MIAMIBEACH

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Jimmy L. Morales, City Manager

DATE: November 30, 2018

SUBJECT: **DISCUSSION REGARDING THE PARKING GARAGE/RETAIL DEVELOPMENT PROPOSAL, INVOLVING CITY-OWNED PARKING LOTS IN NORTH BEACH, SUBMITTED BY NORTH BEACH TOWN CENTER DEVELOPMENT, LLC, AN AFFILIATE OF PACIFIC STAR CAPITAL, LLC**

HISTORY:

North Beach Town Center Development, LLC ("Developer" or "NBTC") initially proposed for the City to convey two of its Parking Lots (P80 and P84) in North Beach to the Developer, in exchange for the Developer's conveyance to the City of a separate, stand-alone public parking garage unit or structure, which would be constructed as part of the Developer's proposed mixed use project between Abbott Avenue and Byron Avenue. The City currently owns the five parcels outlined in red on Exhibit "A" (Parcel Map), which contain 83 surface parking spaces, and the Developer owns the parcels outlined in yellow. The Developer would convey its five parcels outlined in blue to the City for use for the Town Center Garage.

The appraisal submitted by the City's appraiser estimated the value of the two City parking lots at $10 million, and the value of the Developer parcels at $9.2 million, resulting in a variance of $800,000 between the City properties and Developer properties.

Until April 6, 2018, Developer's concept plan for the Project assumed that Developer would have ownership of property the Developer currently does not own (the Prima Pasta site). The prior versions of the term sheet reviewed by Finance and Citywide projects Committee (FCWPC) at its February 23, 2018, March 13, 2018, and March 26, 2018 meeting, involved, among other terms, the following:

1. An exchange of Developer and City parcels, with developer to pay the City at closing for the difference in the appraised values between the properties being exchanged;

2. The project would be developed as two separate building structures, to include

126,627 SF of retail use and **459 parking spaces**, with 359 parking spaces to be owned and operated by the City as a municipal parking garage, and **100 parking spaces to be owned and operated by the Developer** for the benefit of its retail tenants;

3. **City to provide limited two hour free parking rights at the municipal parking garage for up to ten (10) years** for the benefit of Developer's retail tenants, through a parking validation system, with Developer to make operating payments to the City, to replace lost revenue and the estimated losses that the City anticipates would be experienced at the garage as a result of the two hour free parking;

4. City to pay Developer for the City's portion of the design and construction costs for the Project, pursuant to **separate stand-alone contracts for design and construction** of the City garage, to avoid a commingling of funds and a separation of responsibilities (including separate performance bond, etc.) for the City's portion of the project; and

5. The garage would be designed in accordance with City's design criteria for convertibility to other uses (to take into account anticipated continued declines in parking demand), with no convertibility in the first ten years following the opening of the garage, and thresholds (limits) on any potential conversion by the City, between the tenth and twentieth year following opening of the garage; and

6. At completion of construction, at which time the garage project would be condominiumized, with the City to own the City parking garage condominium unit, and Developer to own the remaining condo units within the garage for retail and loading.

At the April 11, 2018 City Commission meeting, consideration of the proposed transaction was deferred, as the Developer submitted that he no longer anticipated having control of the Prima Pasta site.

On July 19, 2018, following months of discussion of the various issues raised by Developer's new proposal (which would not include the existing Prima Pasta site), NBTC provided a revised Concept Plan and a Summary of Land Swap and Retail Condo Values as well as a revised term sheet on July 20, 2018. The terms of the proposed transaction were discussed at the July 27, 2018 FCWPC meeting. The FCWPC was unsatisfied with the proposed transaction and advised the Developer to reconsider the proposed terms and conditions and to provide its best and final offer.

Subsequently, the City has met multiple times with the Developer, its legal counsel and architects. On November 7, 2018, the Administration met with NBTC to discuss its latest submittal. Following multiple exchanges, **the Developer has provided its best and final offer attached hereto as <u>Exhibit "B"</u>.** Also, the Revised Concept

Plan and Summary of Land Swap and Retail Condo Values are attached hereto as Exhibits "C" and "D".

ANALYSIS:

Some of the noteworthy changes from prior versions of the term sheet reviewed by Finance Committee include, but are not limited to, the items below:

(1) The Developer is now proposing for the project between Abbott Avenue and Byron Avenue to be constructed as a single building structure (as opposed to two building structures) with condominiums containing 80,378 s.f. of retail owned by the developer. The City has the option of paying for the development rights (for spaces on Developer's site) and for the cost to design and construct either (1) a 358 parking space garage; or (2) a 479 parking space garage, with all of the parking spaces to be owned and operated by the City (and, as set forth more fully below, with Developer not providing, or paying for, the design or construction costs of, any parking spaces dedicated for its retail tenants). The single structure of retail and parking would no longer be considered a main use garage. After the proposed swap, the underlying land would remain separately owned by Developer and the City until the project is completed and condominiumized.

