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## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Raul J. Aguila, City Attorney

DATE: June 1, 2015

SUBJECT: ITEM NO. 7:

Discussion Regarding A Resolution Approving The Term Sheet Attached And Incorporated As Exhibit "A" To This Resolution, And Authorizing The City Attorney's Office To Negotiate A Purchase And Sale Agreement (PSA) Between The City And 8701 Collins Development, LLC ("8701") For The Sale Of The City Property Located At 226 87 Street To 8701 (City Parcel), And To Develop Both The City Parcel And 7925 Collins Avenue ("The 8701 Parcel") Under A Unified Development Project (The "Project"); Which PSA Will Include The Design, Development And Construction Of The Project, At 8701's Sole Cost And Expense, A Main Use Parking Garage Which Shall Include (I) Commercial Uses Such As Spa, Restaurants, And Similar Uses; (II) One Or More Levels Of Parking Garages Directly Above The First Floor, Including Mechanical Parking Elements With Valet Service; (Except For The City Unit); (III) Approximately 12,000 Square Feet Of Retail On The First Floor; And (IV) A City Municipal Parking Condominium Unit (The "City Unit") Of 75 Parking Spaces Which May Be Located In The Basement; And Pursuant To Section 82-37 Of The City Code, Directing The City Manager To Transmit The Term Sheet And Draft PSA To The Finance And Citywide Projects Committee For Review Prior To City Commission Final Approval Of The PSA; And The Terms Sheet And Draft PSA Shall Also Be Reviewed By The Planning Board As Required By Section 1.03(B)(4) Of The City Charter

Attached is the latest version of the Term Sheet between the City and 8701. For ease of reference, the underlined portions denote changes from the last draft, and which have been agreed to by the parties.

Additionally, as noted in the Term Sheet, the updated appraisal for the City property (Parcel "D") is still pending

RJA/mmm  
Attachment

**Purchase and Sale Agreement - 226 87th Terrace Term Sheet**

1. Parties.

The City of Miami Beach (the “City”) and 8701 Collins Development, LLC (“8701”) intend to enter into a purchase and sale agreement (“PSA”) for 8701’s purchase of Parcel D (as hereinafter defined) from the City, and for the development of the Property (as hereinafter defined).

2. Property.

- a. 8701 is owner of that certain parcel of land located at 7925 Collins Avenue, Miami Beach, Florida (Folio # 02-3202-006-0420), which is approximately 15,312 sq. ft. in size (“Parcel C”).
- b. City is owner of that certain parcel of land located at 226 87<sup>th</sup> Terrace, Miami Beach, Florida (Folio # 02-3202-006-0430), which is approximately 15,313 Sq. Ft. in size (“Parcel D”).
- c. Parcel D is north of and adjacent to Parcel C.
- d. Parcel C and Parcel Dare herein referred to collectively as the "Property."

3. Project.

- a. The Property shall be developed and constructed as a main use parking garage, to include (i) commercial uses such as spa, restaurants, and similar uses on the top two (2) floors; (ii) one or more levels of parking garage directly above the first floor, including mechanical parking elements with valet service; (except for the City Unit, as hereinafter defined); (iii) approximately 12,000 – 15,000 square feet of retail on the first floor; and (iv) a City Municipal Parking Condominium Unit (the “City Unit,” as further described in subsection 4(b) hereof, which may be located in the basement. Collectively, the uses in (i) – (iv) shall be hereinafter referred to as the “Project”. The Project may not provide active “liner” uses on all four (4) street frontages, as is ordinarily required of main use garages.
- b. The Project will be subject to a Declaration of Condominium delineating the City Unit from the rest of the Project. 8701 shall be responsible for all costs and fees (including, without limitation, attorney’s fees) related to the preparation of the condominium documents for the City Unit. No later than 90 days after issuance of a temporary certificate of occupancy (TCO) or certificate of occupancy (CO) for the Project,

(whichever occurs first), 8701 will deliver the City Unit, which at a minimum; (i) shall be a separately delineated space from the rest of the garage; (ii) may contain a separate entrance and exit from the rest of the garage; and (iii) shall contain 120 public parking spaces to be owned by the City. At this time, the City Unit is proposed to be located in the basement of the Project, below grade.

