

## LETTER OF INTENT

This Letter of Intent (the “**LOI**”) is entered into as of the 18th day of February 2020 (the “**Effective Date**”) between the **City of Lake Worth Beach**, a municipality duly constituted under Florida law, and having its offices at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 (“**City**”) and **1017 Lake Ave, LLC**, a limited liability company authorized to do business in the State of Florida (“**Developer**”) with an address of 414 North Andrews Avenue, Ft. Lauderdale, Florida 33301. The City and Developer are jointly referred to as the “**Parties**” and individually as a “**Party**”.

The purpose of this LOI is to set forth provisions pertaining to the conceptualization, planning, entitlement, funding, development, implementation, construction and operation of The Bohemian, a proposed residential rental unit project containing approximately 200 apartment units with commercial space and a parking garage with 120 dedicated public parking spaces in downtown Lake Worth Beach (the “**Project Transaction**”), and any activities ancillary to these opportunities that may be agreed upon by the Parties (collectively, the “**Work**”).

### PART I

The following paragraphs reflect the Parties’ current understanding of the matters described to be included in the Definitive Agreements, but are not legally binding until such time the Definitive Agreements are final. Each Party will work in good faith to negotiate or conclude the Project Transaction on such terms. This is not a complete statement of all terms and conditions of the Project Transaction, but provides a basis for further discussions and negotiations.

**A. Project Transaction.** The City and Developer are considering the Project Transaction whereby the City would provide financial incentives, density bonuses and other legal considerations in exchange for the Developer to develop, construct and operate the project to be known as The Bohemian to be located at 1017 Lake Avenue, Lake Worth Beach, Florida. The Parties understand that additional discussions and negotiations with respect to the Project Transaction will be required, and that neither Party will be bound to proceed with the Project Transaction unless and until the City and the Developer negotiate, approve and execute mutually acceptable definitive agreements and related documentation (the “**Definitive Agreements**”) and related documents and terms and conditions that are negotiated, approved and executed and certain other conditions precedent as described in this LOI (including, without limitation, city commission and other governing body approvals) are obtained. However, to facilitate further such discussions and negotiations, the Parties desire to set forth the basic proposed terms of the Project Transaction and their understandings with respect thereto:

1. The Parties acknowledge and agree that the City intends to provide to the Developer certain financial incentives and density bonuses, which shall include:
  - A. Providing a 50.8975 unit planned development density bonus and a 20.359 unit transfer development right bonus for the original 2.0359 acre site located at 1017 Lake Avenue, Lake Worth Beach, Florida.

