

**EXHIBIT “1”**

**FOR ADDITIONAL BACKGROUND ONLY**

**Nov. 14, 2018 City Commission  
Memorandum regarding Development  
Agreement (first reading)**

Resolutions - R7 A

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Raul J. Aguila, City Attorney  
DATE: November 14, 2018

10:15 a.m. First Reading Public Hearing

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, TO CONSIDER APPROVAL, FOLLOWING FIRST READING/PUBLIC HEARING, 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 SOUTH BEACH HEIGHTS I, LLC, 500 ALTON ROAD VENTURES, LLC, 1220 SIXTH, LLC, AND KGM EQUITIES, LLC (COLLECTIVELY, THE "DEVELOPER"), WHICH DEVELOPMENT AGREEMENT: (1) DELINEATES THE CONDITIONS FOR THE DEVELOPMENT OF THE PROPERTIES LOCATED AT 500 ALTON ROAD, 630 ALTON ROAD, 650 ALTON ROAD, 1220 6TH STREET, 659 WEST AVENUE, 701 WEST AVENUE, 703 WEST AVENUE, 711 WEST AVENUE, 721 WEST AVENUE, 723 WEST AVENUE, 727 WEST AVENUE, AND 737 WEST AVENUE (COLLECTIVELY, THE "DEVELOPMENT SITE"), WITH SUCH DEVELOPMENT SITE LIMITED TO A MAXIMUM FLOOR AREA OF 571,000 SQUARE FEET (OF WHICH THERE SHALL BE A MAXIMUM OF 15,000 SQUARE FEET OF RETAIL), WITH ANY TOWER CONSTRUCTED THEREON TO BE LOCATED WITHIN THE NORTHEAST QUADRANT OF THE 500 BLOCK OF ALTON ROAD, LIMITED TO UP TO 484 FEET IN HEIGHT (OR GREATER HEIGHT, SUBJECT TO CITY COMMISSION APPROVAL), AND WITH UP TO 410 UNITS; (2) MEMORIALIZES THE CONDITIONS FOR VACATING THE CITY'S RIGHT OF WAY AT 6TH STREET, BETWEEN ALTON ROAD AND WEST AVENUE ("CITY PARCEL" OR "CITY RIGHT-OF-WAY"); (3) GRANTS TO THE CITY A PERPETUAL ROADWAY EASEMENT ACROSS THE VACATED CITY PARCEL FOR UTILITIES AND PUBLIC VEHICULAR AND PEDESTRIAN USE AND ACCESS; (4) PROVIDES FOR THE DEVELOPER'S DESIGN, PERMITTING, CONSTRUCTION AND CONVEYANCE TO THE CITY OF A WORLD CLASS PUBLIC CITY PARK OF AT LEAST 3.0 ACRES WITHIN THE DEVELOPMENT SITE, WITH SUCH CITY PARK TO BE OWNED AND MAINTAINED BY THE CITY FOR PUBLIC PURPOSES; (5) PROVIDES FOR OTHER TERMS, INCLUDING, WITHOUT LIMITATION, DEVELOPER'S CONVEYANCE TO THE CITY OF A PERPETUAL ROADWAY EASEMENT OF AN UP TO 10 FOOT-WIDE STRIP OF LAND WITHIN THE DEVELOPMENT SITE FOR AN ADDITIONAL LANE ON 5TH STREET, BETWEEN ALTON ROAD AND WEST AVENUE, FOR UTILITIES AND PUBLIC VEHICULAR AND PEDESTRIAN USE; AND (5) WITH THE FOREGOING SUBJECT TO AND CONTINGENT UPON DEVELOPER'S SATISFACTION OF THE CONDITIONS SET FORTH IN THE DEVELOPMENT AGREEMENT, THE CITY COMMISSION'S VACATION OF 6TH STREET, AND ENACTMENT OF CERTAIN AMENDMENTS TO THE CITY'S COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS, ALL AT THE CITY COMMISSION'S SOLE DISCRETION; AND FURTHER, SETTING THE SECOND AND FINAL READING OF THE DEVELOPMENT AGREEMENT FOR A TIME CERTAIN (PROVIDED THAT, PURSUANT TO RESOLUTION NO. 2018-30555, THE SECOND AND FINAL READING OF THE DEVELOPMENT AGREEMENT SHALL BE HEARD TOGETHER WITH THE SECOND AND FINAL READING OF, RESPECTIVELY, THE 6TH STREET VACATION RESOLUTION AND THE PROPOSED AMENDMENTS TO THE CITY'S COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS).

