

Memorandum



Date: December 17, 2019

Supplement to
Agenda Item No. 8L1

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez", written over a horizontal line.

Subject: Supplemental Information on Item 8L(1) (Legistar No. 192603) Approving First Amendment to the Amended and Restated Exchange Agreement between Miami-Dade County and Mapton Holdings, LLC and MANA Fashion Realty, LLC for the Property located at 2900 NW 5th Avenue to redefine the Improvements and provide for deadline extensions

Attached are recommended revisions to the First Amendment to the Amended and Restated Exchange Agreement ("First Amendment") with Mapton Holdings, LLC and MANA Fashion Realty, LLC for the Board's consideration. The First Amendment is attached to the resolution that is Item 8L(1) (Legistar No. 192603). These recommended revisions are shown in the attached First Amendment in redline and they accelerate the milestone and completion deadlines set forth in the First Amendment. The Developer shall be solely responsible to comply with the First Amendment and for submitting all documentation required to the County Mayor or County Mayor's designee with respect to the Project and shall have sole responsibility for cost overruns without further reduction to the scope of the Project.

For the Board's reference, all words to be removed are stricken and additions are underlined.

Attachment

A handwritten signature in black ink, appearing to read "Jack Osterholt", written over a horizontal line.

Jack Osterholt
Deputy Mayor

FIRST AMENDMENT
TO AMENDED AND RESTATED EXCHANGE AGREEMENT

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED EXCHANGE AGREEMENT (“First Amendment to Amended and Restated Exchange Agreement”) is entered into and made effective on this _____ day of _____, 2019 by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter “Landlord” and/or “County”), and MAPTON HOLDINGS LLC, a Delaware limited liability company (“Mapton”) and MANA FASHION REALTY, LLC a Delaware limited liability company (“Developer”) and/or (“MANA”).

WITNESSETH

The foregoing provisions are hereby adopted and incorporated herein to the Amended and Restated Exchange Agreement entered into by Miami Dade County and Mapton Holdings, LLC and MANA Fashion Realty, LLC on July 24, 2018 and all related documents and exhibits. If there is a conflict between any of the Recitals and the Terms of this Agreement, the Terms set forth below shall control.

The following definition shall supersede and replace the referenced definition:

“Improvements” shall mean a three-story building consisting of approximately 35,410 Gross square feet, which includes, at a minimum: (a) 24,851 square feet of interior, fully finished and built-out space; (b) 2,060 square feet of terrace space; and (c) 6,832 square feet of parking garage. The facility shall also house the Puerto Rican Community Center, and shall be developed in accordance with the terms and conditions of this Agreement. The total cost to construct the facility shall be no less than \$8,357,633.00.

The following paragraphs and exhibit shall supersede and replace the referenced paragraphs and exhibit in the Restated and Amended Exchange Agreement:

Paragraph 14.2 (b) is hereby amended to read as follows:

Developer and the County acknowledge and agree that the Developer has provided the County with conceptual site layouts and plans, sections, and elevations for the Improvements on the Developer Property, dated August 29, 2019, which are attached hereto as Exhibit “G”.

Paragraph 14.2 (c) is hereby amended to read as follows:

Developer shall complete seventy-five percent (75%) of the design for the Improvements by December ~~13~~17, 2019, and shall, on or before such deadline,

submit such 75% plans to the County. The 75% plans shall show, without limitation, any and all work to be performed on the Developer Property, including site plans, architectural, engineering, structural, mechanical, electrical, landscape and plumbing plans; preliminary grading and drainage plans; soil tests; utilities; water and sewer service connections; vehicular and pedestrian traffic circulation plans, including locations of ingress and egress to and from the Developer Property and the Improvements; curbs, gutters, and parkways, as applicable; lighting; locations for outdoor signage; and storage areas, all sufficient to enable the County to make an informed judgment about the schedule, estimate, design and quality of construction. Such 75% plans shall be based on the conceptual site layouts and plans, sections, and elevations previously approved by the County in accordance with Section 14.2(b) herein.

Paragraph 14.2 (d) is hereby amended to read as follows:

Developer shall complete one-hundred percent (100%) of the design and have final Construction Documents for the Improvements by January 31, 2020 and shall submit same to the City of Miami for a building permit or equivalent on the next business day following the County's approval of same ~~February 17, 2020~~. Along with the final Construction Documents, Developer shall provide the County with a construction schedule, prepared using a critical path method, prepared by the Developer's contractor, that identifies, coordinates and integrates the anticipated design and construction milestones for the Improvements, inclusive of the Developer's responsibilities, reviews by governmental authorities having jurisdiction over the development of the Improvements, and other activities as are necessary for the timely completion of the Improvements.

