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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: September 3, 2009

SUBJECT: **Discussion Regarding a Proposed Joint Venture for a Parking Garage in the Collins Park Neighborhood.**

On November 18, 2008, the Finance and Citywide Projects Committee held a discussion regarding a proposed joint venture parking garage in the Collins Park Neighborhood. At that meeting, various options were provided, which included: 1) a joint venture with American Riviera Real Estate Company ("ARRE"), which is owned by Ron Bloomberg; 2) the construction of a traditional garage on the two City-owned surface lots and Liberty Avenue; and, 3) a joint venture with the Gansevoort Hotel.

At the meeting, ARRE presented the concept of selling its interest of (i) a parcel that it controls under a long-term sub-lease, and (ii) conveying the rights ARRE has to purchase the fee of said parcel to the City, followed by the City entering into a long-term ground lease to ARRE for the development of a parking garage with ground floor retail on the site encompassing both parcels. ARRE would be responsible for construction and operation of the project, and proposed a base rent along with percentage rent associated with parking and retail rental revenues. The Committee directed the Administration to bring the item back to the Committee to provide an update on negotiations.

The Administration has met with ARRE on a number of occasions to further negotiate the terms of a proposed venture.

The City staff has reservations regarding several of the proposed positions of ARRE. The staff position on these issues is outlined in a table below, following the summary of the proposed structure of the transaction. The table also summarizes the original offer by ARRE in November 2008, the City staff position, and ARRE's current offer to the City, respectively.

Essentially, Staff has concerns regarding the proposed Term of the Agreement, the amount of the Base Rent, a proposed Credit against the Base Rent for the City portion of property taxes, and the structure of the proposed City buy out.

As currently presented by ARRE, the staff is not prepared to recommend that the City move forward with the proposal. However, with certain modifications, the Project could still prove to be a viable option if the main City objective is to locate a Garage with public transient parking in the Collins Park area.

Current Proposed Structure of the Transaction

The City currently owns a parcel of land ("Parcel A"), consisting of approximately 13,800 square feet.

ARRE currently controls a parcel of land ("Parcel B"), consisting of approximately 17,250 square feet.

Pursuant to rights under its purchase contract regarding Parcel B, ARRE will cause the conveyance directly to the City of good, marketable and insurable title to Parcel B. For this conveyance, the City shall pay to ARRE the appraised value of fee simple title to Parcel B. The Appraised Value shall be determined by an appraiser mutually agreed to by the parties.

The City, as ground lessor, and ARRE, as ground lessee, shall enter into a long-term ground lease, for the purpose of the development and operation of a parking facility with ground floor retail (the Project). ARRE is obligated to pay all costs of development and construction of the Project.

Parcel B actually consists of three parcels, all of which are consolidated under a single current owner, with which ARRE has a valid purchase contract. The current fee owner entered into three 99-year leases with Nadia M. Dallet, two of which expire on April 16, 2042, and the third of which expires on February 19, 2043. This lessee entered into a long-term sublease of the Parcel B, including all three parcels, to the Standard Oil Company, which expires on April 16, 2042, and which was subsequently assigned to ARRE.

It is important to note that, upon closing, the City will acquire fee ownership of Parcel B and will also be assigned the balance of the long-term Standard Oil sublease, currently controlled by ARRE. The Dallet lease will remain in place, and the City shall become the responsible party under the terms of the Standard Oil sublease. That sublease has a monthly rent payment in the amount of \$500, and the only default provision in the sublease is in the event of non-payment of rent.

The Administration is concerned about the impact of these leases on the ability of ARRE to secure financing, and requested that all leases and subleases be terminated prior to closing; however, ARRE has not agreed to this as a contractual requirement and does not have any rights to terminate the Dallet lease. ARRE has indicated that it will attempt, on a best efforts basis, to resolve this issue, and in the event the lease remains in place, ARRE shall provide assurance that is satisfactory to the City that institutional leasehold construction financing can be arranged.

