

## **City Center Development Agreement—Summary of Terms**

**July 7, 2016**

**Owner (Seller):** Margate Community Redevelopment Agency ("CRA")

**Developer (Purchaser):** New Urban Communities, L.L.C., a Florida limited liability company, whose principals are Timothy Hernandez and Kevin Rickard

**Property:** The property consists of 11 platted parcels comprising approximately 36.46 acres as shown on the Pre-Development Plan attached hereto as Exhibit "A."

**Project:** The Margate City Center is a mixed –use project to be developed in three phases and consisting of 968 residential units, 100,000 square feet of commercial/retail, and 80 room hotel, together with an amphitheater, community center, waterfront promenade and boat launch, shared parking garage and other public amenities, as shown on attached Exhibit "A". The Agreement further establishes the proportions of 1, 2 and 3 bedroom residential units and requires up to 15% of the residential be set aside for affordable housing. The land use data is shown by phase in attached Exhibit "A".

**Purchase Price:** \$4,065,700 (Phase 1), \$3,319,500 (Phase 2), \$2,656,550 (Phase 3) for a total of \$10,041,750.00, payable in cash at the Closing of each Phase.

**Contingent Fee:** The Developer will pay to CRA a fee for pre-development services calculated at 1% of the total construction and development costs of the Project (excluding land cost). The fee will be paid by Phase, 50% at Closing of each Phase and 50% at time of first certificate of occupancy within each Phase. Based on an estimated construction/development cost of approximately \$127 million, the Contingent Fee to be paid to CRA is estimated at \$1.2-\$1.3 million over three Phases.

**Deposit:** \$150,000.00 total, \$50k paid at time of execution of Agreement, \$100k upon expiration of the Inspection Period. The Deposit is non-refundable on expiration of the Inspection Period and will be reduced by \$25k at the first and second Closing, and by \$50k at the third and final Closing. The final \$50k remaining Deposit will be released upon issuance of the first certificate of occupancy in Phase 3.

**Closing Costs:** CRA will pay documentary stamps and ½ of escrow fees; Developer will pay for title insurance, survey, ½ of escrow fees and other Closing costs.

**Inspection Period:** One Hundred Twenty (120) days from the signing of the Agreement (Effective Date), during which Developer may conduct environmental site assessment(s), title review and other matters related to the suitability of the Property for its intended use. Developer must indemnify CRA and maintain insurance before accessing the Property. CRA will be responsible for any damage it causes to the Property after the expiration of the Inspection Period. CRA agrees to remove the exotic vegetation along the canal bank during the Inspection Period.

**Critical Path:** The Agreement sets forth a critical path schedule for the Developer to perform its obligations through the three Phases of the project. The Developer must:

- submit Site Plan and Architectural Scheme for CRA approval within 120 days of the expiration of the Inspection Period
- submit final construction plans and all permit applications within 120 days of Site Plan Approval
- Close on Phase 1 within 30 days of receiving building and development permits
- Begin Phase 1 construction within 30 days of Closing
- Substantially complete Phase 1 construction within 48 months of Closing

A similar schedule for Phases 2 and 3 is included on attached Exhibit "B". Closings on Phase 2 and 3 must occur no later than 2 years and 4 years respectively after the Phase 1 Closing. Phase 1 construction must be substantially complete prior to Closing on Phase 3.

**Schedule:** Based on an Effective Date of the Agreement in July 2016, the above Critical Path will result in Site Plan Approval by July 2017, building permits issued no later than October 2017, and Phase 1 Closing and commencement of construction on or before the 1st quarter of 2018. Closing on Phase 2 will occur no later than 1st quarter 2020. The Phase 3 Closing and the substantial completion of Phase 1 construction must occur by 1st quarter 2022. Pursuant to the Agreement, the entire Project will be substantially complete on or before 1st quarter 2026. It should be noted that Critical Path represents contractually mandated time frames, which, if not met, will result in a default by Developer under the Agreement. It is in the interest of the Developer to make every effort to accelerate the actual schedule well in advance of the Critical Path; however the Critical Path provides for governmental approvals and allows sufficient time for the market to develop and attract the optimal mix of businesses and other uses.

