

MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Members of the Finance & Citywide Projects Committee

FROM: Raul J. Aguila, City Attorney

DATE: July 27, 2018

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE ADMINISTRATION AND THE CITY ATTORNEY TO INITIATE NEGOTIATIONS WITH SOUTH BEACH HEIGHTS I, LLC, 500 ALTON ROAD VENTURES, LLC, 1220 SIXTH, LLC, AND KGM EQUITIES, LLC (COLLECTIVELY, THE "DEVELOPER"); WHO IS THE OWNER OF THE PROPERTY LOCATED AT 500, 630 AND 650 ALTON ROAD, 1220 6TH STREET, AND 659, 701, 703, 711, 721, 723, 727 AND 737 WEST AVENUE; IN ORDER TO DRAFT A PROPOSED DEVELOPMENT AGREEMENT THAT WOULD (1) PROVIDE THE CITY WITH PARK LAND, (2) PROPOSE A SCHEDULE; AND (3) TO DELINEATE CERTAIN DEVELOPMENT RIGHTS ATTRIBUTABLE TO THE DEVELOPER AND THE CITY; FURTHER AUTHORIZING THE REFERRAL OF A FINAL NEGOTIATED TERM SHEET TO BE SENT TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE; AND AUTHORIZING A REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE OF APPLICABLE DRAFT ORDINANCES TO EFFECTUATE THE DEVELOPMENT

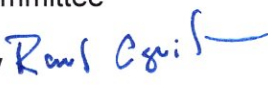
Enclosed please find a memorandum before the Finance and Citywide Projects Committee on July 27, 2018 relating to the subject referenced above.

MIAMI BEACH

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

FINANCE AND CITY WIDE PROJECTS COMMITTEE MEMORANDUM

TO: Members of the Finance Committee

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

DATE: July 27, 2018

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE ADMINISTRATION AND THE CITY ATTORNEY TO INITIATE NEGOTIATIONS WITH SOUTH BEACH HEIGHTS I, LLC, 500 ALTON ROAD VENTURES, LLC, 1220 SIXTH, LLC, AND KGM EQUITIES, LLC (COLLECTIVELY, THE "DEVELOPER"); WHO IS THE OWNER OF THE PROPERTY LOCATED AT 500, 630 AND 650 ALTON ROAD, 1220 6TH STREET, AND 659, 701, 703, 711, 721, 723, 727 AND 737 WEST AVENUE; IN ORDER TO DRAFT A PROPOSED DEVELOPMENT AGREEMENT THAT WOULD (1) PROVIDE THE CITY WITH PARK LAND, (3) PROPOSE A SCHEDULE; AND (3) TO DELINEATE CERTAIN DEVELOPMENT RIGHTS ATTRIBUTABLE TO THE DEVELOPER AND THE CITY; FURTHER AUTHORIZING THE REFERRAL OF A FINAL NEGOTIATED TERM SHEET TO BE SENT TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE; AND AUTHORIZING A REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE OF APPLICABLE DRAFT ORDINANCES TO EFFECTUATE THE DEVELOPMENT.

I. Background.

The City of Miami Beach holds a right of way dedication to a 50 foot wide road, running between West Avenue and Alton Road, known as 6th Street. (hereinafter "6th Street"). South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC, and KGM Equities, LLC, (hereinafter collectively "Developer") own 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").

II. Development Agreement.

Developer is the owner of the property to the north and south of and adjacent to 6th Street, and is seeking that the City vacate 6th Street (the "6TH Street vacation") in order for it to have a unified development site, upon which Developer intends to develop

a mixed-use residential and commercial development (Project”). Concurrent with the requested 6th Street Vacation, the City and Developer would also enter into a Development Agreement, pursuant to Chapter 163, Florida Statutes. The Development Agreement would provide the following:

(NOTE: The following terms are preliminary and the City reserves its rights to continue to negotiate with Developer, should the FCWPC and/or the City Commission so direct).

- A. 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.
- B. The Development Site shall require any residential tower constructed within the 500 block of Alton Road to be: (a) located within the northeast quadrant of the 500 block of Alton Road; and (b) limited to 42 stories.
- C. No parking related to the Project will be constructed underneath the Park Site (as hereinafter defined).
- D. 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 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.
- E. The Developer will be responsible for submitting any required applications and obtaining all required final non-appealable land use approvals for development of the Project and the Park (as hereinafter defined), 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.