### ANALYSIS

This Agenda item is the first reading and public hearing of the proposed Development Agreement for the properties along the 500-700 block of Alton Road and West Avenue (the Project). The development of this area is of critical importance, as it lies at the entrance to the City's South Beach neighborhood, via the MacArthur Causeway, and provides an important first impression to residents and visitors alike.

### BACKGROUND

#### Description of the Proposed Project

The proposed Project is for a mixed use residential and commercial development, which would include a 44 story tower located within the northeast quadrant of the 500 block, utilizing approximately 550,000 square feet of floor area ratio (FAR) from the 500/600/700 blocks of Alton Road, and approximately 15,000 square feet of retail, on the southeast corner of the 600 Block.

In order for the Project to proceed, the City would vacate 6th Street, and thereby convey ownership thereof to the Developer, to provide a unified development site with respect to the proposed Project. As a condition of the vacation, the Developer would convey to the City a portion of the Development Site consisting of a minimum of 3.0 acres, for use as a City Park, and the Developer would be responsible, at Developer's sole cost and expense, for developing, designing, permitting and constructing the City Park.

In addition to the public benefits associated with the land and construction of the Park, the Developer would also construct a segment of the baywalks between 10th and 12th Streets (to which City would obtain the consents from the adjacent upland owners, as well as all necessary permits, as well as contribute up to \$762,862, for construction thereof), and Developer would also



design and construct a "Baywalk Platform" that would serve as a launching point for a future pedestrian bridge across 5th Street (to connect the baywalk south of 5th Street with the City Park and, ultimately, the baywalk north of 5th Street).

Based on the foregoing, the City would need to approve three major components for the Project: (1) the Development Agreement, specifying the terms and conditions for the development of the Project; (2) the vacation of 6th Street (subject to utility and access easements in favor of the City, for pedestrian and vehicular traffic); and (3) certain amendments to the City's Comprehensive Plan and Land Development Regulations, to (a) amend the Comprehensive Plan to change the designation of those portions of the Development Site designated within the CPS-2 District and RM-2 District to the CD-2 District designation, (b) amend the City's Land Development Regulations to rezone those portions of the Development Site in the CPS-2 District and RM-2 District to the CD-2 District, and (c) amend the City's Land Development Regulations to authorize up to 484 feet in height for a tower within the CD-2 District (or such greater height as may be approved by the City Commission), and (d) regulate uses (collectively, (a)-(d) are hereinafter referred to as the "LDR Amendments").

As the foregoing three major components for the Project are all interrelated, on October 17, 2018, the Mayor and City Commission adopted Resolution No. 2018-30555, sponsored by Commissioner Mark Samuelian, to specify that the foregoing three major components for the Project would "travel" together and be considered by the City Commission on the same date(s).

Accordingly, this agenda item is presented along with companion agenda items, including Agenda Item R7I, the first reading for the proposed vacation of 6th Street, from West Avenue to Alton Road; and Agenda Item R5A, R5B and R5C, for the first reading of the LDR Amendments.

### **HISTORY**

On April 11, 2018, as part of Agenda Item R9AA, the Mayor and City Commission discussed the proposed development, referred consideration of proposed ordinances to the Land Use Committee, and directed the Administration to meet with the Developer and members of the community to identify opportunities to improve the currently permitted project in the 500/600/700 blocks of Alton Road.

On June 14, 2018, the item was discussed by the Land Use Committee, which provided preliminary feedback.