- B. Providing for the legal transfer through sale to the Developer and grant of an easement by the Developer to the City for City's perpetual use of and access to the City's Electric Utility ("Electric Utility") site of 0.3468 acre located at 1109 1<sup>st</sup> Avenue South, Lake Worth Beach, Florida ("East Switching Station"), which will provide a total of 27 residential units through a combination of by right density, planned development density bonus and transfer development right bonus (land value \$390,150, transfer development right value \$9,102). Notwithstanding anything contained herein, should another form of conveyance be required for tax or liability purposes, or as a requirement of the Developer's Lender, the Parties will work in good faith to accommodate a different structure that accomplishes the same mutual benefit to each Party. If the East Switching Station site is conveyed to the Developer, the Developer will be required to provide a unity of title for the East Switching Station site and the property at 1017 Lake Avenue. The Parties understand that the City's Electric Utility may need to make improvements to the East Switching Station site in the future and the finalized structure related to the East Switching Station site must ensure the Electric Utility's ability to make such future improvements above, below and within the site. Any improvements to the East Switching Station site by the Developer will be subject to City Commission review and approval.
- C. Providing an economic investment incentive of at least \$89,066.48 requiring a performance bond and payable at time of Certificate of Occupancy based on 200 residential units averaging 620 sq. ft. and 2,455 sq. ft. of commercial space with the following rates (final amount may be adjusted based on final unit number, sizes, and commercial space).
1. Electric – \$0.55 per sq. ft. (based on projected Electric Utility revenues from the Project Transaction of \$92,450 annually or \$277,350 in aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit).
  2. Water/Sewer – \$0.12 per sq. ft. (based on the projected revenues from the Project Transaction with the minimum annual or aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit, to be set forth in the Definitive Agreement(s)).
  3. Stormwater - \$0.12 per sq. ft. (based on the projected revenues from the Project Transaction with the minimum annual or aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit, to be set forth in the Definitive Agreement(s)).
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- D. Providing an infrastructure investment incentive of \$300,000 payable via two payments requiring the Developer to provide a section 255.05, Florida Statutes, compliant performance and payment bond (or letter of credit) (“Bond”) to insure and protect the City’s investment of funds for public infrastructure. The first half payment will be paid after the City approves the construction documents and issuance of permits. The second half payment will be paid after the issuance of a certificate(s) of completion for the infrastructure improvements. Alternatively, if the Bond cannot be provided by the Developer, the Developer may have its construction contractor provide the Bond with the City named as a dual obligee on the Bond. However, payment of the infrastructure investment incentive of \$300,000 will be after issuance of the certificate(s) of completion, or such other form agreed by the Parties evidencing completion, for the infrastructure improvements.
1. Streets - \$250,000
  2. Stormwater - \$50,000.
- E. Signing a Parking Garage Master Lease (the “Lease Agreement”) for 120 parking spaces for public use in the parking garage, under the following terms and conditions:
1. **Landlord:** Developer (1017 Lake Ave, LLC)
  2. **Tenant:** City (City of Lake Worth Beach)
  3. **Parking Garage:** Approximate six (6) levels precast parking garage structure consisting of approximately 360 parking spaces with 120 public parking spaces to be leased to the City and approximately 240 to be for Developer’s use. The City’s 120 parking spaces will be located on the first two levels of the parking garage structure. The Developer’s parking levels will be exclusively for its other tenants and the Developer will refer all others in need of parking in the Parking Garage to the City.
  4. **Tenant Demised Premises:** 120 parking spaces and shared common areas as further detailed in a parking garage plan to be attached to the Lease Agreement.
  5. **Lease Term:** 35 years
  6. **Renewal Option:** 1 30-year option at the end of the initial Lease Term, years 36-65 (the “First Option Term), 1 30-year option at the end of the First Option Term, years 66-95 (the “Second Option Term”). Together the Lease Term, First Option Term and Second Option Term shall be referred to as the “Lease Term”.
  7. **Effective Date:** Date the Lease Agreement is signed by all parties (prior to Financial Closing).
  8. **Construction Commencement Date:** The date a notice of commencement has been filed with the appropriate governing authority allowing work to begin pursuant to a building permit to construct the Parking Garage, which shall occur within 720 days from the Effective Date. The City Manager may elect to

approve any extensions of the Construction Commencement Date for a period of time up to 180 days. Any extensions of time beyond 180 days shall require the approval of the City Commission.

9. **Substantial Completion Date:** The date that the following have all been achieved: a temporary certificate of occupancy (or its equivalent) has been issued by the appropriate governing authority for the Parking Garage; a notice of commencement has been filed with the appropriate governing authority allowing work to begin pursuant to a building permit(s) to construct the residential rental unit project containing approximately 200 apartment units with commercial space; and, the improved access to the Parking Garage is completed.
10. **Commencement Date:** The term of this Lease shall commence on the Substantial Completion Date, which shall occur on or before 24 months from the Construction Commencement Date. Year 1 Annual Base Rent shall become immediately due and payable to Developer within 10 days from written notice to City demonstrating the Substantial Completion Date.
11. **Base Building Improvements:** The Parking Garage shall be constructed in accordance with the permitted set of plans, which shall be in accordance with the Parking Garage floor plan to be attached to the Lease Agreement as Exhibit A
12. **Landlord Work:** Developer shall be responsible for completing the Base Building Improvements, which will be defined in the Lease Agreement.
13. **Tenant Work:** City shall be responsible for completing any improvements to the Tenant Demised Premises that exceed the Base Building Improvements, such as parking meters, signage and safety monitoring. All such City improvements, including all subsequent alterations or additions, shall require the express written approval from Developer, which shall not be unreasonably delayed or withheld and shall be at City's sole cost.
14. **Annual Base Rent:**  
Year 1 = \$2,458,958  
Year 2 - Year 8 = \$72,000/yr  
Year 9 - Year 35 = \$144,000/yr  
First Option Term = CAM only (not to exceed \$72,000/yr.).  
Second Option Term = CAM only (not to exceed \$72,000/yr.).
15. **Annual Base Rent Increases:** None, other than as provided for herein.
16. **CAM & Operating Costs:** In addition to Annual Base Rent, City shall be responsible for the payment of common area maintenance and operating expenses, which shall include but not be limited to: security, general parking systems, cleaning,

