

**Bryon Carlyle Cultural Center
Developer's "Best and Final Offer"
Term Sheet
February 18, 2021**

1. Project Description ("Project") and Overview of Transaction Structure:

a. The Project will be developed on the property owned by the City and located at 500 71st Street, Miami Beach, Florida (the "Property").

b. The Project will include: (i) multi-family residential units; (ii) a minimum 12,000 sq. ft. City-owned Cultural Center, located on the ground floor; and (iii) additional ground floor commercial areas, which may incorporate uses such as: artisanal retail for on-site sales only, grocery store, alcoholic beverage establishments (other than stand-alone bars), offices, restaurants with outdoor cafes, or retail.

c. The transaction will be structured initially as a Development and Ground Lease Agreement ("Agreement") with the Agreement term limited to the construction period for the Project.

i. Upon completion of construction of the Project (including the Cultural Center), the City would sell the Property to the Developer, and Developer would submit the Property to a condominium structure, to create a single condominium unit for the residential component of the Project, a condominium unit for the Cultural Center, and condominium unit(s) for the remaining commercial portions of the Project.

ii. The City would receive \$2 million in cash at Closing (which would be paid following completion of the Project), as well as a warranty deed for the completed Cultural Center condominium unit. [Note: This consideration significantly exceeds the appraised value of the Property in the range of \$4.7 million to \$6 million.]

d. The ground floor space will include a Cultural Center use as follows:

i. Cultural Center, to be owned and controlled by the City and located on ground floor, with a minimum of 12,000 sq. ft.

ii. Non-exclusive shared back of the house service area (loading docks, deliveries, trash, etc.) for the Cultural Center and remainder of the Project that is a minimum of 5,000 sq. ft.

iii. In addition to the foregoing, at City's option, City will have right of first option to lease the remaining ground floor area, or portions thereof, at market rates, for additional space for the City's Cultural Center tenant or for other City purposes.

e. The sale and lease of the Property, as applicable, shall be subject to, and comply with, Chapter 82, Article II, Sections 82-36 through 82-40 of the City Code, and Section 1.03(b)(4) of the City Charter.

2. Cultural Center Component of Project:

- a. Location: SW corner of the building with an entrance on 71st Street (“Cultural Center”).
- b. Delivery: The Developer will deliver the Cultural Center to the City as a Grey Shell:

- i. Includes bare stud walls, unfinished floors, with a point of connection for water and sewer within the space and electrical service within the electrical room, and HVAC. Developer shall be solely responsible for all costs and expenses associated with the permitting, design, and construction of the Cultural Center Gray Shell in accordance with the Agreement (including, without limitation, any cost overruns the Developer may experience in connection with the development and construction of the Cultural Center Grey Shell). The scope and specifications for the “Grey Shell” will be incorporated as part of the Development Agreement.

- ii. If City selects a tenant for the space within 60 days after Developer obtaining building permit for the Project, at the City’s request and at the City’s cost, Developer would commit to provide construction services for the interior build out of the Cultural Center as part the Project.

- iii. If City selects tenant at later date, City to be responsible for the interior build out of the Cultural Center.

3. Project Costs and Financing:

- a. Developer, at its sole cost, shall be responsible for all costs and expenses in connection with the demolition of the existing improvements on the Property and the development, construction and completion of the Project in accordance with the Agreement (as defined below).

- b. Financing mix: financing through a regional bank and/or a mix of regional institutional financing and private lender financing. Collateral: Developer will retain, as a term of the lease, the ability to mortgage its leasehold interest to an institutional lender, subject to City Manager approval of such institutional lender, with such approval not to be unreasonably withheld.

- c. Developer shall be solely responsible for any and all costs in connection with the financing of the Project, including Developer’s and its lender’s title insurance policies, costs of recording the mortgage and any other loan documents, including without limitation, recording fees and documentary stamp and intangible taxes.

- d. Tax credits and subsidies: Not applicable as part of the City Commission’s approval of this transaction. However, nothing in the Agreement shall preclude Developer from obtaining any such tax credits or subsidies from any governmental entity at any time.

