in the amount of \$1,250,000, adjusted annually by CPI or (ii) Percentage Rent of 7.5% of Gross Receipts. The cumulative excess of actual Construction Rent over the Minimum Annual Guaranteed Construction Rent during the four year Construction Rent period would be calculated at the conclusion of Construction Rent period, and payments to the City for such cumulative excess amounts, if any, would be amortized over a period of fifteen (15) years.</p>
<p>Submerged Land Lease ("SLL") Rents</p>	<p>Lessee is not responsible for rents due under the Submerged Lands Lease (SLL).</p>	<p>Same as Existing Lease</p>	<p>City to pay SLL Rents through 2052 (same as Existing Lease). New Lessee to pay for cost of any expansion to SLL, if any. In addition, at expiration of the SLL Lease that is in place in 2052, New Lessee to pay for 50% of any increases to the SLL Rent for any extended or new SLL Lease, above the rate of the cumulative increase of CPI from 2020 through date of new SLL Lease, up to a cap of \$750,000 per year. This cost-share represents a significant improvement over the Existing Lease, which places entire responsibility for SLL lease costs on the City.</p>
<p>Capital Improvements</p>	<p>None</p>	<p>35M over 30 years for Area 2 improvements only.</p>	<p>\$40 million for Marina Improvements over 35 years: \$15 million in years 1-10, \$12.5 million in years 11-20, and \$12.5 million in years 21-35). In lieu of default and termination, any amounts unspent to be escrowed with the City for Marina Improvements in subsequent periods, subject to escrow cap of \$10M in Year 10, \$12.5M aggregate escrow cap in Year 20, and \$15M aggregate escrow cap in Year 35.</p>

TERMS AND CONDITIONS OF EASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	FINAL AGREEMENT
Sublease of Area 1 / Upland	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 obligations under the Lease.	<p>The Lease would authorize a Master Sublease over Area 1 to a Master Sublessee, Marina Park Commercial, LLC. Master Sublessee will be under common control with Residential Parcel Purchaser, to be executed concurrently with the New Lease.</p> <p>City to grant Master Sublessee a non-disturbance and recognition agreement, to permit financing of Area 1, separate from any other financing obtained by Lessee. The Recognition Agreement, in substantial form, is included as part of the PSA (Exhibit "4"). 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.</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>New Lessee to continue to maintain and operate parking areas, subject to maintenance standards included in New Lease, with failure to maintain subject to fine in lieu of default by the City.</p> <p>The increased Minimum Annual Guaranteed Rent of \$1,900,000, the entire amount of which will be adjusted annually by CPI over the entire Term, is inclusive of a \$250,000 annual contribution to cover a portion of City's parking expenses. In exchange, City would annually provide 850 parking passes (representing \$250,000 worth of annual parking passes).</p> <p>The above structure will facilitate creation of a validation system to charge guests and customers of the new commercial facility for parking (at prevailing rates at City parking garages), with the City to receive 35% of such parking revenues. The City anticipates the foregoing will generate increased revenues for the City.</p>

TERMS AND CONDITIONS OF EASE AGREEMENT	EXISTING LEASE	INITIAL TERM SHEET	FINAL AGREEMENT
City Resident Price Protection.	None.	None.	Annual fees for wet slips for boats of less than 40 feet charged to City residents shall not increase by more than five percent (5%) over the prior year's annual fees charged to such Space Lessees, subject to certain parameters.
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.	New Lessee agrees to City's detailed maintenance and the Marina standards for a "world class" Marina, included as part of the Lease, with failure to maintain subject to fines in lieu of default by the City. City may engage consultant every 10 years to revisit standards to ensure world class standard is maintained during the entire 99-year term.
Transfers/Assignment	Existing Lease does not cover Transfers of interests in the Lessee; 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.	New Lease includes City's "Acceptable Owner" criteria and process for City approval of transfers of controlling interests in the Lessee. City has agreed to clarifications that City approval would not be required for transfers (i) for REIT tax compliance purposes, (ii) that do not result in any single transferee holding a Controlling interest in Lessee, and (iii) as part of a "going public" transaction (i.e., an IPO).
Termination	City may terminate the Lease following any Event of Default	Same as Existing Lease.	Same as Existing Lease

SUMMARY OF MAIN CHANGES SINCE JUNE 24, 2020 FIRST READING

The Agenda materials at first reading included an exhibit entitled "Update on Terms and Open Issues," identifying a number of issues that were the subject of the parties' continuing discussions. All open items have been resolved and are reflected in the proposed Agreements, with the key points addressed in this Memorandum. The key changes since first reading include the following:

- 1. Minimum spends for new Marina Facility, public park and resiliency benefits and the Marina Improvements**, including \$22,500,000 to be spent on capital improvements to the Commercial Retail Improvements and Park, of which a minimum of \$5 million must be spent for Public Benefit Improvements described more fully in **Exhibit "8"** (including park enhancements, resiliency improvements, Baywalk enhancements, Alton Road right-of-way enhancements, and additional art in excess of the required AIPP contribution), and \$17.5 million for the Baseline Commercial Building for the Project, of which not less than \$5 million shall be expended for upgrades to the Commercial Retail Improvements, such as higher ceilings, better quality finishes, and more architectural features). The New Lease also reflects updated minimum spends for the Marina Improvements from \$35 million to \$40 million. The

foregoing also does not include the value to the City of ownership and control of the Park upon completion, another public benefit discussed below.

2. **City ownership and control of 1.0 acre park upon Park Project completion, to ensure dedication of a public park for the benefit of the general public.** Since first reading, the parties have continued to discuss whether the 1.0 acre park should be part of the Leased Premises. The parties have now agreed to the Administration's recommended option, namely that the 1.0 acre Park, once constructed, would be held separately from the Leased Premises and owned/controlled outright by the City. The City, in turn, has agreed to permit the Lessee to hold up to 12 special events per year within the new Park, under a master special event permit similar to a master permit in place with City's long-term beach concessionaire. The City would further agree to provide competitive event protection to the New Lessee, to ensure that any special event at the Park does not conflict with the operations of the Marina and its tenants, particularly with respect to boating-related events.
3. **Updated Schedule of Performance for delivery of the Project and Final Payment of Purchase Price for Sale of Residential Parcel.**

A summary of key milestones for the Project, including the Closing, the installment payments for the Sale of the Residential Parcel (including extent to which the various payments are refundable or non-refundable, the target dates for Project Approvals and construction, outside dates for Project Approvals, issuance of Building Permit and Completion of Construction, and the associated remedies to address Project contingencies at each stage of the Project, including liquidated damages or termination, as applicable, is set forth more fully in **Exhibit "6."** With respect to the final payment of the \$40 million balance for the Sale of Residential Parcel, the agreements provide for the final \$40 million payment to be made once Developer has satisfied all conditions precedent to Commencement of Construction, namely, when all Governmental Approvals have been obtained, full financing for the Project is in place, and the construction contract for the Project is executed (the "Construction Conditions").

Until the Construction Conditions are satisfied and the City is thereby assured that the Project is "shovel ready" and can be fully realized, the City has required that the deed to the Residential Parcel must be re-conveyed to the City in the event of an unwinding of the transaction. Although the foregoing has the effect of potentially deferring the final payment of \$40 million to the City to a later date (as previously the parties contemplated the final balance would be paid following the Project Approvals, and not prior to Commencement of Construction), the approach is fundamental to protecting the City's interests for the Residential Parcel to revert to the City if the Project cannot be realized, as the Development Site will continue to be the site of the City's only public marina. The approach as to the transaction structure also permits the Developer to avoid complexities with respect to the financing of the Project.

4. **Promissory Note for the Balance of the Purchase Price to become interest-bearing after specified date, to account for adjustment to the Maturity Date (as described above) and incentivize early Commencement of Construction,** with Residential Parcel Purchaser agreeing that, following the date that is the earlier of (i) ninety (90) days after the Project Approvals (Design Review Board and Planning Board) are obtained or (ii) fifty four (54) months after the Effective Date, the then-remaining balance of the Note would accrue interest at a rate equal to one percent (1.0%) above the LGIP Index Rate (as published by FLCLASS) and, commencing two years thereafter, the rate shall increase by 0.5% above the Interest Rate previously in effect, and shall continue to increase by 0.5% each year thereafter above

the Interest Rate previously in effect, through the Maturity Date (the date the Conditions to Commencement of Construction are satisfied).