Paragraph 14.2 (e) is hereby amended to read as follows:

Upon receipt of each of the above-mentioned submittals, the County shall review same and shall, within fifteen (15) days after receipt thereof (except for Exhibit "G" for which the County shall have thirty (30) days from the Effective Date), advise Developer in writing of its approval or disapproval, setting forth in detail its reasons for any disapproval. In the event of a disapproval, Developer shall, within fifteen (15) days after the date Developer receives such disapproval, make those changes necessary to meet the County's stated grounds for disapproval or request reconsideration of such comments. Within fifteen (15) days of the County's response to such request for reconsideration, Developer shall, if necessary, resubmit such altered plans to the County. Any resubmission shall be subject to review and approval by the County, in accordance with the procedure hereinabove provided for an original submission, until the same shall receive final approval by the County. The County and Developer shall in good faith attempt to resolve any disputes concerning the plans in an expeditious manner.

Paragraph 14.2 (f) is hereby amended to read as follows:

In ~~no~~ the event that shall the Project Costs ~~bear~~ greater than \$8,357,633.00 and in no event shall the design plans or square footage of the Project be downsized or value engineered to a condition less favorable to the County than that contained in the approved 75% plans. ~~All~~ cost overruns shall be the sole responsibility of the Developer and the Developer shall not be entitled repayment of said overage from the County.

Paragraph 14.2 (g) is hereby amended and restated to read as follows:

Upon the approval of the final Construction Documents for the Improvements, Developer shall provide the County with a set of plans signed by all parties as approved. In the event that any change to the final Construction Documents results in an anticipated decrease to the Project Costs, then Developer and the County shall work in good faith to identify additional improvements that can be provided by the Developer on the Developer Property so as to result in no net decrease to the Project Costs. The County reserves the right to request a refund in the form of a check in lieu of additional improvements. The Developer shall provide the County with a check in the name of the County within 30 days of any such request by the County.

Paragraph 14.3 Permits is hereby amended to read as follows:

Developer shall obtain building permits for the Improvements by August 1, November 1, 2020. Developer acknowledges, understands and agrees that it is its responsibility to submit the final Construction Documents to the applicable and required governmental authority with sufficient time to enable review, comments and resubmittals by and to the governmental authorities, if necessary, so as to ensure that the permits are issued by the deadline contained herein.

Paragraph 14.4 Commencement and Completion of Construction is hereby amended to read as follows:

Developer shall have Commenced Construction by ~~December 31~~ September 1, 2020 and shall thereafter diligently and continuously undertake the construction of the Improvements until Final Completion. Developer shall select the contractor for the Improvements in accordance with the requirements of Section 255.20, Florida Statutes. Developer shall obtain substantial completion of the Improvements, as evidenced by a Temporary Certificate of Occupancy, no later than ~~December 31~~ September 1, 2021 and Final Completion ~~shortly thereafter~~ or before November 1, 2021 so as to allow Closing 2 to take place on or before ~~November 30, 2021~~ February 1, 2022.

The attached **Revised Exhibit G**, conceptual site layouts and plans, sections, and elevations for the Improvements on the Developer Property, dated August 29, 2019, shall supersede and replace **Exhibit G** in the Restated and Amended Exchange Agreement.

All references to Exhibit G will refer to the Revised Exhibit G, Dated August 29, 2019.

In all other respects, the Amended and Restated Exchange Agreement remains in full force and effect in accordance with the terms and conditions specified therein. In the event of any conflict between this First Amendment to the Amended and Restated Exchange Agreement and the Amended and Restated Exchange Agreement, the First Amendment to the Amended and Restated Exchange Agreement shall supersede same. Additionally, any other provisions of the Amended and Restated Exchange Agreement inconsistent herewith shall be deemed revised in accordance with the terms of this First Amendment to the Amended and Restated Exchange Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[ONLY THE SIGNATURE PAGE REMAINS]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease, with the intent for it to be legally binding, as of the day and year first above written.

MIAMI-DADE COUNTY
a political subdivision of the State of Florida

By: _____

Name: _____

Title: _____

Date signed: _____

ATTEST:
Harvey Ruvin, Clerk

Approved by the County Attorney as to
Form and legal sufficiency

By: _____

Assistant County Attorney

MAPTON HOLDINGS, LLC

Delaware limited liability company

Witness/Attest:

By: _____

Witness/Attest:

Name: _____

Title: _____

Date signed: _____

STATE OF _____

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, of (MAPTON HOLDINGS LLC), a Delaware corporation _____ has produced _____ as identification.

(SEAL)

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MANA FASHION REALTY, LLC

Delaware limited liability company

Witness/Attest:

By: _____

Witness/Attest:

Name: _____

Title: _____

Date signed: _____

STATE OF _____

SS:

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, of (MANA FASHION REALTY, LLC), a Delaware corporation _____ has produced _____ as identification.

(SEAL)