4. The Development and Ground Lease Agreement:

- a. Term:

i. The Agreement will provide for the lease of the Property by the City to the Developer during the period of construction and, for the Developer's development of the Project.

ii. The term of the Agreement will commence upon execution of the Agreement by the parties and approval thereof by the City Commission (the "Effective Date").

iii. The term of Developer's possession of the Property shall commence immediately following, and commencement of construction shall be subject to Developer's satisfaction of certain conditions reasonably determined by the City (and to be further described in the Agreement), and, at a minimum, the following conditions and/or required Approvals:

i. Developer's delivery to the City of payment and performance bonds in form and substance reasonably acceptable to the City and naming City as co-obligee;

ii. Developer's delivery to the City of a budget reflecting the costs to complete construction of the Project in accordance with the Agreement, with City Manager approval of the budget for the Cultural Center, which approval shall not be unreasonably withheld;

iii. Developer's execution and delivery to the City of the general construction contract for the Project reflecting a guaranteed maximum price that does not exceed the costs set forth in the budget;

iv. City's approval of the general contractor/design builder for the Project, with such approval not to be unreasonably withheld so long as the contractor has bonding capacity in excess of \$50 million and has successfully completed at least two similar mixed use projects within the last five (5) years;

v. Closing of Developer's construction loan with an approved institutional lender; and

vi. Developer's delivery to the City of evidence satisfactory to the City that the Developer has sufficient funds to complete construction of the Project and make the required payment of \$2 million to the City at Closing, in accordance with the Developer's budget and the Agreement.

iv. Promptly following satisfaction of the conditions to Developer's possession of the Property, Developer shall commence construction of the Project and, thereafter, diligently and continuously pursue completion of the Project in accordance with the Agreement.

v. The term of the Agreement will expire on the earlier of completion of construction of the Project in accordance with the Agreement or seven (7) years after the Effective Date.

b. Zoning: The Agreement contemplates that the City Commission will consider, at its sole and absolute discretion, rezoning the Property from GU to TC-C, and a waiver of the required

parking for the Cultural Center component of the Project (the “LDR Amendments”), and that the LDR Amendments will “travel together” with the City Commission’s consideration of the Agreement, so that both the Agreement and LDR Amendments are heard at the same time. Notwithstanding the waiver of required parking for the Cultural Center component of the Project, Developer would make available parking for the Cultural Center as set forth in Section 10. The rezoning of the Property to TC-C shall be a condition precedent to Developer’s obligations to commence construction of the Project, to be further described in the Agreement, but shall not be an obligation of the City.

c. Unified Development Site: The Project may be developed as a unified development site, subject to a covenant in lieu of unity of title, as permitted by Chapter 118-5 of the City Code, to permit Developer to purchase up to 14,375 sq. ft. of excess F.A.R. from an adjacent property located at 6971 Carlyle Avenue, and incorporate such additional F.A.R. as part of the Project.

d. Required Approvals:

i. As part of the Development Agreement, the City Commission shall approve the concept plan design of the first floor of the Project (the “Concept Plan”), which Concept Plan shall be subject to further design development as described below. The Concept Plan will be included as an exhibit to the Agreement.

ii. Developer, at its sole cost, is responsible for obtaining all governmental approvals for the design, development and construction of the Project, including without limitation, Design Review Board (“DRB”). The Developer will endeavor, to the extent practicable, to include design elements or features for the Project that reference the existing Byron Carlyle building or components thereof.

iii. The City Manager will approve the proposed plans and specifications, which approval will not be unreasonably withheld, provided such proposed plans and specifications conform to the approved Concept Plan. Any modifications to the approved Concept Plan must be approved by the City Commission, in its sole discretion. The City Manager will either approve or provide objections/comments to the proposed plans and specifications (or material modifications thereto, which material modifications shall be approved by the City Commission in its sole discretion to the extent of such modifications do not conform to the approved Concept Plan), within 45 calendar days of receipt of such proposed plans and specifications, to permit sufficient time to place the proposed item on a City Commission agenda. If the City has not provided a response within the 45-day time period, the proposed plans and specifications shall be deemed approved (the “Approved Plans”).

