MIAMI BEACH
PLANNING DEPARTMENT

Staff Report & Recommendation PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: November 17, 2020

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB 20-0407. Collins Park Artist/Workforce Housing- Development Agreement.**
PB 20-0408. Collins Park Artist/Workforce Housing- Approval of Lease.

PB20-0407. Review of Development Agreement – Collins Park Artist Workforce Housing Project. Review by the Planning Board 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 Servitas, LLC (the "Developer"), for the development of the City-owned property located at 224 23rd Street, the current site of a surface parking lot (the "Property"), for the Collins Park Artist Workforce Housing Project, a proposed development containing: (1) residential workforce housing units, for artists, teachers, and other income-eligible tenants; (2) residential dormitory space, currently intended for use by Miami City Ballet, Inc. (the "Ballet"), to support the Ballet's dance education and other programs or, if agreement with the Ballet cannot be reached, additional workforce housing units; and (3) ground floor retail or cultural space, with the building constructed on the Property to be limited to a maximum height of 75 feet (collectively, the "Project"); further, memorializing the conditions for the City's lease of the property to Community Finance Corporation, a not-for profit corporation, or an affiliate thereof, for the development, financing, construction and operation of the Project (the "Lease"), with the Lease subject to and contingent upon approval by the Planning Board and the City Commission, pursuant to Section 1.03(b)(4) of the City Charter.

PB20-0408. Approval of Lease for Collins Park Artist / Workforce Housing Project. Approval of the Planning Board, by a 4/7ths vote, pursuant to City Charter Section 1.03(b)(4), and Section 118-51(11) of the City's Land Development Regulations, of the Lease Agreement ("Lease"), as authorized under Section 82-37 of the City Code and Section 1.03(b)(4) of the City Charter, between the City of Miami Beach ("City") and Community Finance Corporation, an Arizona not-for-profit corporation, or an affiliate thereof ("Lessee"), of the City-owned property located at 224 23rd street (the "Property"), for the construction of the Collins Park Artist Workforce Housing Project on the Property, a proposed development which shall include (1) residential workforce housing units, for artists, teachers, and other income-eligible tenants; (2) residential dormitory space, intended for use by Miami City Ballet, Inc. (the "Ballet"), to support the Miami City Ballet's dance education and other programs or, if agreement with the Ballet cannot be reached, additional workforce housing units; and (3) ground floor retail or cultural space (collectively, the "Project"); further, providing for the Project to be developed, designed, financed, constructed, and operated in accordance with the terms of the Lease and the Development Agreement between the City and Servitas, LLC for the Project; and further providing for a maximum term of ninety (90) years, with an initial term of fifty (50) years, and two (2) renewal terms, for a period of twenty (20) years each, on mutual agreement of the City and Lessee.

This item is before the Planning Board as authorized under Section 118-4 of the City Code for review of the Development Agreement, and City Charter Section 1.03(b)(4) and City Code Section 115-51(11) regarding review of the Lease Agreement.

RECOMMENDATION

Subject to direction as to the policy and business issues outlined in this Memorandum, staff recommends that the Planning Board transmit the proposed development agreement to the City Commission with a favorable recommendation and further recommends that the Planning Board approve the Lease, in accordance with Section 1.03(b)(4) of the City Charter.

HISTORY

In September 2016, per Resolution No. 2016-29547, the City Commission selected The Concourse Group to identify public-private partnership (P3) opportunities for workforce/affordable housing projects on City property, including a Design Criteria Package for the Collins Park Parking Garage/Housing facility, spanning both of the City lots located east and west of Liberty Avenue.

In December 2016, Resolution No. 2016-29679 approved a GU height waiver for the Collins Park Parking Garage and Workforce Housing project (initially conceived as one joint project), finding that a waiver was necessary in order to provide optimal development and to allow for maximum capacity for artist housing. Subsequently, the City expedited construction of the parking garage on the west side of Liberty Avenue and separately bid out a stand-alone P3 project for workforce housing on surface lot P51, located at 224 23 Street.

