

City's Latest Edits as of 7/24/18 to the Developer's Initial Term Sheet,

[It includes notification to the Committee of Developer's objections]

[Note: The City Reserves any and all rights to continue to negotiate the below terms and to supplement and/or delete such terms as the Mayor and City Commission, the FCWPC, and Administration may deem to be in the best interest of the City.]

500-700 Alton Development

Development Agreement and Road Vacation Term Sheet

I. Recitals.

- A. South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC and KGM Equities, LLC (collectively, the "**Developer**") are owners of the properties located at 500, 630 and 650 Alton Road, 1220 6th Street, and 659, 701, 703, 711, 721, 723, 727 and 737 West Avenue (collectively, the "**Development Site**").
- B. The City of Miami Beach (the "**City**") holds a right-of-way dedication to a 50 foot wide right of way known as 6th Street, running from West Avenue to Alton Road (the "**City Parcel**").
- C. Developer is the owner of the Development Site, which Development Site fronts both sides of the City Parcel, to wit: 500 Alton Road, and 630 Alton Road, 650 Alton Road, and 1220 6th Street.
- D. The Developer intends to develop the Development Site with a mixed-use residential and commercial development (the "**Project**") pursuant to a Florida Statute Chapter 163 development agreement to be negotiated between the City and the Developer (the "**Development Agreement**"), subject to and contingent upon: (a) Developer obtaining all applicable final, non-appealable land use approvals for the Project and the "**Park**" (as hereinafter defined); (b) the vacation of the City Parcel in favor of Developer; and (c) City's approval of the "Land Development Regulation Amendments" (as hereinafter defined).
- E. This Term Sheet outlines the general terms agreed to by the Developer and the City with respect to the Development Site, the Project and the Park.

II. Vacation and Dedications.

- A. Concurrent with the submittal of the Development Agreement to the City Commission for its approval, the City shall prepare and submit a resolution for the vacation of the City Parcel to the City Commission (the "**Vacation Resolution**"), for its consideration and approval (which approval shall be at the City Commission's sole discretion). Upon the effective date of the vacation of the City Parcel, as set forth in the Vacation Resolution, and subject to satisfaction of the conditions in subsection (B)(1)-(6) below, the City shall convey title to the City Parcel, by quitclaim deed, to Developer, and

the City Parcel shall be incorporated into and made a part of the Development Site.

- B. After (a) the Development Agreement has been approved by the City Commission (and executed by the Developer and the City); (b) the Vacation Resolution has been approved by the City Commission; (c) the Land Development Regulation Amendments have been adopted; (d) the Developer has obtained all required final, non-appealable land use board approvals for the Project and the Park; and (e) the City is ready to issue a Full Building Permit for the Project and the Park, Developer and City shall execute, deliver, convey and record the following documents:

[Note: Developer does not agree to Full Building Permit. Developer simply agrees to a "building permit." The objection continues through the Term Sheet where the term "Full Building Permit" is utilized.]

Developer's conveyance to the City in fee simple, free and clear of all liens and encumbrances, by special warranty deed, of approximately 2.3 acres located within the Development Site (the "**Park Site**"), on which Park Site Developer shall design, permit and construct, at its sole cost and expense, a public City park (the "**Park**") which, following completion of construction by Developer and acceptance by the City, shall be operated, maintained and programmed by the City. Developer shall design and construct the Park for the City in accordance with the Park concept plan design, which will be attached as an exhibit to the Development Agreement (and is also, therefore, subject to City Commission review and approval at that time). [Note: The City reserves its rights to continue to negotiate with Developer, should the FCWPC and/or the City Commission so direct]. The Administration desires for the Developer to convey a larger Park Site, at 4.312 acres, to include the entirety of the 600 and the 700 blocks, for the City to design and activate. [Note: Developer has not agreed to this].

[Note: Concurrent with the conveyance of the Park Site to the City, Developer shall provide the City reasonable evidence and confirm, after due diligence, that: (a) the Park Site does not contain any "hazardous substances" (as defined by CERCLA, RCRA, the Clean Water Act, the Clean Air Act, and Florida law) in violation of any applicable environmental law, rule or regulation which requires environmental remediation; and (b) no environmental remediation for the Park Site). is required under any applicable environmental law, rule or regulation at the time the Park Site is conveyed to the City.]