Noteworthy, the retail portion of the project was 50 percent larger in earlier versions than in the current term sheet, which likely would have resulted in significantly greater economic impact in North Beach.

(2) Instead of Developer providing a minimum of 100 parking spaces, which would be located on the 2nd floor and dedicated to the grocer tenant, **Developer has proposed that it be responsible for zero parking spaces for the entire project, with the City to pay for the entire cost of all parking to support Developer's mixed use project.** Instead, Developer has proposed to build approximately 41,000 SF of retail space on the entire 2nd floor, with parking to now be located on Floors 3, 4 and the roof (358 space option), or on Floors 3, 4, 5 and the roof (479 space option).

The Cost of the 358 Space City Parking Garage Option

Due to the configuration of the parking, under the 358 space option, the City would now pay the Developer $3,201,000 for the real estate value of the parking condo unit located on Developer's parcel. The City would receive from the Developer $2,519,965 for the real estate value of the retail condo unit located on City's parcel, and $800,000 for the higher value of the City's parcels for the land swap. This results in a developer net payment to the City in the amount of $118,965, which will slightly offset the City's $12,172,000 construction cost of the garage.

Accordingly, the net out-of-pocket cost to the City for the 358 spaces is $12,053,035 ($33,668 per space) versus $10,459,680 ($29,136 per space) for 359 spaces under the prior proposal, resulting in a significantly more expensive project for the City.

The Cost of the 479 space City Parking Garage Option

Due to the configuration of the parking, under the 479 space option, the City would now pay the Developer $4,268,000 for the real estate value of the parking condo unit located on Developer's parcel. The City would receive from the Developer $2,519,965 for the real estate value of the retail condo unit located on City's parcel, and $800,000 for the higher value of the City's parcels for the land swap. This results in the City owing the Developer a net payment of $948,035; however, the Developer has agreed to waive this payment.

Accordingly, the net out-of-pocket cost to the City for the 479 spaces is $16,286,000 ($34,000 per space) versus $10,459,680 ($29,136 per space) for 359 spaces under the prior proposal, resulting in a significantly more expensive project for the City.

(3) In earlier FCWPC meetings, the Developer proposed the City provide up to ten (10) years of two-hour free parking. As presented at the July 27, 2018 FCWPC meeting, the Developer proposed the City provide 2-hour free parking for up to 20 years through a ticket validation system, with the Developer paying for any operating losses in the Town Center garage in addition to an annual contribution of $66,000 for replacement of the revenue associated with the City owned lots. Commencing in the 5th year, instead of Developer making validation payments for the full amount of tickets validated if retail occupancy exceeds 70%, Developer proposed to make validation payments if retail occupancy exceeded 90%, a significantly higher threshold. **The Developer's current proposal includes a ticket validation system for the benefit of Developer's retail tenants. The Developer shall pay the cost of procurring and implementing the validation system for developer's retail tenants. The developer shall pay, on an annual basis, an amount equal to the amount of all tickets validated for Developer's retail tenants, at the City's generally applicable garage parking rates.**

(4) In earlier term sheets, the Developer provided for flexibility for the City to convert the garage to other purposes after ten (10) years if parking utilization falls below specified thresholds (limiting City), **but the City had the ability to convert the garage after 20 years in its sole discretion**. At the July 27, 2018 FCWPC meeting, the Developer proposed convertibility of the garage only after a minimum of 20 years, and the Developer proposed that, if the City decided to convert the garage based on agreed upon occupancy thresholds, the Developer would have a right of first refusal to purchase the to-be-converted areas at fair market value, without regard to any other public uses that the City Commission may contemplate for such spaces. The Developer currently proposes convertibility of the garage only after a minimum of 10 years, and only in the event total transient (hourly) transactions are less than certain specified thresholds "Convertibility Thresholds" as follows:

<u>a.</u> A decrease of 50% or more in Garage Occupancy in any one year period, as compared to Garage Occupancy for any other one (1) year period since the Opening Date, based on hours of operation between 10AM and 6PM; or
<u>b.</u> A decrease of 10% or more in Garage Occupancy, in each of three consecutive years, as compared to any one (1) year of Garage Occupancy since the Opening Date, based on hours of operation between 10AM and 6PM; or
<u>c</u>. Any year in which Garage Occupancy during the year consists of a total number of transient (hourly) transactions of less than 40,000 transactions.

The Developer shall have a right of first refusal to purchase the to-be-converted area at Fair

Market Value, after Year 10. After Year 20, Developer shall have a right of first refusal to the purchase of the to-be-converted area at Fair Market Value, only if the City decides to sell the property.