In January 2019, the City issued ITN 2019-099-KB for an artist workforce housing facility on surface lot P51. The solicitation attached The Concourse Group's Collins Park Workforce Housing Study, which the City Commission incorporated as part of its direction, proposing one floor of residential use by ArtCenter/ South Florida and ground floor studios dedicated for use by local artists. In addition, the City Commission proposed the project might also include two residential floors for Miami City Ballet (MCB). Following issuance of the ITN, ArtCenter notified the City that it was no longer interested in partnering on the project.

On July 17, 2019, Resolution No. 2019-30908 authorized simultaneous negotiations with both ITN proposers. Following withdrawal from the process of Atlantic Pacific Communities, LLC, the City Commission directed negotiation with the sole remaining proposer, Texas-based Servitas, LLC, a developer of on-campus student housing, including a P3 with FIU at its Biscayne Bay campus.

On September 23, 2020, the Finance and Economic Resiliency Committee (FERC) reviewed the Term Sheet, provided guidance on the Project, and unanimously recommended that the Administration negotiate a ground lease and development agreement consistent with the Term Sheet for the City Commission's consideration.

On October 14, 2020, the City Commission adopted Resolution No. 2020-31435, which accepted the recommendation of the FERC, directed negotiation of a development agreement and ground lease consistent with the Term Sheet, and referred the project and agreements to review by the Planning Board.

ANALYSIS:

Overview of the Proposal and Project Delivery Structure:

Servitas proposes a 7-story building designed by Shulman + Associates in collaboration with Goodwin Alexander & Lineville:

1. Ground floor space for either commercial retail or cultural space, such as artist studios;
2. Up to 32-bed dormitory on the second floor for the Miami City Ballet (plus two private units for MCB staff); and
3. Approximately 80 workforce housing units on the remaining five floors (while the total number of units is not yet finalized, the ratio of unit mix would be:

- 50% - studios (average size 403 sf)
- 25% - one (1) bedroom units (approx. 518 sf each)
- 25% - two (2) bedroom units (approx. 640 sf each)

One of the key aspects of the Servitas proposal that distinguishes its proposal from other public-private proposals the City has received is that **this Project would ultimately be not-for-profit in character, in that it would be leased by a non-profit entity and used for not-for-profit purposes at all times**.

As proposed, the City would enter into a long-term ground lease for the entire property with a nonprofit 501(c)(3) organization, Community Finance Corporation, or an affiliate thereof (the "Ground Lessee"), which would finance the design and construction of the Project with tax exempt bond financing (which would be non-recourse to the City, with principal and interest payable solely from Project revenues).

Based on the information provided to the City by Servitas, Community Finance Corporation, the proposed Ground Lessee, is a not-for-profit Arizona corporation organized and operated exclusively for the purpose of assisting governments and nonprofits with the construction and financing of public buildings, and accordingly, is operated exclusively for charitable purposes. Community Finance Corp. has participated in over $1.3 billion in P3 projects throughout the United States, including a wide range of governmental and nonprofit uses, such as office facilities, parking structures, public safety/correctional facilities, university facilities, privatized student housing, and infrastructure.

In addition to the Ground Lease, the City will enter into the proposed development agreement with Servitas, LLC to govern the development of the Project. Once the Project is constructed, the Ground Lessee would have overall responsibility for the operation of the Project.

Under the proposed structure, Servitas would earn a Development Fee for delivery of the completed Project to the Ground Lessee (discussed further below in Section 4), with its fees to be covered by the tax-exempt bonds issued by the Ground Lessee to finance the

Project. Following completion of the Project, Servitas would separately contract with the Ground Lessee to provide asset management services to the Ground Lessee.