(2) A perpetual, non-revocable roadway easement granted by Developer in favor of the City against a 50 foot wide strip of land located within the Development Site, to provide a through street on 6th Street as a connector between West Avenue and Alton Road (the "**Future 6th Street**") for public vehicular and pedestrian use and access, which easement will provide that the City will be responsible for the maintenance, repair, safety and security of the Future 6th Street and all improvements thereon.

(3) A perpetual, non-revocable roadway easement granted by Developer in favor of the City against a 24 foot wide strip of land located within the Development Site, to provide a through street on 7th Street as an additional connector between West Avenue and Alton Road (the "**Future 7th Street**") for public vehicular and pedestrian use and access, which easement will provide that the City will be responsible for the maintenance, repair, safety and security of the Future 7th Street and all improvements thereon.

(4) The City's conveyance to Developer by quit claim deed, of the City Parcel pursuant to and subject to the terms of the Vacation Resolution.

[Note: Developer desires a fee simple deed free and clear of liens and encumbrances].

(5) A perpetual, non-revocable public access easement granted by Developer in favor of the City against an up to 10 foot wide strip of land located within the Development Site, to provide for public pedestrian walkway connecting the baywalk south of 5th Street across 5th Street onto the Development Site terminating on the south side of Future 6th Street (the "**Future Baywalk**"), which easement will provide that the City will be responsible for the design, construction, maintenance, repair, safety and security of the Future Baywalk and all improvements thereon.

(6) A perpetual, non-revocable roadway easement granted by Developer in favor of the City against an up to 10 foot wide strip of land located within the Development Site, to provide an additional lane on 5th Street from Interstate 395 (the "**Future 5th Street**") for public vehicular and pedestrian use and access, which easement will provide that the City will be responsible for the design, construction, maintenance, repair, safety and security of the Future 5th Street and all improvements thereon.

The execution, delivery, conveyance and recordation of the documents set forth in (1) through (6) above shall occur prior to, and shall be a condition precedent to, the City's issuance of a "Full Building Permit" to Developer for the Project and the Park.

III. Development Agreement.

A. The terms set forth in Section II above, as well as other matters concerning the Development Site, the Project and the Park will be incorporated into the Development Agreement. The Developer shall develop and construct the Project substantially consistent with the plans as delineated in the Development Agreement, including without limitation, the Development Agreement shall also include the following additional terms:

1. The Development Site shall be limited to a maximum of: (a) 571,000 square feet of floor area ratio (of which there shall be a maximum of 35,000 square feet of retail floor-area ratio); and (b) 400 residential units.

2. The Development Site shall require any residential tower constructed within the 500 block of Alton Road be: (a) located within the northeast quadrant of the 500 block of Alton Road; and (b) limited to 42 stories.
3. No parking related to the Project will be constructed underneath the Park Site.
4. The City shall process the following amendments to its Land Development Regulations (collectively, the "**Land Development Regulation Amendments**") (a) an amendment to the Comprehensive Plan and Zoning Code to rezone Developer's CPS-2 and RM-2 zoned parcels to CD-2; and (b) a text amendment to authorize up to 42 stories within the CD-2 zoning district, and to also provide for modified setback provisions. The Developer acknowledges and agrees that any such amendments are subject to, and conditioned upon, approval by the City Commission, at its sole discretion.
5. The Developer will be responsible for submitting any required applications for development approvals for the Project and the Park (e.g., Design Review Board, Planning Board, Board of Adjustment, etc.) prior to issuance of a Full Building Permit for the Project and the Park. The Developer acknowledges and agrees that any such development approvals are subject to, and conditioned upon, approval by the applicable development boards.
6. The Developer shall demolish, at its sole cost and expense, the South Shore Hospital within twelve (12) months after the issuance of a Full Building Permit for the Project and the Park.
7. The City reserves the floor area ratio from the vacated 6th Street, to be utilized for the City's Park Site.