The Project

The proposal contemplates the development of an approximately 380-space parking garage with approximately 18,000 square feet of retail on the ground floor. The project will be operated and managed by ARRE. At least 50% of the parking spaces will be open and available for transient public parking at all times. The structure would be split into several separate condominiums, including one for the Retail unit, and one or more units for the Garage.

Credit Enhancement - "Put"

During the negotiations, an additional concept emerged that involves a "put" to the City that involves the potential buyout of ARRE's interest by the City. This concept was discussed in order to provide both a credit-enhancement that will improve the ability to finance the Project, and create the potential for greater profitability due to the possible reduction in

operating expenses the credit enhancement might have on the project. This concept would technically result in the City's ownership of the garage portion of the project. This concept would also utilize RDA funding which may become available at some time after 2013.

The attached Term Sheet, which represents ARRE's latest offer to the City, reflects this concept. ARRE would have the ability to cause the City to purchase the garage unit(s) for a total purchase price of \$11,400,000, with this payment deferred and due either in a single lump sum on or before December 31, 2022, or in installments prior to that time, perhaps beginning in 2019. Under this schedule, the payments are structured in a manner that RDA funds should be available prior to the City Center RDA's termination in 2023.

ARRE has proposed that after the "Put" that it continue to have the exclusive right to manage and operate the Retail and Garage components of the Project. In return, ARRE has proposed that the City receive an annual return of 3.5% on the \$11.4 million once it is paid, or \$399,000. There are many scenarios that involve different buy down amounts and time frames that the City and ARRE could consider, if the concept of the "Put" is of interest to the Finance and Citywide Projects Committee. An alternative to this would be to place the "Put" on the City's side, as opposed to ARRE's, or have an agreement that the City would buy out the Project at some point, without a "Put" on either side.

The Staff recommendation in any event, is that if the City buys out ARRE's interest in the Project, that the City should at least gain the right to operate the Garage Unit(s). There would be a reduction in the Base Rent under this scenario as ARRE would potentially have the right to continue with a ground lease for the Retail Unit, but would be foregoing the right to operate the Garage.

Proposed Ground Lease Structure

ARRE has proposed the following lease structure, upon the earlier of either 2 years from TCO/PCO or 90% of the retail portion of the Project is open.

- A Term of 99 Years;
- A Base Rent of \$75,000 plus 2.5% of the Purchase Price for Parcel B;
- Percentage Rent of Retail Unit of 8% of Net Rents;
- Percentage Rent of Garage Unit of 10% of Gross Revenue in excess of \$300,000;
- A Transfer Fee of 10% of Net Profit if the Leasehold is transferred;
- A Credit against the Base Rent for Property Taxes paid to the City on the Garage Unit(s) until such time as the Put is exercised (estimated to be up to \$100,000);

Proposed Timing

ARRE and the City have agreed to the following proposed milestones for the Project.

- Final DRB Order shall be obtained within 12 months of Agreement execution
- A full Building Permit must be obtained within 30 months of Final DRB Approval
- A construction loan to fully fund the construction of the Project must be obtained within 27 months of Final DRB Approval
- A construction contract for the construction of the Project must be executed within 29 months of the Final DRB Approval
- Construction must be complete within 36 months of a full Building Permit