Accordingly, if the Project proceeds to a Financial Closing, the Project would be constructed, and managed, with limited City financial participation, and the City would not be responsible for payment of any of Servitas's fees or for Project development costs, with limited exceptions discussed more fully herein. Specifically, Servitas proposes for certain pre-development environmental expenses to be covered by the City, subject to reimbursement of the City from bond proceeds at Closing or from surplus revenues later once the Project is completed. *See Section 3 below for further explanation.*

Once the Project is constructed, the Ground Lessee would be solely responsible for the operation and maintenance of the Project, with the intent that the Project would be entirely self-supported by the rental revenues the Project will generate. To the fullest extent possible under applicable law, the Project would be structured to be exempt from ad valorem taxes, pursuant to exemptions that are available for workforce/affordable housing, and/or otherwise available for properties leased and used for exempt not-for-profit purposes. For this reason, it is anticipated that the Project may be subdivided as a leasehold condominium (consisting of three leasehold condominium units, with one condo unit for the ground floor cultural or retail space; one condo unit for the dormitory housing, and one condo unit to include all of the workforce housing unit), to preserve the applicable exemptions from ad valorem for the Project, to the fullest extent possible.

To the extent the revenues of the Property generate surplus revenues (after payment of all operating expenses, maintenance reserves, and debt service reserves), ALL of the net revenues of the Project, throughout the Term, would solely inure for the benefit of the City or any other not-for-profit entity designated by the City to receive surplus revenues, as Rent under the Ground Lease. *See Section 1 below for further explanation.*

The proposed Development Agreement is attached as **Exhibit A**.

The proposed lease agreement is attached as **Exhibit B**.

In accordance with Section 82-38 of the City Code, the City's planning analysis is attached as **Exhibit C**.

Key Lease Terms

Property	224 23rd Street
Ground Lessee	Community Finance Corp., a 501(c)(3) entity, or wholly owned limited liability entity owned by CFC
Initial Term	50 years
Renewals	Two (2) renewals of twenty (20) years each
Financing	Ground lessee will finance development entirely with tax

	exempt bond financing, which would be non-recourse to the City, with principal and interest payable solely from Project revenues. Lease is "unsubordinated", meaning that the rights of any lender or bond holders will be subordinate to, and would not otherwise affect, the City's fee interest in the property. However, as the bond financing for the Project will be secured by a leasehold mortgage, the Lease provides standard "step-in" rights to permit the first city mortgagee to cure defaults in the event the Lessee fails to perform in accordance with the Ground Lease.
Rent/ Revenue	100% of the Project's annual net revenues (after operating expenses, debt service, and reserves) inure to the benefit of the City (and the MCB, as City's designated beneficiary of Project proceeds), as proposed in section 1 below: first to cover City's development costs, second, to cover the Ballet's rental costs of the 2nd floor dormitory, third, to cover City's costs for the ground floor activation, and fourth, to cover Ballet's potential costs to expand dormitory use with the balance of revenues to the City.
City Pre-Development Financial Participation	City responsible for Environmental costs in excess of \$10,000 but not to exceed \$200,000, all of which to be reimbursed at Financial Closing or from Project net revenues, prior to distribution to any other party. Given Project structure that provides City with all net proceeds throughout entire Term, liability for pre-Closing risks is shared between City and Developer. If Project is terminated for unforeseeable circumstances, City is responsible for pre-development costs as follows: • <u>Up to HPB approval</u>: Maximum of \$500,000 • <u>After HPB Approval but before Financial Closing</u>: Maximum of \$800,000, and • <u>In both instances, with City to receive an assignment of all of the plans, specifications and/or other work product, for potential future use by City</u>
Termination for Convenience	• By City: any time prior to HPB approval • By Developer: any time prior to Financial Closing
Maintenance	Once constructed, operation of the facility is entirely self-supported by rental revenues.

