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COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Raul Aguila, Interim City Manager

DATE: January 13, 2021

SUBJECT: **COLLINS PARK ARTIST / WORKFORCE HOUSING PROJECT – SECOND READING / PUBLIC HEARING**

This is a Consolidated Commission Memorandum related to the Collins Park Artist/Workforce Housing Project, including the second reading public hearing of the Development Agreement (Agenda Item R7C), the second reading/public hearing of the Ground Lease (R7D), as well as the public hearing relating to the waiver of certain GU zoning regulations, as referenced in the Development Agreement (Agenda Item R7E).

HISTORY

The Mayor and City Commission have identified the need for workforce and affordable housing in the City as a key objective in the City's 2019 Strategic Plan: *Through the Lens of Resilience.* The City's 2040 Comprehensive Plan prioritizes workforce and affordable housing, with the express goal "to encourage redevelopment that provides workforce and affordable housing" within the City. In addition, in the City's 2019 Strategic Plan, the City has committed to support, develop, coordinate and promote performance, visual and other cultural arts within the City, including elevating the Collins Park Cultural District, where the proposed project is to be located.

The City is the owner of the property located at 224 23rd Street (the "Property"), the current site of a 21-space public parking lot, and desires to redevelop the Property as a mixed-use residential workforce housing development, and further desires to prioritize housing for income-eligible artists and educators (the "Collins Park Artist Workforce Housing Project" or "Project"), to accomplish two of the City's strategic planning objectives. The Miami City Ballet, Inc. (the "Ballet"), South Florida's premier classical ballet company, is a not-for-profit charitable cultural organization, headquartered in close vicinity of the Property, at 2200 Liberty Avenue, Miami Beach, Florida.

On September 14, 2016, the Mayor and City Commission adopted Resolution No. 2016-29547, selecting The Concourse Group to identify public-private partnership (P3) opportunities to alleviate the cost and other burdens on the City associated with the development of workforce/affordable housing projects on City property, including with respect to the proposed Collins Park Artist Workforce Housing Project.

On December 14, 2016, the Mayor and City Commission adopted Resolution No. 2016-29679, approving a height waiver for the Collins Park Artist Workforce Housing Project, to authorize a height of up to 75 feet, finding that the waiver was necessary in order to provide optimal development and to allow for maximum capacity for artist/workforce housing.

On January 18, 2019, the City issued a competitive solicitation for the Project (ITN 2019-099-KB), which expressly encouraged proposers to incorporate the participation of the Ballet as part of the Project, in an effort to address the Ballet's dormitory housing needs and program the workforce housing component of the Project with a focus on attracting artists and area educators to the City.

On July 17, 2019, the Mayor and City Commission adopted Resolution No. 2019-30908, authorizing simultaneous negotiations with both ITN proposers Servitas, LLC and Atlantic Pacific Communities, LLC. Following the withdrawal of Atlantic Pacific, the City Commission directed negotiation with the sole remaining proposer, Servitas, LLC ("Servitas" or "Developer").

ANALYSIS

Overview of the Proposal and Project Delivery Structure

The Developer, in collaboration with Community Finance Corp., a not-for-profit corporation that specializes in facilitating capital projects for governmental entities throughout the United States, has proposed a public-private partnership with the City that would advance the City's policy objectives of developing workforce housing in the City. The Developer intends to develop the mixed-use residential workforce housing Project pursuant to a Florida Statute Chapter 163 development agreement entered into between the City and the Developer (the "Development Agreement").

Servitas proposes a 7-story building constructed on the Property, designed by Shulman + Associates in collaboration with PGAL Architects, to be limited to a maximum height of 75 feet, as previously approved by the City Commission, with:

(1) approximately 80 workforce housing units on the highest five floors:

- 50% - 40 studios (average size 403 sf)
- 25% - 20 one-bedroom units (approx. 518 sf each)
- 25% - 20 two-bedroom units (approx. 640 sf each)

(2) approximately 32-bed dormitory on the second floor intended for use by the Ballet, to support the Ballet's dance education and other programs (including two private units for Ballet staff) or, if agreement with the Ballet cannot be reached, up to 16 additional workforce housing units

(3) ground floor retail or cultural space

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 development agreement with Servitas to govern the development of the Project, and in addition thereto, a long-term ground lease for the entire property (the "Lease") with a non-profit 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). Once the Project is constructed, the Ground Lessee would have overall responsibility for the operation of the Project.