Proposed Financial Terms

	ARRE's Nov 2008 presentation to Finance Committee	City Administration Preferred Terms provided to ARRE	Current ARRE Preferred Terms as of Sept 2009
Term of Ground Lease	99 years	50 years	99 years
Ground Lease Base Rent	6% on retail portion of land value	\$225,000	\$75,000 plus 2.5% of amount paid for Parcel B.
Base rent escalation	None	Avg CPI or 13% over a 5-year period	None
Base rent reset	None	10 years	None
Percentage Rent (Retail)	8% Net Operating Income from retail areas	8% Net Operating Income from retail areas	8% Net Operating Income from retail areas
Percentage Rent (Retail) commencement	90% Stabilization	Earlier of 12 months from a CO or 90% Stabilization	Earlier of 24 months from a CO or 90% Stabilization
Percentage Rent (Garage)	10% of Gross Revenues in excess of \$500,000 in years 1-30 and 15% thereafter	10% of Gross Revenues in excess of \$300,000.	10% of Gross Revenues in excess of \$300,000.
Credit for Property Taxes on Garage Unit	None	None	Credit of City Portion of taxes paid on Garage Unit unless Put is exercised
Required Purchase by City of the Project	None	May be considered but should be within a specific window, preferably between 2019 to 2022. City should have full operating authority of Garage once fully owned by City. Reduction in Base Rent upon City ownership and operation of Garage. ARRE continues with lease of retail.	At Option of ARRE ("Put") in the 2019 to 2022 window. ARRE retains full operating rights following City purchasing Ownership interest. ARRE pays City 3.5% on purchase dollars.
Transfer Fee	10% of net profit	10% of net profit	10% of net profit

Conclusion

The Administration recommends against the current ARRE Term Sheet and is seeking guidance from the Finance and Citywide Projects Committee regarding this term sheet and potential joint venture.

If, however, the Committee desires staff to continue to negotiate, we recommend that staff be authorized to expend certain funds to pursue further due diligence, including, but not limited to, financial ability of ARRE to perform and appraisals.

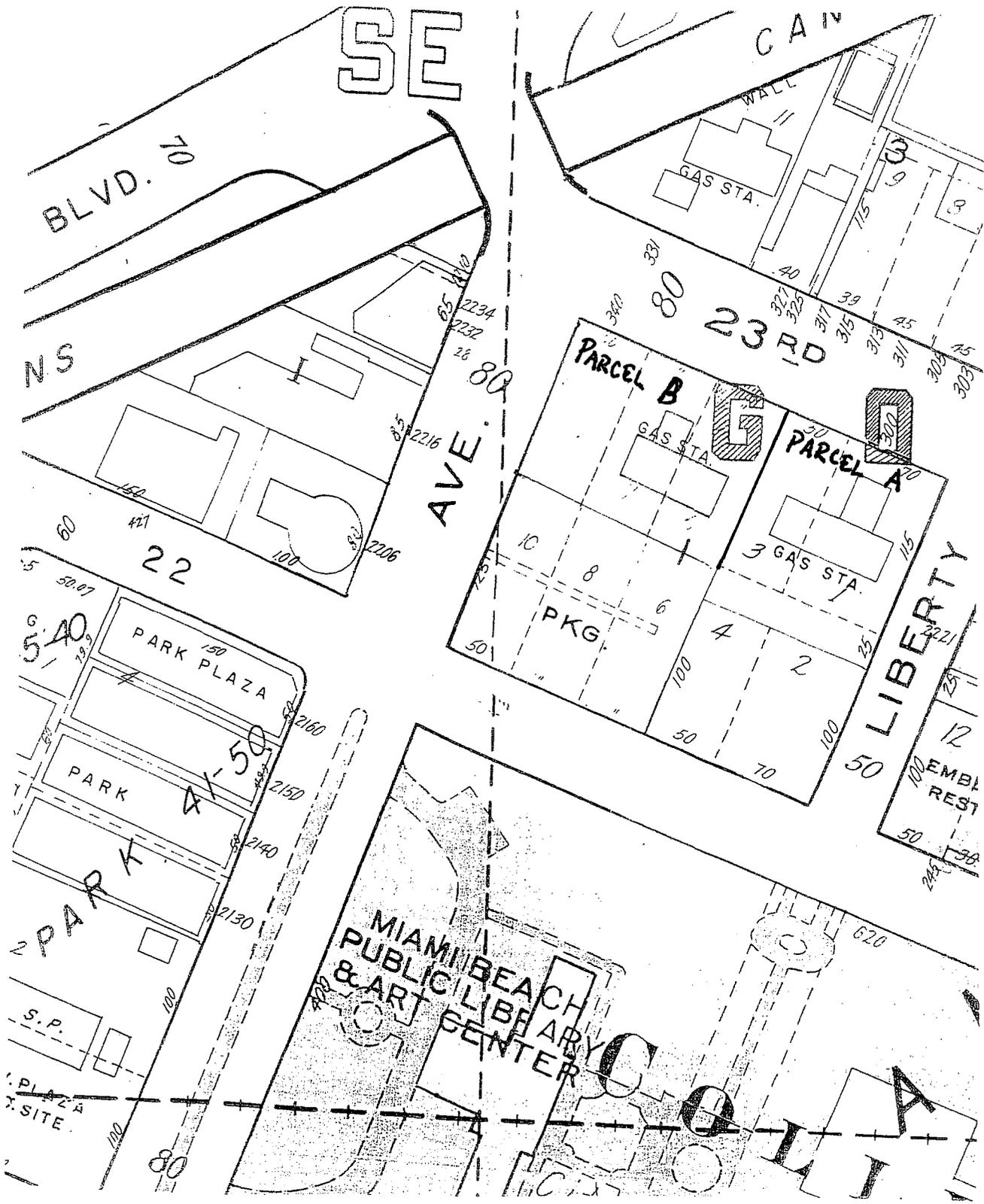
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Attachment 1 – Site Map