**Conditions Precedent to Closing:** Satisfaction of clear title and environmental and other matters during Inspection Period, together with: (i) approval of Development Plan, (ii) issuance of all building permits, and (iii) closing of Developer Financing, with said financing subject to specified criteria and approval of CRA.

**Developer Obligations:** Developer is responsible for the design, permitting and construction of the entire Project (all residential, commercial and hotel) by Phase, with the exception of the Civic and Community Component. In addition, Developer shall design, permit bond for and construct all water, sewer, paving and drainage in new public rights of way within the Project. Developer's obligations are required to occur in accordance with the Critical Path schedule set forth in the Agreement, including the Substantial Completion of construction within each phase. Substantial Completion is defined as completion/certificate of occupancy obtained for 100% of the infrastructure, 80% of the residential component and 60% of the commercial component within each phase (except 75% of the commercial is required for Phase 3). Developer is also responsible for all marketing, sales and/or leasing of the Residential and Commercial Component.

**CRA Obligations:** CRA is responsible for the design, permitting and construction of the Civic and Community Component, which includes: (i) an Amphitheater and Lawn, (ii) Community/Fitness Center, (iii) Town Square with Water Feature, (iv) Canal Walk and Boat Launch, and (v) Parking Garage designed to accommodate parking demand from the Civic and Community Component and a portion of the displaced parking for the commercial/residential uses; also possible participation in beautification and pedestrian improvements for SR 7, and other local roadways, subject to funds availability and participation by Broward MPO and/or Florida DOT. In addition, the CRA will reimburse Developer for up to \$75,000 for land and/or drainage improvements necessary to accommodate the additional water management requirements arising from the County and SFWMD permits dated March 18, 2016.

**Developer Financing:** Prior to Closing on each Phase, Developer is required to demonstrate financing commitments sufficient to fund at least 80% of the Apartments and 60% of the Commercial (Phases 1 & 2) and 80% of Apartments and 75% of Commercial for Phase 3. This ensures funds are in place to commence and complete construction of the substantial majority of each Phase prior to Closing on the sale of land. A variety of financing structures are permitted by the Agreement; however, Developer must maintain a minimum 10% equity stake in the Project.

**Declaration of Covenants/Deed Restrictions:** Within 110 days of the Effective Date, the CRA and Developer will agree to a Declaration of Continuing Obligations, Reservation of Rights and Restrictive Covenants which will govern the Property post-Closing(s). This Declaration will address common area maintenance, CRA's continuing right of architectural review, CRA's right to repurchase the Property under certain conditions, and shared parking rights and obligations, including the Parking Garage.

**Architectural Control:** The CRA will retain architectural control over the design of all improvements within the Project. All Site Plans, drawings, specifications and Construction Documents will be subject to the review and approval of the CRA. The CRA-approved Pre-Development Plan is incorporated in the Agreement and serves as the baseline for all future submittals and approvals, which must be substantially consistent with the approved plan. Some limited flexibility is provided with certain permitted changes to the plan, including: (i) up to 5% variance in the number of residential units and a 10% variance in the "mix" of units (number of bedrooms); (ii) a decrease of not more than 5%, or an increase of not more than 25% of commercial uses; (iii) other changes required by law, permitting or inconsistency in Construction Documents; and, (iv) minor material substitutions or field changes provided that these don't adversely affect the quality of the Project. The Agreement defines significant or "Material" changes to the Project which CRA may consider but is not obligated to approve. Examples of Material Changes include density changes in excess the aforementioned limits, significant changes in building height, or open space, amenities, landscaping, traffic circulation and public improvements. During the initial approval process, acceptable architectural styles for the Project will be determined. Any significant variation from these acceptable styles will be subject to CRA review and approval.