utilities, maintenance and repairs, elevator maintenance, pest control, fire safety, insurance, management fees, licenses and fees, supplies, general signage, landscaping, administrative and professional costs, industry standard repair and replacement reserves (“Reserves” herein), and applicable real estate taxes (“CAM” herein). CAM shall not include costs and expenses directly related to the parking provided to Developer’s other tenants including but not limited to: parking meters or system, signage and safety monitoring. CAM is anticipated to be \$21,000 per year. At no time shall City be responsible for CAM that exceeds 50% of the Annual Base Rent). CAM will be based on actual costs, but may grow concurrently with the Consumer Price Index.

17. **Tenant’s Percentage Share:** The City’s Percentage Share in CAM shall be based upon the total number of spaces in the Demised Premises divided by the total number of spaces in the Parking Garage (i.e.,  $120/360 = 33.33\%$ , Total CAM = \$50,000 \* 33.33% = \$16,666.66 (Tenant’s Percentage Share).
18. **Management & Operations:** Developer, or the Developer’s designee and/or management company, shall be responsible to manage, operate and maintain the Parking Garage and Tenant Demised Premises for the Lease Term in a manner comparable to other similar parking garages in Palm Beach County, Florida.

2. The Parties acknowledge and agree that the Developer intends to pursue the requisite approvals to develop The Bohemian at 1017 Lake Avenue, Lake Worth Beach, Florida, which at a minimum will include the approval of a Planned Mixed-Use Development order by the City’s City Commission. The Parties understand that all such Definitive Agreements will need to be final no later than April 10, 2020, except for Part I, Section (A)(1)(A) and (B) of this LOI, which shall be finalized at the conclusion of the land use entitlement process and requisite approvals, which shall be no later than September 30, 2020. Approval of all such development is an independent legal process that is not governed by this LOI nor guaranteed by this LOI.

## **ARTICLE 1. GOOD FAITH NEGOTIATIONS**

**Section 1.1** **Good Faith Negotiations.** Subject to the conditions set forth in this LOI, the City and the Developer agree to coordinate and negotiate in good faith through April 10, 2020 (the “**Negotiation Period**”), unless this LOI is earlier terminated pursuant to Article 2, below, to attempt to execute and deliver the Definitive Agreements with respect to the Project Transaction. The Negotiation Period may be extended pursuant to Section 11.6.

## ARTICLE 2. TERMINATION

**Section 2.1** This LOI shall terminate on the earlier of: (i) execution of the Definitive Agreements including those related to Part I, Section (A)(1)(A) of this LOI, (ii) the expiration of the Negotiation Period, unless Parties are still actively involved in negotiations and pursuing final Definitive Agreements, which shall cause for the Negotiation Period to be extended pursuant to Section 11.6, or (iii) termination by a Party by written notice to the other Party.

**Section 2.2** Upon the termination of this LOI, the Parties shall have no further obligation hereunder; provided, however, that the terms and provisions set forth in Articles 3 through 10 shall survive the termination of this LOI.

## ARTICLE 3. EFFECT OF THIS LOI

**Section 3.1** This LOI:

- (a) does not constitute a legally binding agreement;
- (b) does not constitute an exclusive agreement and the City of Lake Worth Beach reserves the right to enter similar LOIs with other private and public entities and persons;
- (c) does not contain all of the material terms of the Proposed Transactions, including those to be set forth in the Definitive Agreements; and
- (d) shall not constitute the basis for an agreement by estoppel or otherwise.

Rather, the Parties hereby agree that this LOI is intended as a statement of the Parties' good faith, mutual intent and understanding as of the date hereof to proceed with the negotiation of the terms of the Project Transaction and the Definitive Agreement during the Negotiation Period. Any actions taken by a Party or any other person in reliance on the terms expressed in this LOI or statements made (whether orally or in writing) during the negotiations between the Parties shall be at that Party's own risk. Unless and until the Definitive Agreements have been duly authorized, executed and delivered by the Parties, no Party shall have any legal obligations to the other, expressed or implied, or arising in any other manner under this LOI or in the course of negotiations as contemplated by this LOI.