	Lessee responsible for facility maintenance, utilities, and standards of operation. Lease provides for City approval of operating plan, annual budget, and changes thereto.
Insurance	Lease contains standard terms for the protection of the City, including insurance requirements and broad indemnification of the City.
Uses	• Ground floor: retail or cultural space • Second floor: Miami City Ballet dormitory (subject to master sublease) • Floors 3 – 7: approximately 80 workforce housing units, 50% studios, 25% one-bedroom, 25% two-bedroom units
Workforce Housing Tenants	Income-eligible persons earning less than 120 AMI, paying rent at maximum of 30% AMI, with the units available for artists, educators, etc. per the tiers described in Section 7 below). In addition to the restrictive covenants related to workforce housing as set forth in the Lease, because the project is intended to be financed with tax-exempt bonds, the conditions of the Bond Documents will further ensure that the Property is only used for the workforce housing purposes for which it is intended, and not converted to market rate rental units.
Public Benefits	• First ever workforce housing P3 project proposed for development within the City. • Little financial cost to the City if constructed, which costs will be reimbursed to the City. • Ownership of the building transfers to the City upon expiration of the Lease (with option for City to purchase and buyout the Lease for the amount of outstanding principal and interest on the bonds, if any, and limited closing costs). • Dormitory Housing for cultural arts partner Miami City Ballet, located adjacent to its headquarter facility, with the Ballet to also benefit from Project proceeds, as a grant/subsidy to offset Ballet's costs for its Dormitory Housing). • Option for City to control ground floor programming • The use of art from local artists to decorate the building.

Additional information regarding some of the key items of the agreements, along with the Administration's recommendation, is set forth more fully below.

1. **Participation of Ballet and Distribution of the Annual Net Proceeds Generated by the Project, After Payment of all Project Expenses, Debt Service and Reserves.**

As set forth above, one of the key features of the Servitas proposal is that the not-for-profit Ground Lessee proposes that all of the net proceeds, if any, generated from the Project throughout the entire term of the lease (after the payment of all operating expenses, debt service, and maintenance reserves) shall constitute rent to the City and dedicated for use by the City Commission (or any other not-for-profit entity designated by the City to receive the "surplus revenues"). A summary of the developer' s pro forma for the Project is attached as **Exhibit D** hereto and indicates that by Project Year 3, the Project may generate approximately $329,432 in surplus revenues annually, and will continue to generate additional net proceeds in subsequent years, all of which will inure to the benefit of the City (or its designees), as Rent under the Ground Lease.

The proposed agreements contemplate that Miami City Ballet will enter into a master sublease for the entire second floor dormitory housing, and that the Ballet would pay rent for its use of the second-floor dormitory space, in the approximate annual amount of $363,841 in the first rental year. This amount is consistent with the amounts Miami City Ballet has previously advised the City that it spends annually in connection with housing for dancers and MCB participants. The agreements further provide that the Ballet may, at some point in the future, elect to expand its sublease to include additional dormitory housing on the third floor.

From a financing perspective, the guaranteed rental income from the lease of an entire floor to a single entity is beneficial to the Project, as stable rental flows reduce the financing risks associated with the Project.

Miami City Ballet has proposed that it be designated as a Project beneficiary to receive surplus revenues from the Project, so that if the Project is successful and generates net proceeds, the Project would serve to potentially subsidize and reduce Miami City Ballet's rental obligations with respect to the dormitory floor, and thereby free up funds for the Miami City Ballet to enhance its cultural and charitable mission to provide dance education and cultural programming, in close proximity to its headquarters in Collins Park. (The foregoing benefits for the MCB presume that the MCB will ultimately participate in the Project, and confirm its long-term commitment via a master sublease for its use of the dormitory floor. In the event MCB determines that it cannot participate in the Project, the second floor would be designed to accommodate approximately 16 additional workforce housing units. City staff is working with Servitas and MCB with regard to the timing for confirming MCB's participation as early as possible in the process, to avoid additional costs or delays associated with the necessary design changes that would be required to convert the dormitory floor to regular workforce housing units.)

Subject to City Commission approval of the MCB as a beneficiary, the Administration proposes that net proceeds be distributed in the following manner:

1. First, to the City to reimburse any Project costs advanced by the City for the development or construction of the Project.
2. Second, to the Miami City Ballet, until such time as the Ballet's rental costs for the second-floor dormitory are fully covered
3. Third, to the City, to cover City's rental costs if City elects to sub-lease the ground floor for cultural activation purposes
4. Fourth (subject to further negotiation with the Ballet), to cover a portion of Ballet's costs in the event the Ballet elects to enter into a sublease for additional dormitory housing on the third floor, with any balance remaining, if any, being paid to the City.