Attachment 2 – ARRE Current Proposed Term Sheet

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SITE MAP



TERM SHEET

This Term Sheet sets forth certain business terms that are being discussed between the City of Miami Beach ("City") and American Riviera Real Estate Company ("Developer") with respect to the proposed Project described below. This Term Sheet is prepared for discussion purposes only. It creates no binding rights or obligations.

1. The Project. Developer shall develop upon the Land described below (a) a parking garage containing **approximately 380 parking spaces** on four (4) levels, of which not less than 50% of the parking spaces shall **always** be available for transient parking; and (b) **approximately 18,000 square feet** of retail space located on the ground level (collectively, the "Project"). The parking garage shall be available for public parking. City and Developer shall enter into the City's standard form of Development Agreement describing the Project in detail and specifying the Developer's construction and other obligations, including a specific description of the Project and timing. The Project shall conform with all existing setback, height restrictions, design requirements, and other elements of the Miami Beach Code.

2. The Land. The land upon which the Project is to be built consists of two (2) contiguous parcels (collectively, the "Land"), as follows:
 - (a) a parcel of land ("Parcel A") consisting of approximately 13,800 square feet and legally described on Exhibit A hereto. Title to Parcel A is currently held by the City; and

 - (b) a parcel of land ("Parcel B") consisting of approximately 17,250 square feet and legally described on Exhibit B hereto. Title to Parcel B is complicated. It can be summarized as follows:
 - (i) fee title to Parcel B is currently held by Charlotte Staiger, John Staiger, and the heirs of Matilda Miller. Developer represents that Developer has a valid purchase contract ("Developer's Purchase Contract") that will entitle Developer to purchase the fee title from all of the current fee title holders of Parcel B;

 - (ii) the fee title holders entered into three (3) 99-year leases with Nadia M. Dallet. Those 99-year leases expire on April 16, 2042 (as to two of them) and February 19, 2043 (as to one of them). Accordingly, Nadia M. Dallet or her heirs or successors (collectively, "Ground Lessees") currently hold a long-term leasehold estate with respect to Parcel B. Developer does not have any right to purchase the leasehold estate of these Ground Lessees; and

 - (iii) the Ground Lessees entered into a long-term sublease of Parcel B to Standard Oil Company. That sublease expires on April 16, 2042. That sublease was assigned to Developer.