On July 27, 2018, the Finance and Citywide Projects Committee reviewed the proposed vacation, and recommended a term sheet, which term sheet has served as the basis for the negotiation of the Development Agreement. The term sheet outlined the three major components that must be implemented in order for the Project to proceed, including (1) the Development Agreement; (2) the vacation of 6th Street; and (3) the LDR Amendments.

On September 28, 2018, the Land Use and Development Committee considered and favorably recommended the LDR Amendments, including a recommendation that the height of the residential tower be capped at 484 feet.

On October 17, 2018 the City Commission referred the proposed vacation and LDR Amendments to the Planning Board. Pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the Planning Board, at its October 23, 2018 meeting, approved the proposed vacation by a 7-0 vote. The Planning Board also approved the LDR amendments by a 7-0 vote, and recommended a maximum height of up to 519 feet for any tower on the Development Site, with up to a total of sixty (60) or twenty percent (20%) of such units of any tower, whichever is less, consisting of hotel, apartment hotel, or suite hotel units.

### **SUMMARY OF PROPOSED DEVELOPMENT AGREEMENT**

The Developer team is led by Mr. Russell Galbut. The proposed Development Agreement is between the City and South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC, and KGM Equities, LLC (collectively, the "Developer").

The Development Site consists of 500 Alton Road, 630 Alton Road, 650 Alton Road, 1220 6th Street, 659 West Avenue, 701 West Avenue, 703 West Avenue, 711 West Avenue, 721 West Avenue, 723 West Avenue, 727 West Avenue and 737 West Avenue (the "Development Site").

The Developer's proposed Concept Plan for the Project and Park is attached hereto as Exhibit "1."

The proposed Development Agreement is attached hereto as Exhibit "2."

The Development Agreement provides, among other provisions, the following terms and conditions:

- Developer's Conveyance to City of a Completed World Class Park. Developer shall convey to the City that portion of the Development Site consisting of a minimum of 3.0 acres, in fee simple, by special warranty deed (the "Park Site"), on which the Developer shall design, permit and construct, at its sole cost and expense, a world class public City park (the "Park"), based upon the Park Concept Plan, which will be presented to the City Commission, for its approval, concurrent with the Development Agreement. If approved, the Park Concept Plan will be incorporated as an exhibit to the Development Agreement. Once completed, the Park will be a City asset and will thus be owned, maintained, and programmed by the City for public purposes; and

- Project Conditions. Developer shall develop the Project in accordance with the City's Land Development Regulations and the limitations set forth in the Development Agreement, including, without limitation, the following conditions:

- o Any tower built on the Development Site would be located within the northeast quadrant of the 500 Block of Alton Road, and with a height not-to-exceed 484 feet to the top of the roof (or such greater height as may be approved by the City Commission) and 44 stories, and with a floor plate of any residential floor within the tower not-to-exceed 13,800 square feet of floor area ratio;

- o The tower will contain up to 410 units (including multi-family residential units, single-family detached units, townhomes,



condominiums, and apartments), with up to a total of sixty (60) or twenty percent (20%) of such units, whichever is less, consisting of hotel, apartment hotel, or suite hotel units if approved by the City Commission;

o The Project may include up to 15,000 square feet of retail uses; and

o No parking, whether surface or underground, will be constructed on any part of the Park Site.

- City's Vacation of 6th Street. In order to permit the Project to proceed as a unified development site, the Developer has requested that the City vacate and convey to the Developer, by quit claim deed, the City Right-of-Way (6th Street), subject to the terms of the Vacation Resolution. The vacation of 6th Street would be subject to and conditioned upon Developer's compliance with certain conditions in the Development Agreement (most notably, the Developer's conveyance to the City of the Park Site, and Developer's grant of easements in favor of the City, including, without limitation, the easements for pedestrian and vehicular travel on 6th Street).