**Developer Default & CRA Remedies:** Developer will be in default under the Agreement if it (i) fails to perform or satisfy any of the material terms of the Agreement after notice and period to cure, (ii) fails to commence, continue and complete construction in accordance with the Critical Path schedule (iii) fails to Close on the Property in accordance with the Critical Path, (iv) is materially impacted financially

by attachment/garnishment, court judgment or bankruptcy or (v) transfers ownership interest in a manner not permitted under the Agreement. In the event of default by Developer, CRA may (i) terminate the Agreement and retain all remaining Deposit, (ii) exercise its right of repurchase at the original price of the land plus improvement costs, (iii) accelerate the payment of the balance of the Contingent Fee and (iii) collect liquidated damages up to \$250,000. The amount of liquidated damages is reduced by \$50,000 at the each of the first and second Closing, and is eliminated after the third Closing. The CRA's right of repurchase within a Phase expires when the public infrastructure and 50% of the building foundations within the Phase are complete.

**CRA Default & Developer Remedies:** CRA will be in default under the Agreement if it (i) fails to perform or satisfy any of the material terms of the Agreement after notice and period to cure, or (ii) makes a material, inaccurate representation and warranty. In the event of default by the CRA, Developer is entitled to certain rights under the law and may (i) terminate the Agreement as to any Parcels not yet acquired (ii) sue for specific performance, and (iii) sue for actual (but not consequential) damages.

**Representations & Warranties:** Standard, contractual representations are provided by Developer and CRA, including identity, non-conflict with other obligations and authority to enter into Agreement. Developer also warrants that there are no pending legal issues that would affect its performance.

**Transfers & Assignments:** Developer is restricted from selling, transferring assigning or otherwise conveying the Property or portions thereof, prior to completion of construction. Such transfers are limited to affiliates of Developer, or Acceptable Transferees approved by CRA, that are of equal or better status than Developer in terms of expertise and financial capability. Provisions are also made for estate planning, death and foreclosure. Any transfer or assignment will be subject to an Assignment Agreement satisfactory to the CRA which, at minimum, will specify that any remaining obligations will be the responsibility of Developer and the Assignee as to their respective ownership.

**Insurance/Indemnification:** Developer indemnifies the CRA from all liabilities arising from its negligence, breach and/or failure to perform its obligations under the Agreement. Developer is required to maintain various forms of insurance with both the CRA and City of Margate included as "Additional Insured."

**Other:**

- CRA may continue to hold events on portions of the Property. No carnivals or fairs after 5/1/2017. Music festivals and similar events can be held west of SR 441 until 90 days prior to Closing of these parcels.
- Provisions are included for affordable housing (up to 15%) and local hiring initiatives.
- At the request of the Developer, CRA may elect in its sole discretion to sell parcels to Developer in advance of the phased sequencing. If CRA approves such a sale, the price shall be 150% of the contractual per square foot price of the parcel, which will be deducted from the Purchase Price when the remainder of that Phase is sold.
- Property is sold "as is" with no warranties except as expressly stated in the Agreement.

- With CRA approval and under specified conditions, Developer may shift the hotel site from Phase 3 to Phase 1. In the event that Developer has not secured a hotel use by the Phase 3 Closing, at Developer's option, the hotel property can be excluded from the Phase 3 sale and retained by the CRA, in which case the Purchase Price will be reduced proportionately.
- At the option of the CRA during the first 36 months from the Effective Date, the Park Drive property can be added to the Agreement, at a negotiated price. If the Park Drive property is included, the Developer will be required to construct the public roadway shown on the Site Plan. If the CRA elects not to include the Park Drive property, the Developer will modify the Site Plan accordingly.

**Disclaimer:** This summary is merely an abbreviated synopsis of the Agreement and shall in no way be construed or relied upon as a legally binding document or as an interpretation or clarification of the Agreement or its intent; nor shall this summary be utilized with respect to any dispute arising from the Agreement.