Accordingly, Developer holds the subleasehold estate to Parcel B pursuant to a sublease that expires in 2042; Developer also has a contract to purchase the fee title interest to Parcel B.

3. City's Purchase of Parcel B. By virtue of its rights under the Developer's Purchase Contract, Developer will cause the fee title holders of Parcel B to convey good, marketable and insurable title to Parcel B directly to the City. City will pay to Developer the Appraised Value of fee title to Parcel B, and Developer will simultaneously pay to the fee title holders the purchase price that Developer has agreed to pay them under the terms of Developer's Purchase Contract (which will be less than the Appraised Value and therefore Developer will realize a profit at this closing). The Appraised Value shall be determined by an appraiser approved by both the City and Developer. The appraisal shall assume that Parcel B shall be used to construct a portion of the Project (and therefore Parcel B and Parcel A will both be appraised for such land use). The Appraised Value shall also take into consideration the status of title to Parcel B, including the existing leases.

As a condition precedent to City's purchase of fee title to Parcel B, Developer shall either (a) cause all leases and subleases to be terminated, including those listed in 2(b)(ii) and (iii) above; or (b) assign to City all of Developer's interest under the leases and subleases referenced in paragraph 2(b) and provide assurance satisfactory to City that institutional leasehold construction financing can be arranged notwithstanding the existence of such leases and that City's interest shall not be adversely affected by the existence of such leases.

As to Parcel B, Developer shall be obligated to provide marketable title; eliminate any survey problems; deliver the Property **free of any hazardous substances**, etc. City shall be entitled to an inspection period to inspect and analyze Parcel B, to investigate financing alternatives, and otherwise evaluate the Project and shall have the option to terminate the transaction without cost for any reason during the inspection period.

4. Lease from City to Developer.

Simultaneously with City's purchase of Parcel B, City, as ground lessor, and Developer, as ground lessee, shall enter into a long-term ground lease (the "City-Developer Lease") with respect to the Land (for both Parcel A and Parcel B). The City-Developer Lease shall include all of the following basic terms:

- (a) the City-Developer Lease shall be a triple net lease, with Developer obligated to pay all costs of development and construction of the Project and all costs of the Land and all improvements thereon, including without limitation taxes, assessments, insurance, maintenance, environmental remediation and operation.
- (b) Developer shall be obligated to comply with the Development Agreement and complete the Project as and when required thereby. The Development

Agreement will be in the City's standard form but will additionally provide that Developer must (a) **obtain final DRB approval within one (1) year**; (b) obtain a full Building Permit for the Project within 30 months of final DRB approval; (c) obtain a construction loan from an institutional lender within 27 months of final DRB approval to build the Project; (d) obtain an executed construction contract to construct the Project within 29 months of DRB approval; (e) complete construction of the Project and obtain a certificate of occupancy within three (3) years of full Building Permit. **City shall have the right to terminate the City-Developer Lease** and the Development Agreement if Developer defaults under either such agreement and such default continues beyond any applicable cure period.

- (c) **the term of the City-Developer Lease shall be ninety-nine (99) years;**
- (d) the Project shall be developed as a leasehold condominium pursuant to a Declaration of Condominium approved by Developer and City. The leasehold condominium shall include two types of condominium units, as follows:
 - (i) Garage Unit(s). The garage portion of the Project will include one or more (up to 4) condominium units. If there are four units, then each of the four parking levels within the garage shall be a separate unit; and
 - (ii) Retail Units. The retail portion of the condominium shall include one single unit comprising the entire retail portion.
- (e) Developer shall be entitled to finance the construction of the Project with institutional financing secured by Developer's leasehold interest in the ground lease. City shall have no financial obligations with respect to such financing and City's fee simple interest in the Land shall not be encumbered as security for the financing.
- (f) Developer shall retain possession of Parcel B until commencement of construction activities (although City shall purchase Parcel B pursuant to a purchase and sale agreement with Developer that will provide details and timing of the purchase). Upon the City's acquisition of title to Parcel B, Developer shall pay to City an annual rent of \$75,000 until commencement of Base Rent as set forth below.
- (g) Developer shall pay annual base rent under the City-Developer Lease in an amount equal to \$75,000 plus 2.5% of the purchase price paid by the City for Parcel B.