- Developer to Grant Easements in Favor of City for 6th Street, for Pedestrian and Vehicular Use. Simultaneous with the City's conveyance to the Developer of the City Right-of-Way, the Developer shall grant to the City a perpetual, non-revocable utility, roadway and pedestrian access easement against the City Right-of-Way, to provide a through street on 6th Street for public vehicular and pedestrian use and access (Future 6th Street Easement"), 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, and which shall reserve to the Developer the right to construct a pathway and related improvements not less than 20 feet above the surface of Future 6th Street as part of the Project.

- Developer to Construct Future Baywalk Platform and Grant Related Easements. Developer shall design and construct, at the Developer's cost and expense, an elevated terminus/platform (approximately 14-15 feet above grade) to accommodate the City's development of the Future Baywalk (the launching site for a public pedestrian path connecting the baywalk south of 5th Street across 5th Street onto the Development Site). Developer shall grant to the City access easements related thereto, including an easement for a pedestrian path leading to the Future Baywalk Platform, and a separate easement for pedestrian and bicycle use along West Avenue, between 5th Street and 6th Street.

- Developer to Grant Easement in Favor of City For Additional Lane on 5th Street. Developer shall grant to the City a perpetual, non-revocable roadway easement 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 Easement") 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.

- Developer to Construct Baywalks Between 10th Street and 12th Street. Developer shall complete, or cause to be completed, the construction of the unfinished baywalks along 1000 West Avenue (Mirador 1000 Condo), 1100 West Avenue (Mondrian Hotel), and 1200 West Avenue (Mirador 1200 Condo) (collectively, the "Baywalks") subject to City's obtaining the permits and any necessary consents for the Baywalks, and City's payment to the Developer for construction work completed on the Baywalks, in the amount not-to-exceed \$762,682.58.

- City Will Not Issue A Building Permit For Project Until Park Site Conveyed to City. City will not issue a building permit for the Project until the Developer conveys the Park Site to the City, and all easements and other documents required by the Development Agreement have been delivered to the City.

- City Will Not Issue a Temporary Certificate of Occupancy Or Certificate of Occupancy For the Project Until the Park Construction is Completed. City will not issue a temporary certificate of occupancy or certificate of occupancy for the Project until Developer has completed the Park construction and satisfied its obligations to the City under the Development Agreement.

- Demolition of South Shore Hospital. Developer will begin demolition the existing South Shore Hospital building within six (6) months after the Developer obtains a final non-appealable Project Zoning Approval and Park Zoning Approval, and expiration of the applicable appeal periods thereof.

- Outside Dates for Completion of Park Project. Developer shall complete the construction of the Park no later than eight (8) years following the issuance of the building permit for the Project.

- Zoning Application Fees, Impact Fees and Concurrency Fees/Credits. Developer shall pay all zoning application fees, concurrency mitigation fees and impact fees that may be applicable to the Project; provided, however, that if the City Commission amends the City's Land Development Regulations to permit a waiver or refund of such fees, Developer shall be entitled to such waiver or refund in accordance with the City's Land Development Regulations, as amended.

- Lender Agreement or Letter of Credit In Favor of City for Value of Park Improvements. As security for Developer's obligations to deliver to the City a completed and constructed Park, Developer shall deliver to the City, either (1) an agreement with the Developer's lender to fund the then remaining Park construction amount directly to the City in the event the Developer defaults on its obligations; or (2) a letter of credit in favor of the City, in an amount equal to the Park construction amount (based on the guaranteed maximum price contract for the construction of the Park), which would permit City to draw on the funds, and complete the construction of the Park, in the event the Developer fails to do so.

- Developer to Pay for and Complete All Required Environmental Remediation at Park Site. Developer, at his sole cost and expense, would pay for the required environmental remediation of the Park Site and, as part thereof, prior to conveying the Park Site to the City, the Developer would complete all remediation required on the Park Site, except for any arsenic remediation, which



would be phased with the construction of the Park Site work and completed prior to City's acceptance of the constructed Park.