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.

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, if any, 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), **such revenues would solely inure for the benefit of the City or any other not-for-profit entity designated by the City to receive surplus revenues.**

Key Lease Terms		
Address		224 23rd Street
Ground Lessee		Community Finance Corp., a 501(c)(3) entity
Lease Effective Date		Upon Financial Closing for the Project, when the financing is in place and all permits and approvals for the commencement of construction have been obtained
Initial Term		50 years

Renewals		Two renewal terms of 20 years each, on mutual agreement of the parties
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		Project operates as a nonprofit and surplus revenues (after operating expenses, debt service, and reserves) inure to the benefit of the City, 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*, either to the City, or to cover up to 50% of Ballet's potential costs to expand dormitory use, with the balance of revenues to the City.
City Financial Participation		Environmental costs in excess of $20,000 and up to $200,000, to be reimbursed by Project at Financial Closing or with Project's net revenues, prior to any distribution of net revenues to any other party. **Given that the Phase 2 environmental report has now been completed and minimal issues were noted, City is unlikely to expend any significant amount for environmental costs.** Once constructed, operation of the facility is entirely self-supported by rental revenues.
City Pre-development Liability		• *Up to HPB approval*: Maximum of $500,000 • *After HPB approval but before Financial Closing*: Maximum of $800,000. (In all instances, City to receive an assignment of all plans and other work product)

Termination for Convenience		• *City*: Any time prior to HPB approval • *Developer*: Any time prior to Financial Closing
Maintenance		Property Manager responsible for facility maintenance, utilities, and standards of operation. Each year, City approves operating plan and annual budget
Insurance		Standard terms for the protection of the City, including insurance requirements and broad indemnification of the City
Building Size		72,972 gross square feet (GSF) 47,820 net rentable square feet (NRSF)
Uses		• *Ground floor*: retail or cultural space (subject to, at the City's election, a master sublease with the City) • *2nd floor*: Miami City Ballet dormitory (subject to master sublease) • *Floors 3 – 7*: approximately 80 workforce housing units, consisting of 50% studios, 25% one-bedroom, 25% two-bedroom units
Workforce Tenants		• Income-eligible persons earning at or below 120% AMI, paying rent at maximum of 30% AMI, with the units available for artists, educators, etc. per the tiers described in Section 6 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 workforce housing project proposed for development within the City • Little financial cost(s) to the City, if any, and all of which will be reimbursed to the City if incurred

		• Housing for City's cultural arts partner Miami City Ballet, adjacent to its headquarter facility • Option for City to control ground floor programming • Ownership of the building transfers to the City upon expiration of the Lease. • City has option to purchase the Lease prior to the expiration of the term, with the purchase price consisting of the amount of the then-remaining outstanding principal and interest on the Project revenue bonds (if any), plus closing costs and any other fees that may have been otherwise due to the Lessee at the time of the repurchase, if any

1. Participation of Ballet and Distribution of the Project's Annual Net Proceeds.

One of the key features of the proposal is 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 will be 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 Project Pro Forma, attached as <u>Exhibit C,</u> indicates annual surplus revenues starting in Project Year 3 and all subsequent years, which will inure to the benefit of the City or its designees, as Rent under the Ground Lease.

The proposed agreements contemplate that the Ballet will enter into a master sublease for the entire second floor dormitory housing, potentially for a 35-year master sublease, 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, subject to 2% annual increases. 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 Ballet 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 the Ballet's rental obligations with respect to the dormitory floor, and thereby free up funds for the 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 Ballet presume that the Ballet 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 Ballet as a beneficiary, the Administration proposes that net proceeds be distributed in the following manner:

- First, to the City to reimburse any Project costs advanced by the City for the development or construction of the Project.
- Second, to the Miami City Ballet, until such time as the Ballet's rental costs for the second-floor dormitory are fully covered
- Third, to the City, to cover City's rental costs if City elects to sub-lease the ground floor for cultural activation purposes
- Fourth (subject to further negotiation with the Ballet), to cover fifty percent 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 Project or for Cultural Activation.