Any transaction which might arise from the activities of the Parties as contemplated by this LOI shall be contingent upon the due authorization, execution and delivery by the Parties of the Definitive Agreements, including without limitation the obtaining by each Party of all management or applicable governing board approvals and all other authorizing actions required to be taken by each Party under its organizational documents and consistent with this LOI. No binding commitment shall arise prior to then even if the Parties reach some understanding(s) or agreement(s) in principle.

## ARTICLE 4. COSTS AND EXPENSES

**Section 4.1** Each Party shall bear its own costs and expenses (including fees of counsel and outside advisors) in connection with the preparation, negotiation and execution of this LOI (whether or not the Project Transaction is consummated), in connection with the Project Transaction, and in connection with the negotiation, authorization, execution and delivery of the Definitive Agreements.

## ARTICLE 5. CONFIDENTIALITY

**Section 5.1** The Parties acknowledge and agree that the City of Lake Worth Beach is subject to Florida's Public Records Act, Chapter 119, Florida Statutes. Except for the City's City Commission approval of this LOI, the Parties further acknowledge and agree that the Parties do not intend to make a public announcement (whether in the form of a press release or otherwise) directly or indirectly with respect to the subject matter of this LOI until such time as the Project Transaction has been more thoroughly vetted by each Party. Once the Project Transaction is more thoroughly vetted by each Party (or at such other time agreed to by the Parties), then the Parties may agree in writing to permit such public announcement to be made, which permission shall not be unreasonably withheld. Any public announcement made as permitted under this Section 5.1 shall be made only in accordance with a mutually agreed upon press release or other public communication by the Parties. At a minimum, the subject matter shall not be deemed to have been thoroughly vetted as contemplated hereby until Definitive Agreements have been entered into by the Parties relating thereto.

**Section 5.2** In the course of this LOI it may be necessary for one Party ("**Disclosing Party**") to release certain Confidential Information (as defined below) to the other Party ("**Receiving Party**"). All Confidential Information must be marked as "Confidential" in order to avoid any arguments that the confidentiality of such information has been waived.

**Section 5.3** "**Confidential Information**" shall mean all information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by Disclosing Party or otherwise, which is disclosed to Receiving Party, regardless of whether such information is disclosed intentionally or inadvertently, before, during or after the execution of the LOI, in connection with discussions and negotiations surrounding the Work that is the subject of the Project Transaction and including all reports, analyses, notes or other information that are based on, contain or reflect any such Confidential Information; however, Confidential Information shall not include: (i) information which is or becomes publicly available other than as a result of a violation of this Agreement; (ii) information which is or becomes available on a non-confidential basis from a source which is not known to the Receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the Disclosing Party; or (iii) information which the Receiving Party can demonstrate was legally in its possession prior to disclosure by the Disclosing Party.

**Section 5.4** Confidential Information shall not be used for any purpose other than to analyze, implement or complete the Project Transaction or necessary for a party to fulfill its obligations hereunder, which includes, without limitation, the Parties' applications for governmental grants. Confidential Information shall be held in strict confidence by Receiving

Party and shall not be disclosed without prior written consent of the Disclosing Party, except to those advisors, affiliates, agents, assigns, attorneys, employees, directors, officers and/or members (“**Agents**”) with a need-to-know the Confidential Information for the purposes of analyzing, implementing or completing the Project Transaction or a Party’s obligations hereunder. The Receiving Party shall require all recipients of the Confidential Information to be bound by the terms of the LOI. The Receiving Party shall be responsible for any breach of the LOI by the Receiving Party or its Agents. The Receiving Party shall use the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standard.

**Section 5.5** In the event that Receiving Party is requested or required by legal or regulatory authority to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement prior to disclosure, if permitted by law, so that Disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of the LOI. In the event that a protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions hereof, the Receiving Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

**Section 5.6** The Receiving Party agrees that monetary damages would not be a sufficient remedy for any breach of the LOI and that the Disclosing Party shall be entitled to injunctive or other equitable relief to remedy or prevent any breach or threatened breach of the LOI. Such remedy shall not be the exclusive remedy for any breach of the LOI, but shall be in addition to all other rights and remedies available at law or in equity.

**Section 5.7** It is understood that nothing contained in the LOI shall be construed as granting or conferring rights by license or otherwise in any Confidential Information disclosed to the Receiving Party hereunder.