• **Transfers Prior to Completion of Park Project.** Prior to completion of the Park Project, Developer may transfer and assign its interests in the Project and Development Agreement without City Commission approval, so long as a "Galbut Entity" (a) holds, directly or indirectly, not less than a 10% ownership interest in the Development Site, (b) serves, directly or indirectly, as a manager of the entity that is developing the Project and the Park Project, and (c) exercises, directly or indirectly, day-to-day operational control of the entity as the manager of the entity that is developing the Project. A "Galbut Entity" includes (a) Russell Galbut; (b) any spouse, child, grandchild or sibling of Russell Galbut; (c) any entities owned, directly or indirectly, one hundred percent (100%) by Russell Galbut, or the foregoing family members, or (d) trusts for the benefit of Russell Galbut or the foregoing family members.

## **PLANNING AND ENVIRONMENTAL ANALYSIS AND RECOMMENDATIONS**

The 500-700 blocks between Alton Road and West Avenue present some significant challenges as they pertain to property access, but present key opportunities for water retention and treatment to improve stormwater management to the surrounding neighborhood. In one of the lowest areas of the City, these sites present both a challenge and an opportunity from a land use and sustainability standpoint.

From a climate resiliency strategy standpoint, the ability to acquire low lying areas in the City, for adaptation purposes, will be critical in the long term. One of the biggest constraints the City faces in this regard is land value and the high cost of acquiring underutilized and blighted property that is vulnerable. Another constraint is the limit on planning tools to acquire vulnerable sites, such as transfer of development rights, density and height. As such, the City must evaluate opportunities for acquiring and establishing adaptation areas on a case-by-case basis, and capitalize as these rare opportunities arise.

As it pertains to the 500-700 block proposal, a development opportunity has presented itself that could potentially align with the adaptation area goals of the City's long term climate strategy. While the most ideal scenario would be for the City to purchase all of the land area in the 500-700 blocks outright, and construct a passive, eco-park, the cost of such an endeavor, including land acquisition, design, permitting and construction, would be prohibitive. As such, the next best scenario would be for an allowable development project to partner in the creation of a passive, eco-park.

In this regard, Planning and Environmental staff believes that it will be critical for the proposal on the 500-700 blocks to have limited parking pedestal footprints, and little to no below grade or basement parking. Specifically, for the City's overall resilience, both the Development Agreement and the LDR Amendments to allow for a taller residential tower at the NE corner of the 500 block should include the following:

a. A significant portion of the western half of the 500 block should consist of dedicated, fully pervious open space and should capitalize on elevation differences between the at-grade and design elevations to provide stormwater retention and/or treatment below the resulting land surface.

b. No less than 3.0 acres of the 600 – 700 block shall consist of dedicated, open green space, from the ground down and ground up (no surface, structured or basement parking).

c. The parking required for the Floridian (700 block facing West Avenue) should be minimized in terms of its impact on the open space areas. In this regard, such parking should, ideally, be incorporated within a limited, 2-story pedestal on the north side of the 700 block facing West Avenue. Alternatively, if a surface lot option is chosen, such lot should consist of fully pervious materials and surface finishes.

Planning and Environmental staff also has serious concerns with the proposal for a surface parking lot adjacent to the proposed retail structure within the 600 block. Specifically, the introduction of the surface parking lot prevents the retail building from being able to fully integrate, engage and provide activation for the Park space, as it creates a physical barrier in the form of a suburban-strip mall parking lot. Even new construction of buildings, Citywide, do not emulate failed suburban models such as this. As the proposed Park is within an urban area, with a fully defined street and sidewalk grid, its design should reflect its setting.

Providing parking within the 600-700 blocks is also not necessary for the following additional reasons:

a. The City has re-prioritized its transportation modality hierarchy, specifically to highlight pedestrian movement and walkability, as well as promote non-vehicular forms of transportation. Placing a surface parking lot within an urban park is completely counter to this effort. Users of the Park, and the accessory retail building, should be encouraged to walk or bike to access the Park.

b. There is a fully accessible, public parking facility immediately across the street at 5th and Alton, as well as a publicly accessible parking structure less than 2 blocks to the north at 9th and Alton.

c. The development site is located within Parking District No. 6, which has no parking requirements for smaller, neighborhood uses.

d. Surface parking is completely incongruous with a sustainable, urban park.