Servitas has indicated a willingness to work with the City with respect to the programming for the ground floor, provided, however, that no matter how the space is used, the ground floor needs to generate rental income in order to support the financing for the Project. The most recent proposal includes 5,329 sf of revenue-generating retail and/or cultural space, with separate entrances for both the Ballet dormitory and the workforce housing component.

Subject to direction from the City Commission, 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 approximately $27.60 per square foot (current value), inclusive of common area maintenance and utility expenses, subject to 2% annual increases. The Administration believes that this amount is not inconsistent with current market rate rents for commercial retail. The lease provides that the City must provide notice to the Developer no later than October 1, 2022 whether the City will elect its option to lease back the ground floor space. This notice period assumes that construction will commence in late 2021 and be completed in 2023.

Recognizing the ground floor use's vital role in neighborhood placemaking, the Finance and Economic Resiliency Committee ("Finance Committee") 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 Finance Committee recommended that surplus revenues should be used to subsidize the City's costs in renting the space, following payment to the Ballet to support its dormitory housing. In addition to any annual rental payment by the City as lessee, in order to sub-lease the space to a chosen cultural arts partner, there will be additional costs associated with buildout of the ground floor retail space. The Development Agreement requires Servitas to deliver the ground floor retail space as a baseline shell, with requirements for a minimum amount of base systems and finishing. These minimum baseline requirements are listed in an exhibit to the Development Agreement. During sub-lease of the ground floor space, the City can elect to negotiate for a financial contribution from the sublessee to help defray costs associated with preparing the space for the intended use.

3. City Contribution for Environmental Remediation Costs for the Project.

Servitas will be responsible for obtaining an d paying for environmental reports necessary to determine the scope of work and associated costs of any required environmental remediation, subject to City prior approval. 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 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. **Note**: Following First Reading, the Developer completed a Phase 2 environmental site assessment, which concluded that the Property would not require environmental remediation. Accordingly, barring any unforeseen discovery during site preparation, **the City's potential liability for environmental costs appears to be resolved as a nonissue.**

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 $1,474,282. Up through the date of Financial Closing (anticipated for Autumn 2021), Servitas anticipates that it will expend approximately $1,368,100. The developer's Predevelopment Schedule is attached as Exhibit D.

The City may terminate the development agreement for its own convenience at any time prior to Historic Preservation Board (HPB) approval (Spring/Summer 2021). 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 HPB approval, 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 a portion of the Developer's Pre-Closing expenses, up to an amount not to exceed $800,000, plus the City's Environmental Costs, if any.

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 2020, the Finance Committee 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 on the 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. Request for "GU" Waivers to address Minimum Unit Size for the Studio Units and Required Parking.

The Property is currently in a Government Use (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 (58 spaces). Note: the Developer has agreed that no more than ¼ of the studio units (10 out of a total of 40 studios) would be constructed just below the required minimum size. As currently proposed, even fewer of the studios will not contain the minimum required unit size.

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 through the Ground Lessee). Given the foregoing, the Administration supports the waivers. Both the Finance Committee and Planning Board favorably recommended that the City Commission grant them.

6. Waterfall List of Eligible Workforce Housing Residents, in the Event of Insufficient Demand from Artists and Educators

At the recommendation of The Concourse Group study, the City Commission directed that the 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 "Artists" and "Area Educators" are provided in the Lease and Development Agreement. Following direction by the City Commission, early childhood educators are specifically included in the definition of teachers.

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 sixty (60) days of marketing solely to artists and area educators, the Project be permitted to lease the individual units to other persons meeting the workforce housing income criteria. Per City Code, prior to leasing, the building's property manager must provide the City with a marketing plan and offering notice and comply with annual requirements for tenant roster verification by the Housing department.