**Section 5.8** Promptly following any decision by the Receiving Party to terminate or suspend the Negotiation Period, in whole or in part, terminate this LOI as permitted hereunder, or at any other time upon the Disclosing Party’s written request, the Receiving Party shall return or destroy, at the Receiving Party’s option, all written Confidential Information of the Disclosing Party, including that portion of such Confidential Information that may be found in analyses, compilations, studies or other documents prepared by, or for, the Receiving Party, and the Receiving Party and its Agents shall not retain any copies of such written Confidential Information. At any time after which the Receiving Party has been required to return or destroy the Confidential Information in its possession in accordance with the preceding sentence, the Receiving Party shall, upon written request of the Disclosing Party, cause one of its duly authorized representatives or officers to certify in writing to the Disclosing Party that the requirements of the preceding sentence have been satisfied in full.



## **ARTICLE 6. LIMITATION ON LIABILITY.**

**Section 6.1** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY TYPE OR ANY LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS LOI.

## **ARTICLE 7. NO THIRD-PARTY BENEFICIARIES**

**Section 7.1** This LOI is intended for the benefit of the Parties hereto and is not intended to and does not confer any benefit on third parties.

## **ARTICLE 8. CHOICE OF LAW**

**Section 8.1** This LOI shall be governed by the laws of the State of Florida without regard to its conflicts of laws principles. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Florida located in West Palm Beach, Florida.

**Section 8.2** IN ANY LITIGATION ARISING FROM OR RELATED TO THIS LOI, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LOI, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS LOI. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS LOI.

## **ARTICLE 9. ASSIGNMENT**

**Section 9.1** No assignment or transfer hereunder shall be made by either Party without the prior written consent of the other Party.

## **ARTICLE 10. COUNTERPARTS**

**Section 10.1** This LOI may be executed in counterparts, each of which shall have the effect of and be considered as an original of this LOI.

## **ARTICLE 11. MISCELLANEOUS**

**Section 11.1** The Parties acknowledge that the consummation of the Project Transaction, completion of any associated Work, and the effectiveness of the Definitive Agreements may be contingent upon obtaining any necessary approvals from local, state and federal agencies. Nothing herein is intended to create obligations on the part of either Party that would require it to take actions that are inconsistent with such regulatory compliance.

**Section 11.2** This LOI constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no other oral understandings, terms or conditions with respect to the subject matter of this LOI, and neither Party has relied upon any representation, express or implied, not contained in this LOI.

**Section 11.3** If any one or more of the provisions of this LOI should be ruled illegal, wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction under present or future laws, then: (i) the validity and enforceability of all provisions of this LOI not ruled to be invalid or unenforceable shall be unaffected and remain in full force and effect; (ii) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held illegal, wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein.

**Section 11.4** Each Party acknowledges that it has actively participated in the negotiation and preparation of this LOI, and that accordingly this LOI and any uncertainty or ambiguity contained herein shall not be construed against any one Party as drafter. The descriptive headings of this LOI are inserted for convenience only and do not constitute a substantive part of this LOI.

**Section 11.5** The obligations of the Parties hereunder which by their nature survive the termination of the LOI, shall survive and inure to the benefit of the Parties. Those provisions of the LOI which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination of the LOI.

**Section 11.6** This LOI may be amended only by a writing signed by each Party hereto. The City's City Manager is authorized to extend the timeframes set forth herein without City Commission approval for no more than 120 days. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this LOI, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

**Section 11.7** This LOI sets forth the mutual understandings and intentions relating to the Project Transaction based upon the terms and conditions set forth herein.

**Section 11.8** The City Commission has delegated the authority to the City Manager to execute the Definitive Agreements, if agreeable in consultation with the City Attorney and the City Financial Services Director. However, if in the City Manager's opinion, the Definitive Agreement(s) involves a material or adverse change to the terms and conditions of this LOI, the City Manager reserves the right to bring the matter before the City Commission for its review.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this LOI to be executed by their duly authorized representatives on the first date written above.

1017 Lake Avenue, LLC  
a Florida Limited Liability Corporation

By: [Signature]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Corporate Seal]

City of Lake Worth Beach  
By: [Signature]  
Michael Bornstein, City Manager

ATTEST:

By: [Signature]  
Deborah M. Andrea, City Clerk



Approved as to form and legal sufficiency:

By: [Signature] FOR  
Glen J. Torcivia, City Attorney

Approved for financial sufficiency:

By: [Signature]  
Bruce T. Miller,  
Financial Services Director