



CITY OF DURHAM | NORTH CAROLINA

Date: June 12, 2015

To: Thomas J. Bonfield, City Manager

Through: W. Bowman Ferguson, Deputy City Manager

From: Jina B. Propst, Assistant Director, General Services Department

Subject: Proposed Sale of Various Property Interests to BH-AG Durham Foster, LLC

In response to Council Members' questions at the June 8, 2015 supplemental work session, Staff has made the following substantive changes to the proposed development agreement. These changes are being reviewed by the Developer.

1. **Section 1:** Contribution to Habitat for Humanity of Durham, Inc. for the purpose of developing affordable housing within the Durham City limits has been added to the sentence regarding consideration paid by the Developer.
2. **Section 1(A)(ii):** In response to information received at the supplemental work session that the overhang covers only a portion of the southern boundary of the Property, there are now three (3) separate easements - one for the footings, one for the overhang, and one for the concrete stairs.
3. **Section 1(A)(ii)c:** The concrete stairs were formerly referred to in the section regarding the Terrace, and it was unclear that these were separate structures serving the condominium building. Reference to the stairs has now been removed from that section and has been joined with the section dealing with the building footings and overhang.
4. **Section 1(A)(ii)d:** Provisions have been inserted for inspection and maintenance obligations that are similar to what the City required for the DVI/Capitol Broadcasting balcony easement, and these obligations apply to all three structural easements (footings, overhang, and concrete stairs).
5. **Section 1A(vii):** This new section applies to all of Developer's use of the easements.
6. **Section 2(viii):** Developer's obligation to maintain and assume liability for the Terrace is made explicit in this section.
7. **Section 4:** Language has been added to the Indemnification clause providing explicitly that Developer will defend and indemnify the City from any claims that we do not have the proper authority for the obligations assumed by the City in the Development Agreement.

8. **Section 5**: An insurance provision has been added, requiring that the Developer have insurance meeting the approval of the City's Risk Manager, and that the City be listed as an additional insured with notice of any lapse or termination of the policy.
9. **Section 7**: This section on the City Manager's authority has been revised to specify that where the City's written approval is required, plans should be provided early enough in the process that the City's suggested revisions are actionable, and that such written approval shall not be unreasonably withheld.
10. **Section 14**: A new subsection (iii) has been added, which spells out that Developer shall ensure the Covenants and Bylaws for the HOA include all the ongoing obligations contained in the Development Agreement.