2. Use of Ground Floor Space, Either for Revenue-Generating Retail to Support the Financing of the Project or for Cultural Activation Purposes.

Servitas has indicated a willingness to work with the City with respect to the programming for the ground floor of the Project, provided, however, that no matter how the ground floor space is used, the ground floor needs to generate rental income in order to support the financing for the Project. The most recent proposal included 5,400 sf of revenue-generating retail and/or artist studio space, with separate entrances for both the dormitory and the workforce housing component.

The proposed agreements provide the City with the option to enter into a master sublease (or have a right of first refusal to do so), for the entire ground floor leasable space (subject to City payment of ground floor rent), in order to curate an appropriate street level activation compatible with the Collins Park Arts and Culture District. To this end, Servitas has proposed annual rent of $100,000 – $150,000 (per square foot rental of approximately $18 - $27).

Recognizing the ground floor use's vital role in neighborhood placemaking, the FERC recommended that the City should have the ability, at its option, to program the space. In addition, and as set forth above in the proposed flow of funds for the distribution of the net proceeds, the FERC recommended that surplus revenues should be used to subsidize the City's costs in renting the space, following payment to MCB to support the Ballet's dormitory housing..

3. City Contribution for Environmental Remediation Costs for the Project, Subject to Reimbursement from Bond Proceeds or Project Revenues.

Servitas will be responsible for obtaining and paying for environmental reports necessary to determine the scope of work and associated costs of any required environmental remediation, subject to City prior approval. The agreements provide that Servitas will cover initial costs up to $20,000 (as a Project reimbursable cost), with the City responsible for amounts in excess of $20,000, up to a maximum City contribution for environmental expenses of $200,000. In the event that the parties anticipate that remediation costs would exceed $200,000, the City would have a right to terminate the development agreement.

Any amount expended by the City with respect to any of the foregoing would be reimbursed to the City at Closing (to the extent such costs are financeable), or from the net revenues of the

Project, with the City to receive first priority for payment of such expenses from the net revenues of the Project. At present, the Developer is conducting a Phase 1 Environmental Study.

4. Reimbursement of A Portion of Development Expenses if the Development Agreement is Terminated.

Per the Development Agreement, the Developer will earn a Development Fee equal to 7% of hard costs, estimated at approximately $968,000. Servitas anticipates that it will expend approximately $280,000 on Development Expenses up through the regulatory Historic Preservation Board approval (anticipated for a hearing date in Spring 2021), and $1,300,250 through the date of Financial Closing (anticipated for Winter 2021). The developer's Pre-development Budget is attached as Exhibit C.

The City may terminate the development agreement for its own convenience at any time prior to HPB approval. Given the unique aspects of the proposed transactions – namely that all of the net proceeds of the Project throughout the entire term will be paid to the City as rent under the lease -- the development agreement provides for a "shared" allocation of risk, with the City to be responsible for reimbursement of certain Project expenses if the development agreement is terminated prior to Financial Closing. Specifically, the Development Agreement provides:

(i) Prior to the HPB approval for the Project, in the event the Project cannot proceed due to unforeseeable conditions, the City would be responsible for (1) all Pre-Closing expenses incurred and (2) a portion of the Development Fee that would have been earned as of the date of termination, up to an aggregate total amount not to exceed $500,000, plus Environmental Costs for which the City is responsible, if any.

(ii) After HPB approval but prior to Financial Closing, in the event the Project cannot proceed due to specified unforeseeable conditions, the City would *not* be responsible for any portion of the Development Fee, but would be responsible for all of the Developer's Pre-Closing expenses, up to an amount not to exceed $800,000, plus the City's Environmental Costs, if any.

In both cases above, the City would receive an assignment of all of the plans, specifications and/or other work product related to the Project, for potential future use by City.

Historically, the City has not agreed to reimburse a developer for its development costs. However, none of the prior development agreements the City entered into were structured to provide the City with *all* of the net revenues of the Project, and accordingly, *all* of the potential upside, for the entire term of the lease.