III. Developer Proposed Improvements.

In order to effectuate the Project, and as a condition of the Development Agreement, the following vacation and other dedications have been proffered by the Developer: **(NOTE: The following terms are preliminary and the City reserves its rights to continue to negotiate with Developer, should the FCWPC and/or the City Commission so direct).**

- A. Concurrent with the submittal of the Development Agreement to the City Commission for its approval, the City shall also prepare and submit a resolution for the 6th Street vacation 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 6th Street vacation, as set forth in the Vacation Resolution, and subject to satisfaction of the conditions contained in Section III B (1)–(6) below, the City shall convey title to 6th Street, via quit claim deed, to Developer; and 6th Street shall be incorporated into and made a part of the Development Site; and the Project shall be deemed to be a unified 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, convey and record the following documents:

- (1) Developer's conveyance to the City in fee simple, free and clear of all liens and encumbrances, by special warranty deed, 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 and acceptance by the City, shall be operated, maintained, and programmed by the City. Developer has proposed designing and constructing the Park for the City in accordance with the Park concept plan design, which will be subject to approval of the City Commission (in its sole and reasonable discretion) at the same time that it considers the Development Agreement (and which, if approved, will be attached as an exhibit to the final approved Development Agreement). Final completion of the Park shall occur, and the Park shall be open to the public, no later than the date of the City's issuance of a TCO or CO for the Project.

[**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) City's conveyance to Developer of a quit claim deed for 6th Street, pursuant to and subject to the terms of the Vacation Resolution.
- (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 conveyance, execution, delivery and recordation of the documents set forth in (1) through (6) above shall be a condition precedent to the City's issuance of a Full Building Permit to Developer for the Project and the Park.

IV. Other Terms.

(NOTE: The following terms are preliminary and the City reserves its rights to continue to negotiate with Developer, should the FCWPC and/or the City Commission so direct).

- A. 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.

- B. 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).**

V. **Additional Terms Introduced by Administration.**

(NOTE: The following terms have been introduced by the Administration in initial discussions with the Developer but have not been agreed to by the Developer. The City reserves its rights to continue to negotiate with Developer, should the FCWPC and/or the City Commission so direct).

- A. As an alternative to Developer's proffer in Section III.B.1 (i.e. for a 2.3 acre Park designed and constructed by Developer in accordance with a City approved concept plan), Developer to convey to the City a larger Park Site of 4.312 acres, to possibly include the entire 600 and 700 blocks for a City designed and activated public park.
- B. Developer, at time of receipt of a Full Building Permit for the Project and the Park, shall make a voluntary 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

- C. Developer, at the time of receipt of a full building permit for the project and the park, shall make a monetary contribution [amount to be determined (TBD)] to the City, for the design, permit and construction of the 5th Street pedestrian flyover.

(NOTE: Developer has not agreed to the terms in V (A) –(C) above).

VI. Miscellaneous Provisions of the Development Agreement.

- A. 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 issuance of a TCO or CO, whichever comes first, for the Project and Park.
- B. Time periods will be tolled due to force majeure (strikes, lockouts, acts of God, and other causes beyond the control of either party); appeals or other judicial or administrative challenges to project approvals;
- C. 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.

The City has also attached, for informational purposes only, the latest draft proposed Term Sheet as Exhibit 1. The City Appraisal is attached as Exhibit 2.

VII. City’s Appraisal.

The results of the Appraisals are attached. The first scope for the Appraiser was to determine the land value of the parcels that comprise the 500 block, 600 block and 700 block of this proposed development. The second scope was to determine the land value of the western and eastern halves of the 600 and 700 blocks. The western half of

the 600 and 700 block is the approximately 100,000 square feet that are proposed as the future City park site. The land value of the future City park site is shown as \$52,500,000 in its current condition. The third scope was to evaluate the changes in the development program under the proposed modifications to the height restrictions and the allowance for a unified development site through the vacation of 6th Street. The breakdown of the two development programs are shown in the appendix of the appraisal. The fourth and final scope of the appraisal was to determine the value of the vacation of 6th Street. The appraiser valued this property at \$7,600.00.