iv. Promptly following the City Manager’s approval [or deemed approval] of the proposed plans and specifications, Developer shall submit the Approved Plans to the DRB for approval and thereafter diligently pursue such approval. To the extent the DRB requires any revisions that do not conform to the approved Concept Plan, such revisions shall be subject to the City Commission’s approval in its sole discretion.

v. The completion of the Cultural Center Grey Shell and issuance of a temporary certificate of completion or certificate of occupancy therefor, and delivery to City of deed to condominium unit for the Cultural Center, each in accordance with the Agreement, will be conditions precedent to the issuance of any certificate of occupancy for the remainder of the Project.

e. Milestones:

i. Outside Date for DRB Approval: within 12 months after the Effective Date (plus 1 month to exhaust all appeals);

ii. Outside Date for Completion of construction documents, including guaranteed maximum price construction contract: within 12 months after DBR Approval;

iii. Outside Date for Final Building Permit and Commencement of Construction: within 7 months after completion of construction documents;

iv. Target Completion of the Project and TCO: 5 years after the Effective Date;

v. Outside Date for TCO for the Project: 7 years after the Effective Date; and

vi. Such other development milestones as the parties may mutually agree to be set forth in the Agreement.

f. Transfers: Developer shall not sublease, assign or otherwise transfer any of its interests in the Agreement or to permit the transfer of any of the direct or indirect ownership interests of Developer during the term of the Agreement without prior written approval by the City, with such approval not to be unreasonably withheld, so long as the proposed transferee meets City's acceptable owner criteria (to be specified in the Development Agreement); provided, however, transfers to Developer's City-approved institutional lender following such lender's foreclosure of its mortgage on Developer's leasehold interest in the Property shall be permitted subject to certain conditions to be reasonably determined by the City and set forth in the Agreement.

g. Default: Developer shall be in default of the Agreement if Developer fails to comply with the Agreement, including, without limitation, failure to satisfy conditions to possession of the Property and construction prior to commencement of construction; failure to satisfy the Outside Dates for development milestones; unpermitted transfers; and such other defaults to be reasonably set forth in the Agreement. City's remedies for Developer's default will include, without limitation, termination of the Agreement. In connection with certain defaults for failure to meet development milestones, in lieu of termination, City may agree to accept payment of liquidated damages by Developer for a specified period before exercising its right to terminate the Agreement as a result of such defaults. Such liquidated damages shall be reasonably determined by the City and further described in the Agreement.

h. Completion and Conveyances: Upon Developer's completion of construction of the Project in accordance with the terms of the Agreement:

i. the City will convey the fee interest in the Property to the Developer in consideration of the Developer's subsequent delivery and conveyance of the Cultural Center condominium unit to the City plus a cash purchase price from Developer to the City of Two Million and No/100 Dollars (\$2,000,000.00) paid at the closing of such conveyance;

ii. immediately after recording of the foregoing deed, Developer will record the Declaration (as defined below), as approved by the City, in the public records of Miami-Dade County;

iii. immediately after recording of the Declaration, the Developer will convey the Cultural Center condominium unit to the City; and

iv. immediately after recording the foregoing deed, the Developer will record the workforce housing restrictive covenant, as approved by the City, in the public records of Miami-Dade County.

v. Developer shall pay all applicable recording fees, documentary stamp taxes, surtaxes and other applicable charges in connection with recording of the foregoing instruments. Developer will pay for the cost of its owner's (and its lender's) title insurance policies with respect to the Project other than the Cultural Center. City will pay the cost of the City's owner's title insurance policy insuring its ownership of the Cultural Center.

5. Condition of Property/Environmental:

a. Developer accepts the Property in its AS IS, WHERE IS, and WITH ALL FAULTS condition and all latent or patent defects, without any representation or warranty of any kind, express or implied, or arising by operation of law.

b. Developer acknowledges receipt and approval of the City's Phase 1 environmental site assessment for the Property.