4. Key Terms & Provisions.

- a. City will convey fee simple interest in Parcel D to 8701 upon Closing, as defined herein.
- b. 8701 will pay all Closing costs (including, without limitation, the City's outside counsel fees for the transaction).
- c. The Closing will occur within ninety (90) days following satisfaction of the following conditions: (i) the issuance of all necessary final, non-appealable development approvals for the Project; (ii) the City Commission's adoption of the legislative amendments set forth in subparagraph 4(k) hereof; (iii) the City's review and approval of the design and construction plans and specifications for the City Unit and; (iv) the City's review and approval of the estimated total cost (i.e. hard and soft costs) of the City Unit, based on the City approved design and construction plans and specifications; provided, however, that the Closing shall occur no later than one (1) year following execution of the PSA (unless extended by mutual written approval agreement of the parties).
- d. 8701 will be responsible for the design, permitting and construction of the Project. 8701 will design and construct all improvements on the Property; provided, however, that the City shall have review over, and final approval of, the design and construction plans and specifications for the City Unit, to ensure that such Unit is designed to meet the City's needs and standards.
- e. The PSA will describe the City Unit in narrative text and will incorporate, as exhibits to the Agreement, conceptual sketches showing the location and dimensions of the City Unit, all of which shall be subject to the City's prior review and approval pursuant to subsection 4(d) hereof. After the Project receives design review approval, and the City has reviewed and approved the design and construction plans and specifications for the City Unit, and further, as a condition to issuance of a Full Building Permit for the Project, 8701 will provide the City with a legal description showing the exact location and dimensions of the City Unit.
- f. Prior to Closing, 8701 shall deliver, for the City's review and approval, an estimated budget for the total cost (i.e. hard and soft costs) of the City Unit, which budget shall be based upon the City-approved design and construction plans and specifications for the City Unit. At its sole option and discretion, the City may retain a consultant (i.e. such as a professional cost estimator) to verify 8701's total estimated cost, with the cost of the consultant to be paid for by 8701.

- g. Upon issuance of a TCO or CO for the Project, (whichever comes first), there will be an accounting of the final costs for the City Unit. Such final costs shall include, without limitation, the cost of design, site preparation, environmental assessment and (if necessary), environmental remediation, construction materials, labor, and any and all other costs incurred by 8701, as required herein, to design and construct the City Unit in accordance with the City-approved design and construction plans and specifications (the Final Cost).
- h. Final completion of the Project will occur within three (3) years following the issuance of a Full Building Permit.
- i. The Final Cost, shall be compared to the appraised value of Parcel D of **\$(NOTE: APPRAISAL BEING UPDATED)** (adjusted for inflation). In the event that the Final Cost exceeds the appraised value of Parcel D (adjusted for inflation), 8701 shall be solely responsible for any and all overages. In the event that the Final Cost for the City Unit is less than the appraised value of Parcel D (adjusted for inflation), then 8701 shall promptly pay the City the difference. In no event, however, shall the City be responsible for any additional payment to 8701 for the design, development and construction of the City Unit.
- j. 8701 and the City will work cooperatively to seek approval of the design and development of the Project. 8701 will be responsible for submitting any required applications for development approvals, with City as co-applicant, if and as necessary, for the Project (i.e., Design Review Board, City Commission, Planning Board, and/or Board of Adjustment approvals), and for securing any and all final, non-appealable development approvals and permits for the Project.
- k. The parties acknowledge and agree that, as a condition to Closing, the City Commission, acting in its regulatory capacity, shall, at its discretion, consider certain legislation to accommodate 8701's proposed development plan and design for the Project. Such legislation include amendments to the City Code to allow certain modifications to regulations pertaining to main use garage, as follows:
  - Establishing new category of main use parking garages, which may not have liner uses on all street frontages, within 250 feet of NSOSP.
  - Maximum residential or commercial use shall not exceed 35% of total floor area of the structure.
  - At all points, parking must be at least 50% of the building, not counting parking required for the retail/residential.
  - All retail/restaurant uses on ground floor have no parking requirements.
  - Maximum height of 75 feet.
  - Front and side street setbacks of 0 feet.
  - Signs for commercial uses in main use parking garages providing at least 75 public parking spaces apply the CD-2 standards.

- Permitting City identification sign, (see 5(a) hereof).

The City Commission shall have no obligation to adopt any (or all) of the aforesated Code amendments; provided, however, that if the aforesated City amendments are not enacted, then 8701 may, at its discretion, elect to terminate the PSA, without liability to 8701. In the event of such termination, however, 8701 shall be responsible for any attorney’s fees incurred by the City with respect to the Project transaction, up to the date of termination.

1. Except as to involuntary transfers (as shall be defined in the PSA and which will include, without limitation, foreclosure transfers and transfers in lieu of foreclosure), 8701 shall not be entitled to assign or transfer its rights under the PSA until after the issuance of a Certificate of Occupancy (CO) for the Project. Any such transferee shall assume all remaining obligations of 8701 under the PSA.

5. Purchase Price and Other Costs.

- a. In addition to 8701’s obligation to fund all the hard and soft costs for design, development, and construction of the City Unit, 8701 shall also install, at its sole cost and expense, a “Welcome to Miami Beach” sign at the northwest corner of the Project, the design of which shall be reviewed and approved by the City. The sign will be part of the City Unit and the City will be responsible for power, maintenance, repair and replacement for the sign.
- b. Upon approval and execution of the PSA, 8701 shall give a one time non-refundable contribution to the City, in the amount of \$100,000, to be used by the City to establish a capital maintenance and replacement fund for the North Beach Senior Center.

6. Outside Counsel Review.

8701 agrees to reimburse the City for any attorney’s fees incurred by the City for outside counsel's review and negotiation of the PSA, and related agreements, which counsel shall be selected and approved by the City Attorney.