





Memorandum No: 24-051

City Attorney's Office

To: Honorable Mayor and City Commissioners
Thru: Thomas J. Ansbro, City Attorney 
From: Shaun Amarnani, Assistant City Attorney 
Date: May 10, 2024
Re: Follow-up to CAM 24-0446 Regarding 1st Amendment to Pier 66 Development Agreement

At the City Commission meeting of May 7, 2024, during the discussion of CAM 24-0446, the City Attorney's Office (CAO) was asked to provide a summary of changes proposed in the First Amendment to a Development Agreement between the City of Fort Lauderdale and Tavistock Development Company, LLC. Pier 66 Parking LLC., Pier 66 Ventures, LLC., and Sails Ventures, LLC. ("Developer") for the Pier 66 Development. It is our understanding that the majority of changes were proposed by the Developer's lender counsel to clarify the meaning of provisions and do not alter the substantive meaning of those provisions. It is not unusual for lender's counsel to modify agreements to include preferred wording, even though such changes are not substantive in nature. This First Amendment will also provide greater detail regarding the condo form of ownership for the buildings within the project.

The following is a section-by-section commentary on the changes proposed in the First Amendment:

Recital H: This recital acknowledges the desire to recognize the parcels as one development site. The proposed changes are not substantive and were required by Developer's lender counsel that in our view do not change the meaning of this provision from the original 2018 development agreement.

Recital I: This recital acknowledges that individual development permits may be obtained for the site although the intent is to develop and operate the site under one unified plan of development. The changes clarify that the site will have different owners who can file for individual development permits for their individual parcels. We do not believe that this language is substantively different than what was previously approved under the original 2018

development agreement. We understand that this is a clarification required by Developer's lender counsel.

Section 4: This section expressly recognizes the parcels as one development site for the purposes specifically listed in that section. It clarifies the originally approved language. Additionally, the section contains new language that addresses condo association form of ownership. We believe the original 2018 development agreement allowed this condo form of ownership (even though it wasn't stated), but we understand that this clarification language was required by Developer's lender counsel.

Section 4.1(a): This section addresses the transfer of development rights among parcels within the development site as long as the Trips do not exceed a certain limit. The proposed change is not substantive and only provides for the addition of the word "densities." The original language in the development agreement states that "uses" can be transferred among parcels within the development site. This language implies densities, which is associated with residential land uses, can also be transferred. We believe this clarification language was required by Developer's lender counsel to ensure the transfer of density is expressly stated.

Section 7.1.4: This section addresses how the parking requirements of the Unified Land Development Regulations ("ULDR") are satisfied for the unified development site. This amendment memorializes an interpretation of the Unified Land Development Regulations ("ULDRs") regarding parking under a Declaration of Unity. The Development Services Department ("DSD") confirmed that this interpretation is correct. It is common for developers to memorialize interpretations of the land development regulations in Florida Statutes Chapter 163 development agreements.

Section 7.1.6: This section requires the establishment of an Architectural Review committee. Developer proposed removing this provision, and our office concurs. This architectural review committee idea previously allowed the developer to come up with private architectural review standards for future purchasers and then the City would be required to use "best efforts" to enforce these private restrictions against future purchasers. This concept presents multiple legal issues for the City. The CAO does not advise the City to be an enforcer of private contract architectural restrictions.

Section 7.1.8: This section addresses development permit approvals for the site. This amendment memorializes an interpretation of the ULDR regarding temporary parking lot language and is approved by DSD. There is additional DSD interpretation language that parcel owners may sign off on development permits covering their specific parcels. Additionally, there is clarification language that confirms a condo owner association can sign on behalf of the parcel without requiring the signature of every condo owner (requires the government documents to allow the condo association to do this). All of these amendments are allowed

under the original 2018 development agreement, but these clarifications were required by Developer's lender counsel.

Section 8.1: This section addresses certain development related obligations for the developer and time of performance of those obligations. The original 2018 development agreement provision no longer made sense because five years had already passed (Note: putting time restrictions in development agreements are generally hard to enforce). We changed this out for an additional requirement that requires developer to designate Pier 66 tower prior to using any additional Reserved Units. There is additional temporary CO language that we understand is an ULDR interpretation, approved by DSD.

Section 8.2 and 8.2.1: These sections address certain public benefits the Developer agreed to provide such as a publicly accessible promenade. We understand this change is primarily lender required clarification language to show the Developer was not in default because it could not secure Florida Department of Transportation ("FDOT") property for promenade, though we negotiated new language that keeps open the possibility of this occurring in future. Stronger language to keep permanent open cross access for promenade (subject to private parcel restrictions on old development agreement). Better language that covers construction phasing order of the promenade.

Section 9.2: This section addresses impact fees and reservation fees paid by the Developer. The proposed language reiterates that the main driver of this reservation fee concept in the original 2018 development agreement was to facilitate the historic designation of the Pier 66 Tower. The City's Comprehensive Plan has language promoting incentives for designation. The language clarifies the developer deposited \$1.4 million in reservation fees to reserve 575 units (per original 2018 development agreement). Clarifies 470 unallocated units remain. A new provision states that the remaining reservation units cannot be used until the Pier 66 tower receives historic designation. There is better language for City that \$1.4 million can only be used by developer on impact/permitting fees at the "then prevailing rate" at time fees are charged, not when the \$1.4 million was originally deposited (original 2018 development language was less clear on this point).

Section 10: This section acknowledges the Developer's attempt to gain control of FDOT property contiguous to the development site. The language is modified to clarify language that contemplates potential future scenario where FDOT gives City control of FDOT portion of future promenade and allows the Developer to operate and maintain the site while providing a public benefit and access.

Section 12.1: This section addresses how this agreement is binding on successors and assigns. Our understanding is this was clarification language required by Developer's lender counsel. Did not substantively change from original 2018 development agreement.

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c: Susan Grant, Acting City Manager
David R. Soloman, City Clerk
Pat Reilly, City Auditor

Attachments:

Original 2018 Development Agreement
First Amendment to Development Agreement
Developer's Legal Counsel's PowerPoint

SA/jc