Until such time as the Developer exercises the Put described below the City shall credit against the Base Rent an amount equal to the ad valorem taxes received by the City on the Garage Unit(s) but not on the retail unit.

- (h) In addition to Base Rent, Developer shall pay Percentage Rent

For the Retail Units - in an amount equal **eight percent (8%) of the "Net Rent"** received by Developer from all retail and commercial tenants and other users of space in the Retail Units. "Net Rent" shall be defined as gross rent minus the amounts received from such tenants for sales tax, real estate taxes, insurance and any other items typically included in retail leases as "pass through" operating costs. Retail percentage rent shall commence **two (2) years after a temporary or permanent certificate of occupancy has been issued for the shell of the Retail Units** or the date when ninety percent (90%) of the retail space is open for business, whichever occurs first.

For the Garage - 10% of all revenues generated from the parking garage (including valet parking) in excess of \$300,000 (net of all applicable sales or other such taxes) ("Breakpoint"). Developer shall use good faith efforts to maximize the parking garage revenues and, in any event, shall charge a fair market rate for the use of such spaces

- (i) Developer shall be required to maintain liability, property, and other insurance that meets or exceeds City's requirements;
- (j) Tenant shall indemnify and hold City harmless from all liability arising from or related to the Project or the Land.
- (k) Beginning with January 2 of the year 2019 and until December 31 of the year 2022, the Developer shall have the right to cause the City to purchase the Garage Units ("Put") for a total purchase price of an amount equal to the sum of \$30,000.00 multiplied by the total number of parking spaces in the Garage Units ("Garage Purchase Price"). Good, marketable, and insurable title to the Garage Units (free and clear of all mortgages) shall be transferred to City on the date that of the Garage Purchase Price payment. The Garage Purchase Payment shall be paid at City's election either (i) in a single lump sum payment made at any time on or before **December 31, 2022** ("Outside Date"); or (ii) **in installments at such times and in such amounts as City elects so long as the Garage Purchase Price is paid in full by the Outside Date**. Once the Garage Purchase Price is fully paid, the Developer shall pay the City a 3.5% per. annum. return on the full purchase price for the duration of the ground lease.

At such time as City has paid the entire Garage Purchase Price, the Garage Units shall be managed by Developer or an entity owned and controlled by Developer (the "Garage Manager") pursuant to the City's standard form of third party garage management agreement. The garage

management agreement shall provide that all revenue derived from the Garage Units shall be applied (a) first, to pay all operating costs, including insurance, employee costs, sales tax, ad valorem taxes (if any), maintenance, repair, etc.; (b) second, the sum of \$300,000 to Garage Manager as a management fee; and (c) third, ninety percent (90%) to Garage Manager and ten percent (10%) to City.

5. Transfers; Transfer Fee. All "Transfers" shall require City's approval based upon specified criteria. Upon any Transfer, City shall be entitled to a fee of ten (10%) percent of the net profit (as defined in the Lease) derived from the transfer. "Transfer" shall mean (a) any assignment of all or any part of Developer's leasehold interest; (b) **any long term sublease of all or any part of the leasehold premise;** (excluding any occupancy leases) (c) **any conveyance of any condominium unit located on the leasehold estate;** (d) any conveyance of any interest in Developer that results in any change in control of Developer (but transfers for estate planning purpose shall be exempted so long as **Ron Bloomberg** or his heirs or successors remains in control); or (e) any other transfer that effectively transfers to a third party the economic benefits or obligations with respect to the leasehold improvements. The Transferee Fee shall apply to all Transfers by Developer and to all subsequent Transfers.