VIII. City Charter Analysis.

Any time the City contemplates the disposition of City land, the transaction must be analyzed to ensure compliance with Section 1.03 of the City's Charter. The Charter is reviewed in order to determine whether a supermajority vote of the City Commission or a voter referendum is required prior to vacation of the 6th Street. The following is an analysis of the relevant provisions of Section 1.03 of the City Charter.

1. Is the City Right of Way vacation a "sale, exchange, conveyance, lease, or any other transfer of any City interest in any public street-end bordering on land designated "Government Use", ... or "Waterfront land," which would require either the unanimous approval of those members of the City Commission with power to vote or approval by a majority vote of the voters in a Citywide referendum as contemplated in Section 1.03(e) of the City Charter?

Answer: No. The 6th Street is not "Waterfront land."

2. Does the vacation of the 6th Street result in an increase in the current floor area ratio "by zoning, transfer, or any other means" of a street end or property? If triggered, a referendum vote of the electors, as contemplated under Section 1.03(c) of the City's Charter would be required.

Answer: No. Section 1.03(e) of the Charter is not triggered by the vacation. The surrounding parcels to the 6th Street are zoned CD-2, CPS-2 and RM-2, which all have the same maximum Floor Area Ratio. Upon vacation the 6th Street would retain the zoning designation of the adjacent parcels. Therefore, there will be no zoning change. Under the proposed term of the Development Agreement, the City will convey a quit claim deed to the Developer, relinquishing the City's interest in the 6th Street. As the Developer's Project includes the vacated Right of Way, Developer will be required to execute a Unity of Title as required by Section 118-5(1), of the City Code. The Execution of the Unity of Title shall aggregate Developer's development rights on the unified abutting parcels. This action is consistent with Section 1.03(e) of the Charter, which specifically states: "The provision shall not preclude or otherwise affect the division of lots, or the aggregation of development rights on unified abutting parcels." Developer's aggregation of rights shall not increase by zoning, transfer, or any other means the current, existing floor area ratio of the vacated Right of Way or Developer's Property. Based upon the foregoing, the referendum requirement of Section 1.03(e) is not triggered.

3. Is the vacation a "sale, exchange, conveyance or lease of ten years or

would require approval by a majority 4/7 vote of all members of the Planning Board and 6/7 vote of the City Commission as contemplated by 1.03(b)(4) of the City Charter?

Answer: Yes. In order to effectuate a vacation the City has historically required the execution of a Quit Claim deed conveying its interest in the Right of Way to the adjacent property owner. The Quit Claim deed would be considered a “conveyance” by the City requiring the enhanced voting requirements delineated in section 1.03(b)(4) of the Charter.

IX. Compliance with Chapter 82 of the City’s Code.

The City must also comply with the requirements of Chapter 82, of the City’s Code, which requires certain actions prior to effectuating a vacation. Section 83-37 requires the City Manager to transmit the item to the Finance and Citywide Projects Committee (FCWPC). The City has also obtained an appraisal of 6th Street. The appraisal is attached as Exhibit 2. The Code also requires the Vacation Resolution to be read during two meetings of the City Commission, with the second reading being accompanied by a public hearing. In compliance with Section 82-38, the Planning Department is preparing its analysis of the vacation.

X. Recommendation.

As Chapter 82 requires that the proposed vacation be forwarded to the Finance and City Wide Projects Committee, this item is before you today. Notwithstanding, we have included the terms and conditions regarding **both** the 6th Street Vacation and the Development Agreement because, given how this transaction is structured, they are inextricably linked.

Additionally, it should be noted that the terms set forth in this Memorandum represent the status of discussions, **as of the date of this Memorandum, and that no final deal has been made.** Accordingly, the Administration is requesting direction from the FCWPC including, without limitation, any additional or alternate terms that the Committee may direct the Administration to pursue in its ongoing negotiations with the Developer. Finally, in its continued review of the Project, the Park, and what is in the best interest of the City, the Administration reserves its rights to supplement and/or revise the terms contained herein, particularly as discussions with the Developer continue; input from the FCWPC is processed; and public comment is received.