In order to effectuate the aforementioned goals and objectives, Planning and Environmental staff recommend that the following be included in the proposed Development Agreement:

1. The proposed Park shall incorporate significant and substantial resiliency and sustainability components, which are measurable and definable. Specifically, in order to address one of the lowest lying areas of the City from a stormwater and water storage standpoint, the project architect and landscape architect shall further develop the environmental and sustainable components of



the Park in conjunction with the Environmental and Sustainability and Planning Departments. At a minimum, the following shall be required:

- a. The overall Park programming shall be reduced in intensity and more open greenspace shall be provided;
- b. Native and Florida Friendly species shall be used in the landscape design to reduce water consumption and the need for fertilizer and pesticides
- c. The storm water retention capabilities of the Park shall be clearly delineated;
- d. A connection to the 6th Street outfall and pumping apparatus may be required, including infrastructure to treat water going to the 6th Street outfall.

2. The surface parking area proposed in front of the retail building shall be eliminated, in order for the retail building to fully harmonize with the proposed park. Alternatively, a connected driveway, from 6th Street to Alton Road, may be proposed with parallel parking. Such driveway shall be within the confines of the retail site and shall be composed of pervious pavers (no asphalt or concrete), including all parking spaces, drive aisles and access points from the street.

3. The surface lot providing required parking for the Floridian at the NW corner of the development site shall consist of a 2-level pedestal. Alternatively, if the surface lot is to remain, it shall be composed of pervious pavers (no asphalt or concrete), including all parking spaces, drive aisles and access points from the street. Additionally, the landscape area that is provided along the perimeter of the lot, and within the lot, shall not be included within the overall required minimum 3.0 acreage of the Park.

4. The final design and landscape details of the Park shall be subject to the review and approval of the Design Review Board (DRB). At a minimum, the following shall be required:

a. Tunnels shall be prohibited. All elevated areas and berms shall be kept to a minimum and the design of the park shall allow for unimpeded visibility from all public streets and sidewalks, and shall be free of visual barriers to the Park.

b. The transition of the elevated pink walkway along Alton Road from the top of the retail, to the ground at the north side of the Park, facing Alton Road, shall be further developed and reduced in height, so as to maximize active public park space.

c. The location, width and quantity of dedicated, pedestrian paths around the perimeter of and through the Park shall be substantially increased and further developed. Such walkways shall be accessible at all times, even when access to the raised pink walkways is limited.

d. The perimeter sidewalks along West Avenue, Alton Road and the south side of the Park shall be widened and better integrated with the Park. Canopy trees shall be planted close to the back of curbs in a rhythm to provide continuous shade and to buffer pedestrians from the surrounding streets. Large single trunk palm species may be used to define gateways or Park entry points but not as predominant street trees.

e. Vehicular access including, but not limited to, drop-off and pick-up, parking and loading, as well as turn arounds, shall not be permitted anywhere in the Park.

#### **PENDING ITEMS TO BE RESOLVED**

The Administration requests direction as to the following items, which either involve policy matters or business issues with respect to the Project:

1. Height of Tower. On September 28, 2018, the Land Use Committee recommended that the height of the tower not exceed 484 feet. On October 23, 2018, at the request of the Developer, the Planning Board recommended that the height of the tower not exceed 519 feet. The Administration recommends that the height of the tower remain at the 484 feet.

2. Hotel Uses. Hotel uses were not considered by the Finance Committee at its July 27, 2018 meeting, or by the Land Use Committee, at its September 28, 2018 meeting. On October 23, 2018, the Developer requested, and the Planning Board recommended, that the uses permitted on the Development Site include up to (i) 410 units (including multi-family residential units, single-family detached units, townhomes, condominiums, and apartments), with up to a total of sixty (60) or twenty percent (20%) of such units, whichever is less, consisting of hotel, apartment hotel, or suite hotel units. The Administration recommends that hotels, suite hotels and apartment-hotels NOT be permitted, and that the entire residential tower consist solely of residential units.