(5) The Developer's current term sheet now includes accommodations in an effort to allow the Prima Pasta restaurant to continue to operate. These accommodations are pending ongoing refinement by NBTC, and are subject to review by the Fire Department and Building Department. The Administration has not confirmed whether Prima Pasta is satisfied that these provisions sufficiently protect Prima Pasta's interests.

(6) At the request of the City, NBTC has modified the concept plan to provide for a single delivery/service drive from Abbott Avenue to Byron Avenue, to address the loading concerns previously raised by the Planning Department on multiple occasions.

(7) The Developer's current proposal is for the project to be built as a single building structure, on land that is both publicly owned and privately owned, with the project to be condominiumized at completion. This legal structure is significantly different from the prior proposal, which contemplated the City garage being built as a separate structure, pursuant to a separate stand-alone construction contract, on separately owned land. The new structure raises certain complexities in connection with lender financing (as the project will partially be built on public land and cannot be liened or mortgaged) and in the event the Developer defaults.

Given the Developer's proposed structure, Developer has agreed that (1) the entire project between Abbott Avenue and Byron Avenue cannot be liened or encumbered; (2) Developer's construction loan will identify collateral other than the Project, (3) Developer has further agreed that as a condition of closing, Developer will provide evidence of lender's agreement to continue to fund the project (and thereby provide a "completion guarantee") in the event the Developer defaults and the lender forecloses on that separate collateral; and (4) the Developer entity will be constituted as a "bankruptcy remote" entity with independent directors, to ensure that any decision to seek bankruptcy protection is made in good faith and is not arbitrary. In this regard, although as discussed more fully below, the Administration's preference is for a structure that involves less development risk to the City (i.e., sell the City parcels to the Developer and be paid the full appraised value at closing ($10 million), with the City to purchase the City parking condominium unit upon completion of the Project, so that City's funds are not expended until the City is assured that the parking units would be completed and delivered to the City), the Developer has attempted to address the City's issues to the extent possible.

On July 20, 2018, the Developer submitted an Economic Assessment prepared by the RMA Economic Development Department (RMA) on behalf of Pacific Star Capital (Exhibit "E"). In summary, the highlights of the economic impacts of the Developer investments estimated by RMA are as follows:

• The estimated Ad Valorem impact to the City of Miami Beach for the project is estimated at $312,333 in the first year, and $3.5 million over 10 years.

• The proposed City investment is $9,758,480. This investment will result in both direct, and more importantly indirect and stimulated economic benefits for North Beach and the City. The total estimated cost of the project is $80 million, which will have a positive economic impact of over $92 million during construction. Following construction, the project will include retail, restaurant, office and residential uses which will generate over $59 million annually in the local economy.

• This economic activity will include an estimated almost $50 million annually in retail sales. This is retail spending that without this project, would likely occur outside of Miami Beach.

• The project is estimated to generate $1.115 million in Building Permit Fees and $863,682 in Transportation Concurrency Fees, in addition to $220,000 in Art in Public Places funding. [Note: Building fees offset the cost of building permitting and inspection services and, therefore represent no net revenues to the City. Transportation Concurrency fees similarly represent the development's share of transportation improvements associated with the number of trips generated by the development.]

The report also puts forward the premise that other projects will follow this project and may easily represent an additional $81 million in new investment into the area, creating new residential units and business opportunities, and supporting the City's tax base with an additional +$8 million in Ad Valorem Taxes over the next twenty years. The report has not been updated for the more recent changes.

Concerns

While the Administration and the Developer have made progress in certain regards, there are still noteworthy concerns, and deviations from prior versions of the term sheet reviewed by the Finance Committee including, but not limited to, the items below:

(1) The Developer is no longer providing any parking spaces to support the Developer's project, which currently consists of 80,378 SF of retail space, including a 30,151 SF grocery tenant. The Administration is concerned that it would be spending $12.053 million (358 space option) or $16.286 million (479 space option) for construction of all of the parking for this project, with the possibility that there will be no excess parking to serve the surrounding community, beyond the parking that is, as a practical matter, required to serve big box tenants and a grocery tenant (358 space option).

• Based on practical requirements of 3 spaces/1,000 SF for typical retail tenants and 5 spaces/1,000 SF for the grocery tenant, the parking requirement is 301 spaces just to support the on-site tenants. Therefore, under the 358 space option, most of the parking spaces paid for and owned by the City are just to support the Developer. Inclusive of the 83 spaces lost from existing City lots that serve Prima Pasta and the Byron Carlyle, this results in a **net deficit of 26 spaces** in the area due to the development. Under the 479 space option, inclusive of the 83 spaces lost from existing City lots that serve Prima Pasta and the Byron Carlyle, there is only a **net gain of 95 spaces** in the area due to the development.