6. Condominium:

a. Following completion of construction of the Project and the City's conveyance of the Property to Developer in accordance with the Agreement, Developer shall record a declaration of condominium ("Declaration") submitting the Property and the improvements thereon, and the appurtenances thereto, to condominium, which shall consist of the residential condominium unit for the entire residential component of the Project; the retail condominium unit[s]; and the Cultural Center condominium unit, with the foregoing subject to further refinement as part of the final Development Agreement. Developer, at its sole cost, shall prepare the Declaration, which shall be subject to the City's review and approval. The approved Declaration will be attached as an exhibit to the Agreement.

b. Each condo unit owner shall be responsible for all utilities, repairs and maintenance solely within each unit.

c. The to-be-formed condominium associations shall be responsible for all repairs, replacements, maintenance and insurance of the common areas serving all portions of the condominium, including roof and all structural portions of the condominium, which shall be shared by the condominium unit owners through their respective shares of condominium assessments. The parties acknowledge and agree that there may be limited common elements solely or disproportionately serving either or both of the residential unit and retail unit, the costs of which shall be borne solely by the owners of the residential unit and the retail unit, as applicable, and for which the City shall have no obligation. The parties further acknowledge and agree that there may be limited common elements solely or disproportionately serving the Cultural Center unit, the costs of which shall be borne solely by the City, and for which the owners of the residential unit and the retail unit shall have no obligation.

d. City shall have the right to approve each annual operating budget of the condominium association for the purpose of approvals of applicable common expenses to be shared by the City, which expenses shall be limited to those common expenses directly benefitting the Cultural Center and not expenses solely or disproportionately benefitting the retail or residential components of the Project, with the foregoing subject to further refinement as part of the final Development Agreement. The Declaration shall also include the City's right of self-help with respect to matters affecting the Cultural Center unit and corresponding right to offset any such costs against assessments due from the City to the condominium association and such other rights necessary to protect the City's interests as the owner of the Cultural Center unit, together with other terms to be mutually agreed by the parties and set forth in the Declaration.

7. Use Restrictions:

The Project shall NOT incorporate the following uses: hotel; micro-hotel; co-living; indoor entertainment establishments (other than the Cultural Center); stand-alone bars; and neighborhood fulfillment center.

8. Termination Rights:

a. Developer Termination:

i. Developer may terminate the Agreement for convenience at any time prior to issuance of the building permit for the Project.

ii. In the event of Developer's termination for convenience, Developer shall be responsible for all City's incurred costs and expenses up to \$100,000.00.

b. City Termination:

i. City will not have the right to terminate for convenience.

ii. City will have the right to terminate as a result of any default by Developer, to be further described in the Agreement.

9. Other:

- a. Developer and/or Lessee to comply with all applicable laws in the performance of their obligations for the Project.
- b. Developer will use diligent good-faith efforts to incorporate the City's local workforce hiring goals.
- c. Each party responsible for payment of its own attorney fees and costs incurred in connection with the Project and its approvals. Application fees, public hearing notices, and mailers are Developer costs, and will be borne by the Developer.
- d. Developer will indemnify, hold harmless and defend the City for any claims, losses, damages, liabilities, fees, costs and expenses (including reasonable attorneys' fees, costs and expenses) in connection with any lawsuit challenging the validity of the D.A., the Lease, or any governmental approvals of the Project at Developer's sole cost and expense and using legal counsel reasonably acceptable to the City. The foregoing indemnity will survive the expiration or earlier termination of the Development Agreement and Lease.
- e. Developer agrees to comply with all applicable laws in the performance of their obligations for the project and Developer agrees to make the required contribution to City's AIPP trust fund, in accordance with City's AIPP Ordinance.

10. Parking:

Notwithstanding any City Commission waiver of the parking requirement for the Cultural Center, Developer will exercise best efforts to make available to the valet parking concessionaire for the City or its Cultural Center tenant, at the Developer's then-prevailing market rates, parking for up to 10% of the total seating capacity at the Cultural Center, or up to a maximum of 30 spaces, whichever is less, at a location within walking proximity to the Project. Further parking arrangements for the Project to be mutually agreed by the parties and memorialized in the Agreement and further documentation to be mutually agreed by the parties.