3. Size of Park. At the July 27, 2018 Finance Committee meeting, the Finance Committee approved a term sheet providing that Developer would convey to the City a park consisting of a minimum of 3.0 acres. The proposed Park Concept Plan provides for the City to receive property consisting of 3.0 acres, of which .11 acres will be deemed as part of the "Park" but used as the required landscaping for the Floridian parking lot, as depicted in the overall site plan. The Administration recommends that the landscaping surrounding the Floridian parking not be considered part of the minimum 3.0 acres of park land, and that the overall acreage of the Park be increased by eliminating the surface parking area in front of the proposed retail building.

4. Outside Date for Completion of Park Project. The Developer has proposed an "outside date" for completion of the Park Project of eight (8) years from the issuance of the initial Building Permit for the Project, largely due to the Developer's request that the Park Site first be used for construction staging for the construction of the Project, to minimize traffic and other impacts. The Developer is evaluating the feasibility of a construction schedule that would expedite, and prioritize, the completion of the Park at an earlier date. The Administration recommends that the Park be substantially complete within four (4) years from the issuance of the Building Permit for the Project.

5. Waiver of Zoning Application Fees and Concurrency and Impact Fees. The Developer has requested that the City waive all



zoning application fees for both Project and Park applications, in the approximate amount of \$300,000. Developer has also requested waiver of impact fees, and credit for any prior Transportation Concurrency Mitigation fees for prior development, namely any fees previously paid for the South Shore Hospital (with an approximated estimated range between \$250,000 to \$500,000). The foregoing waivers can only be accomplished by amending the City's Land Development Regulations. The Administration recommends this item be referred for discussion to the appropriate Boards and Committees.

6. Consents In Connection with Baywalk Construction. As part of the permit applications for the construction of the Baywalks, consent is required from the upland adjacent property owners. Developer has agreed to provide any consents that may be required from the Mondrian association, as Developer controls the Mondrian. Developer has requested that the City be responsible for obtaining any consents that may be required from the Mirador I and II as well as 1220 West Ave associations. Without such consents, the Baywalks cannot be constructed, and the associated public benefits would not be realized. Administration recommends these consents be explored further and obtained if possible.

7. Park Concept Plan / Tunnel Design. The concept plan of the Park is still being refined. Planning and Environmental staff have provided detailed recommendations, as this needs to be approved concurrent with the Development Agreement. These items, including the affirmative confirmation that cisterns or other water storage vessels will be included in the design, are needed before the Administration can make a recommendation on the Park Concept Plan.

8. Limitation on City's Ability to Terminate for Cause. Developer has requested that, after the conveyance of the Park Site to the City, in the event the Developer defaults on its obligations under the Agreement, the City limit its remedies to an action for monetary damages or specific performance (if any is available), with no ability to terminate the Development Agreement for cause, without regard to the nature of the Developer's default. The City has never agreed to, and the City Attorney does not recommend, any such limitation on the ability to terminate an Agreement for cause. As a general matter, the mere possibility of a termination for cause is often a sufficient "hammer" to ensure that a Developer honors its contractual obligations. Eliminating the City's ability to terminate for cause would essentially provide that, no matter what the developer does or fails to do with respect to the Project, and no matter what the potential harm may be, the development rights provided for in the Development Agreement will be absolutely "guaranteed" to the Developer. As the proposed remedy may be insufficient, it is not recommended.

## **CONCLUSION**

For the reasons outlined in this Memorandum, the Administration recommends approval of the Development Agreement on first reading and setting the public hearing for 2nd reading for December 12th, 2018 with additional negotiation between first and second reading to resolve the remaining items enumerated above.

## **Legislative Tracking**

Public Works

## **ATTACHMENTS:**

### **Description**

- [Resolution](#)
- [Exhibit 1 - Park Concept Plan](#)
- [Exhibit 2 - Development Agreement](#)
- [Ad](#)