5. **Liquidated Damages to City in the event Developer fails to meet certain outside dates, including:**
 - Liquidated damages to City of \$1,000 per day if Developer fails to obtain Building Permit by Outside Date, with amounts due as condition of issuance of Building Permit;
 - Liquidated damages to City of \$1,000 per day if commercial portion of Project not completed by Outside Date for Completion of Construction, with amounts due as condition of issuance of TCO;
 - Liquidated damages to City of \$1,000 per day if residential portion not completed 5 years from Commencement of Construction, with City ability to terminate D.A. if residential portion of Project is not completed 8 years from Commencement of Construction.
6. **New Lessee's agreement to build a \$22.5 million Alternate Replacement Facility in the event Development agreement is terminated,** to ensure City receives benefit of its bargain: a new replacement facility for the Miami Beach Marina, with liquidated damages to City in the amount of \$1,000 per day under New Lease, if Alternate Replacement Facility and park are not completed within 5 year period, and with City ability to terminate the New Lease if completion is not achieved 18 months thereafter. The New Lease includes a detailed process for City approval of the Alternate Replacement Facility, with mandatory project elements for the Alternate Replacement Facility, which would include a maximum of 75,000 square feet, the \$22.5 million minimum spend noted above, and delivery of the 1-acre park to the City.
7. **New Lessee's agreement to specific Marina Standards for "world-class" Marina, with consolidated maintenance obligations,** for the new Replacement Facility (or Alternate Replacement Facility), Baywalk, Area 2 submerged lands and Parking Areas, with detailed schedule of fines in lieu of default, and with the Lease further providing for the City's right to retain a third party consultant to update the Marina Standards every 10 years to ensure world-class standards are maintained (as such standards may evolve in the industry) over the life of the New Lease.
8. **New Lessee's agreement to City's Acceptable Owner criteria for transfers of controlling interests in the Lessee,** in addition to City's approval of any new operator for the Marina. The New Lease terms represent a significant improvement over the Existing Lease, which does not provide for City approval of such transfers or include requirements as to Acceptable Owners (i.e., with no felony convictions, bankruptcies within a specified period of time, etc).
9. **New Lessee's agreement to pay for certain increases in rent owed to the State in connection with the Submerged Lands Lease.** The New Lease terms represent a significant improvement over the Existing Lease, which places all of the foregoing responsibilities on the City. The cost-sharing approach with respect to increases to the SLL rent are described in the Lease table, above.

EXISTING SUBLEASES

As referenced above, the Development Site is currently subject to the Existing Marina Lease and the associated commercial, retail and restaurant subtenants (a complete list of which is included as an exhibit to the PSA as part of **Exhibit "4"** hereto), 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 15, 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 will not be able to proceed. Accordingly, the remaining agreements would be terminated, and the Residential Parcel would be deeded back to the City. The City, in turn, would refund the installment payments paid to City (up to \$15 million) via a rent credit to be amortized over a period of 10 years, provided that if the rent credit exceeds \$10 million, the amortization period would be extended to 15 years, so that the rent credit would not exceed \$1 million in any given year.

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 termination of current subleases, releases from sublessees, or amendments to all unexpired subleases evidencing the applicable sublessees' agreement to vacate the Development Site to permit the Project to be constructed, or shall otherwise indemnify the City for any claims in connection with the subleases.

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. 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 "7"**, 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 "7"**, 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 \$62.5 million 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 a Minimum Annual Guaranteed 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 (on or before March 15, 2021), \$5 million due on or before January 1, 2022, \$5 million due on or before September 1, 2022 (with dates subject to extension/tolling as outlined above), and the balance due prior to Commencement of Construction, 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.

The updated appraisals of \$87 million and \$70 million are very much in line with the \$55 million in cash and the updated minimum spends for the \$22.5 million in guaranteed capital investments in the City-owned upland facilities, even without considering the benefits from the other components of the entire transaction, such as the updated minimum spends for the Marina Improvements -- which have been increased from \$35 million to \$40 million -- or the value to the City of outright ownership and control of the completed 1.0 acre public park, which will be dedicated for the benefit of the general public.

As a cumulative deal, the Marina Park Project makes significant financial improvements to the Existing Marina Lease. The public investments, along with the cash payments to the City, will result in nearly \$120 million of value, not including the value to the City of the public park, as noted above. That value, coupled with job creation, increased ad valorem tax base, and what will likely be another more than \$50 million in net present value according to the appraised Lease terms, will result in a major economic gain to the City, making the transaction worthy of consideration by the City Commission and the City's voters.

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. 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.

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

CONCLUSION

Based on the significant financial and other public benefits associated with the Marina Park Project as outlined above, the Administration recommends that the City Commission approve the Marina Park Project transaction on second reading, including (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; (3) the City's 99 year New Lease for the Marina; and (4) the proposed vacation of the City Right-of-Way Area, 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 (including City Right-of-Way Area)
- Exhibit 2** – Planning Analysis
- Exhibit 3** – Development Agreement (and exhibits thereto)
- Exhibit 4** – Purchase and Sale Agreement (and exhibits thereto)
- Exhibit 5** – Lease Agreement (and exhibits thereto)
- Exhibit 6** – Summary of Key Milestones, Payments and Project Contingencies
- Exhibit 7** – Independent Appraisals (CBRE, Inc. and Walter Duke)
- Exhibit 8** – Public Benefit Improvements for the Project