The Lease contemplates implementation of a lottery system to select tenants from an eligible pool and the following incorporates the City Commission's input on First Reading for a proposed "waterfall" list to prioritize eligible residents:

(1) Tier 1 – artists practicing in Miami-Dade County; City of Miami Beach employees (including City of Miami Beach law enforcement personnel and firefighters); Area Educators and nurses employed within the City of Miami Beach; and veterans who are either employed within the City of Miami Beach or whose current place of residence is within the City of Miami Beach
(2) Tier 2 – Income-eligible workers employed in the City of Miami Beach in the hospitality and entertainment industries; and
(3) 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.

Land Appraisal

Section 82-39(b) of the City Code requires an independent appraisal of the fair market or rental value when the City considers any lease of its property for more than 10 years. The attached Appraisal of Real Property prepared by Cushman & Wakefield (the "Appraisal Report") provides four value conclusions:

1. Current as-is market value of the land (City's fee simple interest) is $6.9 million.
2. Current market value of the land with the Ground Lease in effect is $18 million.
3. Upon Project completion (anticipated 2023), the leasehold will be valued at $20.2 million.
4. Upon Project stabilization (anticipated 2024), the leasehold will be valued at $22.7 million.

The foregoing value conclusions demonstrate that the proposed project will add considerable value to the City's asset at little cost to the City. The appraiser's analysis of the market determined that the property is in a desirable residential area where demand for rental product at similar price points has been growing and is forecasted to remain strong in the near term. Importantly, the Appraisal Report suggests that the project is economically feasible and will be self-sustaining. Except as to the appraiser's conservative view of the first few years, once the project stabilizes, it will generate considerable net income, all of which would inure to the benefit of the City, sufficient to support the project, the Miami City Ballet, and the City's cultural activation goals for the ground floor.

It is also worth noting that this is a challenging transaction for any appraiser to evaluate, because of lack of clear comparables for tax exempt workforce housing/cultural projects like this, which are essentially governmental and non-profit in character.

Prior Review of Project at Public Hearings

On September 23, 2020, the Finance Committee reviewed the Developer's proposed terms and unanimously recommended that the Administration proceed with the proposed Project. On October 18, 2020, the Mayor and City Commission accepted the Finance Committee's recommendation and referred the Project for review by the Planning Board. Pursuant to Section 1.03(b)(4) of the City Charter governing leases of ten years or longer of City-owned property, the Lease requires approval by a majority 4/7 vote of all members of the Planning Board, and a 6/7 vote of the City Commission.

On November 17, 2020, the Planning Board unanimously approved the proposed Lease pursuant to the requirements of Section 1.03(b)(4) of the City Charter, and voted to transmit the Development Agreement to the City Commission with a favorable recommendation, in accordance with the City's Land Development Regulations.

On December 9, 2020, the Mayor and City Commission unanimously approved on first reading the Development Agreement and Lease. From the dais, the City Commission directed the Administration to incorporate modifications to the waterfall structure for tenant leasing, including inclusion of veteran preference, all of which is detailed in the preceding section.

The following documents are attached to this Memorandum:

Exhibit A –Development Agreement
Exhibit B –Ground Lease
Exhibit C –Pro Forma
Exhibit D –Predevelopment Schedule
Exhibit E –Planning Analysis
Exhibit F – Appraisal Report

FISCAL IMPACT STATEMENT

Any Project costs advanced or funded by the City will be reimbursed to the City either at Financial Closing, or from the Project's net revenues, prior to any distribution of net revenues to any other party. To the extent the revenues of the Property generate surplus revenues (after payment of all operating expenses, maintenance reserves, and debt service reserves), such revenues would solely inure for the benefit of the City or any other not-for-profit entity designated by the City.

CONCLUSION

Following review and consideration of the Development Agreement and Ground Lease, the Administration recommends that the Mayor and City Commission adopt the resolutions approving the GU waivers and execution of the agreements.