[Note: Developer has not agreed to this term].

The execution, delivery, conveyance and recordation of the documents set forth in (1) through (7) above, shall occur prior to, and shall be a condition precedent to, the City's issuance of a "Full Building Permit" to Developer for the Project and the Park.

IV. Developer's Contributions.

In addition to those terms in Sections II and III, and as additional consideration for the City's vacation of the City Parcel, the Developer has voluntarily proffered the following monetary and other contributions:

- A. The completion of the Park by the Developer, and acceptance of the same by the City, shall be a condition precedent to the City's issuance of a temporary certificate of occupancy (TCO) or certificate of occupancy (CO) (whichever comes first) for the Project.

B. Developer, at time of issuance of a Full Building Permit for the Project and the Park, shall make a monetary contribution to the City of \$5,000.000, which funds shall be used by the City to complete the construction of the unfinished baywalks along the following bayside locations:

- (1) South Bay Club
800 West Avenue
Miami Beach, FL
- (2) Bay View Terrace
1228 West Avenue
Miami Beach, FL
- (3) Bay Garden Manor
1250 West Avenue
Miami Beach, FL
- (4) Lincoln Bay Terrace
1450 West Avenue
Miami Beach, FL
- (5) Mirador 1000 Condo ("Mirador 1")
1000 West Avenue
Miami Beach, FL
- (6) Mondrian Hotel ("Mondrian")
1100 West Avenue
Miami Beach, FL
- (7) Mirador 1200 Condo ("Mirador 2")
1200 West Avenue
Miami Beach, FL

[Note: Developer has not agreed to this term].

C. Developer, at time of issuance of a Full Building Permit for the Project and the Park, shall make a monetary contribution to the City, for the City to design, permit and construct the 5th Street pedestrian flyover.

[Note: The City has not identified an amount for the contribution. Developer has not agreed to this term].

V. Miscellaneous Provisions.

- A. Developer will be responsible for submitting and obtaining any and all final, non-appealable development approvals for the Project and the Park (i.e. Design Review Board, Planning Board, Board of Adjustment). Developer agrees and acknowledges that any such development approvals are subject to, and conditioned upon, approval by applicable development boards, in their sole and reasonable discretion.

- B. Except as to involuntary transfers (as shall be defined in the Development Agreement and which will include, without limitation, foreclosure transfers and transfers in lieu of foreclosure), Developer shall not be entitled to assign or transfer its rights under the Development Agreement until after the (i) issuance of a TCO or CO, whichever comes first, for the Project and Park.
- C. Time periods in the Development Agreement will be tolled due to force majeure (strikes, lockouts, acts of God, and other causes beyond the control of either party); and, appeals or other judicial or administrative challenges to project approvals.
- D. In the event that a third party (unrelated or unaffiliated with the City or Developer) institutes a legal proceeding in a court of competent jurisdiction challenging the validity of the Vacation Resolution or the Development Agreement (a "Lawsuit"), then the City shall not be required to effectuate the vacation of the City Parcel until thirty (30) days after the Lawsuit has been completed and finally disposed of; provided, however, if the Lawsuit is still pending more than sixty (60) months after approval of the Vacation Resolution and/or Development Agreement (as applicable), then either party at its option may, from and after the expiration of such sixty (60) month period and while the Lawsuit remains outstanding, elect to terminate the transaction contemplated by the Development Agreement by delivering a written notice of termination to the other party, whereupon the Vacation Resolution shall be rescinded and the Development Agreement shall be terminated, and the City and Developer shall have no further obligation and/or liability to each other.
- D. Notwithstanding the foregoing, Developer shall defend, indemnify, and hold the City harmless should any Lawsuit be filed.
- E. Developer agrees to reimburse the City up to \$150,000.00, for any attorney's fees incurred by the City for outside counsel's review and negotiation of the Development Agreement and related agreements pursuant to the terms of that certain Reimbursement and Indemnity Agreement dated July 13, 2018 executed by Developer and City.
- F. Developer agrees to reimburse the City for any appraisal costs incurred by the City with respect to this transaction.