In September, the FERC recognized the need for a shared allocation of risk in view of the benefits to the City and directed the Administration to negotiate a limitation or cap on City's exposure. The above monetary caps represent the negotiated compromise between the parties, as the initial proposal contemplated that the City would be responsible for expenses of up to $1.3 million , significantly higher than currently proposed.

5. Permit Fees, Impact/Concurrency Fees for the Project.

The agreement provides that the Developer will be responsible for the payment of all applicable permit fees, and impact/concurrency fees. As an accommodation to the Developer, in the event the City Commission elects, at its sole discretion to amend the City Code to waive or reduce any such fees, the City shall waive all applicable City fees to be paid for the Project to the maximum extent permitted by such amendments, and, the City shall refund Developer the cost of all such applicable City Fees to the maximum extent permitted by such amendments.

6. Request for "GU" Waivers to Address Minimum Unit Size for the Studio Units and Required Parking for the Project and Library.

The property is currently in a GU zoning district. In accordance with the requirements of Section 142-425(e) of the City Code, the Development Agreement contemplates that the City Commission would approve the waiver of certain development regulations, specifically: (1) "required minimum unit size" for the studio units (387 sq. ft. per studio unit, rather than the required 400 sq. ft. per unit, if necessary to accommodate the project) and (2) "required off-street parking" for the project (approximately 58 spaces).

Under the City Code, to be eligible for a GU waiver, a property must be either (1) governmental owned or leased, and wholly used by, open, and accessible to the general public, or (2) used by not-for-profit, educational, or cultural organizations. As proposed, the project would qualify for a GU waiver.

Considering that the Project evolved out of the City's initiative to redevelop parking assets into mixed-use housing and parking facilities, The Concourse Group originally intended that the housing component's off-street parking requirement would be satisfied in the adjacent garage facility. Accordingly, the Ground Lease requires that an amount of parking spaces equal to the Project's off-street requirement (58 spaces) will be made available to tenants at the adjacent parking garage (on an as requested basis). Given the foregoing, the Administration supports the waivers and the FERC favorably recommended that the City Commission grant them.

7. "Waterfall" List of Eligible Residents for the Workforce Housing Units, in the Event of Insufficient Demand from Artists and Educators

At the recommendation of The Concourse Group study, the City Commission directed that the 2019 ITN cater to employees of artistic institutions and area educators employed in the City of Miami Beach. (The study recommended broad, inclusive definitions to qualify workers from either industry, e.g. administrators and support staff in nonprofit institutions). These liberally construed definitions for whom is considered "Artists" and "Area Educators" are provided in Section 10 of the Term Sheet).

In order that the units not remain vacant, and to ensure that the Project is financeable and has the ability to generate stable rental income streams to meet debt service obligations, Servitas has requested that, following a specified period of 60 days of marketing solely to artists and area educators, the Project be permitted to lease the individual rental units to other persons meeting the income criteria for workforce housing. Per City Code, prior to leasing, the building's property manager must provide the City in advance with a marketing plan and offering notice and comply with annual requirements for tenant roster verification by the Housing department.

While the Administration seeks direction from the City Commission regarding implementation of a lottery system to select tenants from an eligible pool, the following incorporates the FERC's input for refining a proposed "waterfall" list in order to prioritize eligible residents:

- Tier 1 – Artists and Area Educators, nurses, law enforcement personnel, firefighters, and any other personnel employed in the City of Miami Beach;
- Tier 2 – Eligible workers employed in the City of Miami Beach in the hospitality and entertainment industries; and
- Tier 3 – Any other income-eligible workers employed within Miami-Dade County, with priority for income-eligible workers employed within the City of Miami Beach.

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

Subject to direction as to the policy and business issues outlined in this Memorandum, staff recommends that the Planning Board transmit the proposed development agreement to the City Commission with a favorable recommendation and further recommends that the Planning Board approve the Lease, in accordance with Section 1.03(b)(4) of the City Charter.

Exhibits:

Exhibit A – Development Agreement
Exhibit B – Ground Lease
Exhibit C – City Planning Analysis
Exhibit D – Developer Pro Forma