Under the March 26, 2018 term sheet reviewed by FCWPC, the Developer was providing and paying for 100 of the spaces, 21.7% of the 3.77 spaces/1000 sq. ft (459 space/121.693 sq. ft). Under the 358 option in the current term sheet, the City would be paying for 100% of 4.45 spaces/1000 sq. ft (358/80.378) and even more under the 479 option.

• Developer compares this project to Sunset Harbour, but as noted below, the vast majority of Sunset Harbour garage was additional parking to support future development. In addition, Sunset Harbour garage also does not service a large, big box retailer or grocery store. The two grocery stores nearby have their own, dedicated parking.

Sunset Harbour garage contains 439 total parking spaces and only 30,000 SF of retail space. The Sunset Harbour transaction anticipated retail demand at 4.3 spaces/1,000 SF, (or 130 parking spaces) leaving 309 spaces for general municipal use. **This contrasts with the Town Center Garage, where the entire 287 spaces result in 3.6 spaces/1000 SF of retail, and which will likely result in net deficit of spaces to the surrounding community. Even if the Developer provided the 100 spaces as originally proposed, this would result in 4.8 spaces/1000 SF of retail and would likely not provide any excess parking for the area.**

The RMA study contends that due to low car ownership in the area, use of trolleys, etc., the parking demand by the retail will be less, thus providing excess parking spaces that will be needed by the North Beach Master Plan.

(2) Developer now proposes no free parking rights with the Developer paying for the validated parking. **The Administration is in agreement with this provision.**

Updated pro formas for the proposed NBTC garage based on revenues and expenditures similar to Sunset Harbour, and at 100% occupancy as proposed by the developer, as well as with and without 2-hour free parking are shown in Exhibit "F", resulting in a net profit prior to depreciation of $79,000 and $235,000 for the 358 and 479 options, respectively. Comparatives to Sunset Harbour, Collins Park and Alton and 5th are shown in Exhibit "G".

(3) Developer proposes no convertibility of the garage for a minimum of 10 years, and only in the event total transient (hourly) transactions are less than certain specified "Convertibility Thresholds". As noted above, prior term versions provided for convertibility without limitation after 20 years.

The RMA quotes Walker Parking Consultants that parking demand will remain at 100 percent through 2049, despite impacts from ride share networks or autonomous vehicles, due to demand growth in the area, in which case, the Developer should consider convertability a low risk scenario. The RMA also quotes Walker Parking Consultants that designers and operators should also consider flexibility in parking facility design, allowing for the adaptive reuse of spaces into non-parking land uses.

(4) The Administration previously recommended that the term sheet include the terms for accommodating the Prima Pasta access, life safety, loading, grease trap/utilities, waste removal and related issues. The Developer has included considerations for these items in the term sheet and concept plan. Terms should be confirmed with Prima Pasta to ensure there are no material objections. Life Safety and related issues must be confirmed by Fire and Building.

(5) While the proposed term sheet has addressed the potential bankruptcy issues, the structure is complex and may involve the City taking on more development risk that may be necessary for the City to participate in the project. Although the developer has general real estate experience and appears to have the financial wherewithal to proceed with the project, the Developer does not appear to have any prior experience with the development of a public project. A simpler alternative structure could be for the City to sell the City parcels to the Developer and be paid the full appraised value at closing ($10 million), with the City to pay the full value of the City parking condominium unit upon completion of the Project, so that City's funds are not expended until the City is assured that the parking units would be completed and delivered to the City. Developer does not agree to the proposed alternative.

CONCLUSION:

Given that the City would be utilizing $10 million in land value and incurring $12.053 million in construction costs for 358 spaces that could potentially primarily serve this retail development, along with the loss of surface lot spaces, the Administration would not recommend proceeding with this project on its merits solely as a parking garage project. The Developer argues that the City's investment is critical for this project to move forward, and therefore serve as a catalyst for economic activity in North beach. There is no question that North Beach has lacked economic development for many years. The City has attempted to provide incentives through the increase in FAR in Town Center and the North Beach Town Center overlay. If the FCWPC determines that the proposed project provides a significant economic development benefit to the City sufficient to offset the costs and risks outlined above, the Developer has proposed the terms as outlined in the attached Term Sheet. In determining whether to proceed with the project, the FCWPC should take into account that the construction costs would use much of the available parking funds except for $5 million in mid-beach parking impact fees, and therefore, proceeding with this project would mean that the City will not have sufficient parking funds to contribute to, or develop, any other parking projects for the foreseeable future except in mid-beach.

The Administration seeks direction from the Finance and Citywide Projects Committee.