

## Term Sheet

### The Harbor – Moody Marine Boat Ramp

Any substantial change to these Proposed Terms and Conditions will require Council approval

- **Project Description**

Developer intends to construct a mixed-use development on the 43.80 acre property located generally at 13911 Atlantic Boulevard (RE# 167140 0100). The project features up to 560 multifamily residential units, 106,000 square feet of nonresidential including office, hotel, retail, and restaurant uses, as well as a marina with up to 650 slips (the “Project”). A two-lane public access boat ramp with 30 dedicated boat trailer parking spaces, staging docks and certain other related improvements as further detailed on Exhibit A attached hereto (collectively, the “Boat Ramp Improvements”, which may be amended by agreement of the parties as a result of design changes required by regulatory authorities) are included within the scope of the Project. Attendant thereto, Developer has agreed to grant a perpetual use, access and maintenance easement in favor of the City for the use by the general public of the Boat Ramp Improvements for use by the City and general public from 6:00 a.m. to 10:00 p.m. on a daily basis.

- **Funding Overview**

- 50% of value of the public access easement interest as established by an appraisal performed by a Florida certified appraiser on the City’s approved vendor list and obtained by Developer at Developer’s sole cost and expense and approved by the City in its reasonable discretion.
- Total Projected Cost of Boat Ramp Improvements = \$1,631,500.00
  - \$815,750 from Developer
  - \$815,750 from the City (the “City Funding”);
  - All cost overruns in excess of the foregoing amounts shall be the obligation of the Developer.

- **Boat Ramp Improvements Costs Disbursement Agreement**

- Developer and City shall enter into a Boat Ramp Improvements Costs Disbursement Agreement (“CDA”) in substantial alignment with this term sheet and as authorized by City Council.
- City shall have the right to review and approve in its reasonable discretion the Boat Ramp Improvements design, plans and specifications prior to permitting.
- Developer will be responsible in procuring in accordance with all applicable laws vendors for the design, engineering, and construction of the Boat Ramp Improvements.
- City to disburse the City Contribution to Developer pro rata with the Developer contribution to the Boat Ramp Improvements, on a work performed and invoiced basis no more frequently than monthly, and each request for disbursement shall include such documentation as would customarily be included in a disbursement request, including written invoices for work performed and related backup documentation.
- City Funding shall be used by Developer solely to fund a portion of the direct hard and softs costs attendant to the design, engineering and construction of the Boat Ramp Improvements, and for no other purposes.

- Developer shall be responsible for funding project overruns.
  - Developer shall be responsible for ensuring all federal, state or local permits, as may be necessary, are obtained prior to conducting any work related to the Boat Ramp Improvements.
  - The City shall be granted access to the Boat Ramp Improvements site at all reasonable times to inspect the work in progress and/or the final work product.
  - The City's administrative staff, and the City Council Auditors office, shall have the right to audit payment records and supporting documentation for expenditures reimbursed under the CDA.
  - City may designate a project manager to coordinate with Developer during the construction of the Boat Ramp Improvements. The cost of any such project manager shall be City's sole cost and expense.
  - Developer will diligently pursue all required permits and governmental approvals through all applicable agencies and commence construction promptly upon receipt of the necessary permits and approvals. The estimated timeline to completion is within fifteen months from the commencement of construction.
  - Developer's obligation to construct the Boat Ramp Improvements in accordance with the terms and conditions of this term sheet and subsequent CDA shall run with title to the Project and be binding on Developer's successors and assigns.
  - City's obligations to pay the City funding and maintain the Boat Ramp Improvements in accordance with the terms and conditions of this term sheet and subsequent CDA shall run with title to the Project and inure to the benefit of Developer's successors and assigns.
- **Easement Agreement**
    - Prior to commencement of the Boat Ramp Improvements, Developer and the City shall enter into a perpetual easement and maintenance agreement, as authorized by City Council, providing City and the general public use and access rights to the boat ramp and related parking areas between 6:00 a.m. and 10:00 p.m. on a daily basis, the footprint of which is generally in accordance with Exhibit A attached hereto. Developer shall be responsible for all costs related to the operation and maintenance of the easement area, inclusive of any dredging required for the use thereof, except that the City shall be responsible at its sole cost and expense to maintain and repair (but not replace – except for lighting which shall be replaced as needed with like-kind by City) the surface boat trailer parking area, boat ramp, lighting at the ramp and boat trailer parking area, and staging area boat slips adjacent to the ramp (exclusive of the bulkhead related thereto, which is the responsibility of the Developer), to City standards in the City's sole discretion ("City Obligations"). For purposes of clarity, Developer shall be responsible for all utility, sanitation, bathrooms, fish cleaning station and all other costs attendant to the easement area except for the City Obligations to commercially reasonable standards in Developer's reasonable discretion. To the extent of their obligation as set forth herein, Developer and City shall ensure that the Boat Ramp Improvements, once constructed, maintain compliance with the requirements of the current Florida Clean Marina Program. City shall have no liability for any damage caused to Developer or other third-parties by the actions of any users of the boat ramp facility, and Developer shall hold harmless, indemnify and

defend the City and its members, officers, officials, employees and agents (collectively the "Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness, or intentionally wrongful conduct on the part of the Developer that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party's performance under the Easement, operations, services, or work performed thereunder; and
2. Environmental Liability, to the extent the Easement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up, or damages whether arising out of or relating to the operation or other activities performed in connection with the Easement; except to the extent solely caused by the City's negligent actions or omissions in connection with its obligations under the Easement.