**APPENDIX A-1**

**Coney Island West Parcel A Residential Development**

**Term Sheet for Contract of Sale or Lease**

This term sheet (the “Term Sheet”) sets forth the non-binding proposed terms to be negotiated between the City[[1]](#footnote-2), NYCEDC and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Developer”, and, along with NYCEDC, the “Parties”), for either a) a contract of sale (the “Contract”) or b) a long-term ground lease (the “Lease”) together with c) a Pre-Development Agreement (the “PDA”) as determined by NYCEDC (collectively a, b, and c are “Transaction Documents”) for two lots of land known as Coney Island West Parcel A located between Surf Avenue and Ocean Way and West 21st Street and West 22nd Street (Block 7071, Lot 100 and Lot 123A) (the “Site”) plus up to 175,000 square feet of zoning floor area from Block 7071, Lots 130 and/or 142 (collectively the “RFP Site”) (such development, the “Project”) on the tax map of the Borough of Brooklyn.

This Term Sheet is intended solely as a basis for non-exclusive discussions and is not intended to, nor does it create or give rise to, any contractual or other legally binding or enforceable rights, obligations or liabilities of any kind on the part of the Parties or the City, it being the intent of the Parties that only subsequently formalized Transaction Documents, executed and delivered by the respective Parties, and subject to all necessary review and approvals, shall obligate the Parties on the matters set forth herein. The Parties shall keep this Term Sheet and its terms and conditions confidential except to the extent of disclosure required by applicable law. This Term Sheet is subject in all respects to review and comment by the New York City Law Department.

**Contract Terms:** It is anticipated that the Contract, subject to all applicable approvals and conditions, will include, without limitation, the terms below.

|  |  |
| --- | --- |
| 1. **Site and RFP Site**
 | Block 7071, Lots 100 and 123A (the “Site”) plus up to 175,000 square feet of zoning floor area from Block 7071, Lots 130 and/or 142 (collectively the “RFP Site”) on the tax map of Borough of Brooklyn.  |
| 1. **Sellers**
 | NYCEDC |
| 1. **Purchaser**
 | [Legal Name]The Developer will consist of the following:[name of entity or individual, % equity owned][name of entity or individual, % equity owned] |
| 1. **Development Program**
 | Developer will be expected to satisfy the affordability requirements of New York State Real Property Tax Law (“RPTL”) §485-x.

|  |  |  |  |
| --- | --- | --- | --- |
|  | ZSF | GSF | RSF |
| Residential |  |  |  |
| Retail |  |  |  |
| Commercial |  |  |  |
| Community Facility |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | ZSF | GSF |  |
| Open Space |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | ZSF | GSF | # of Spaces |
| Parking  |  |  |  |

Unit Mix:

|  |  |
| --- | --- |
|   | Unit Count[[2]](#footnote-3) |
| Market Rate |  |
| Affordable |  |
| [ ]% AMI |  |
|  | **Market** | **Affordable** |
| Studio |  |  |
| One Bedroom |  |  |
| Two Bedroom  |  |  |
| Three Bedroom |  |  |

 |
| 1. **Execution Date**
 | Date Contract is fully executed |
| 1. **Closing Date**
 | [18] months from Execution Date |
| 1. **Downpayment**
 | 10% of Purchase Price  |
| 1. **Purchase Price**
 | The total Purchase Price is [$XX] Dollars, with [$XX] due on the Execution Date and the remainder is payable on the Closing Date.  |
| 1. **Administrative Fee**
 | The Administrative Fee is $250,000 dollars, payable on the Execution Date. |
| 1. **Developer Accepts RFP Site As-Is**
 | Developer agrees to accept the RFP Site “as is” Developer is solely responsible for the cost of any due diligence it elects to undertake. |
| 1. **Preliminary Obligations**
 | 1. Within 60 days of the Execution Date, deliver a draft Technical Memorandum to NYCEDC;
2. Within 90 days of the Execution Date, obtain and send a title report and American Land Title Association survey of the RFP Site to NYCEDC;
3. Within 180 days of the Execution Date, deliver a schematic design package, including without limitation, site plans, elevations, sections, massing diagrams, floor plans, circulation plans, major systems plans, and construction staging. Such construction staging must be compliant with the Parking Term Sheet and maintain 160 parking spaces on the Site or in reasonable proximity to the Site at all times;
4. Complete all due diligence by the Closing Date.
 |
| 1. **Project Budget**
 | Developer will provide a final Project budget no later than 30 days prior to the Closing Date. |
| 1. **Select Closing Conditions**
 | Conditions to be met by the Closing Date include, but are not limited to: 1. Evidence of debt and equity financing greater than or equal to the Project budget;
2. Closing on all construction financing;
3. Posting the completion bond or guaranty.
 |
| 1. **Appraisal**
 | Developer shall pay for all appraisal fees in connection with the Project, including appraisals procured by NYCEDC or the City. Developer shall pay for all appraisal fees in advance. |
| 1. **Permitted Uses**
 | The Project will be constructed in accordance with the Development Program and Developer will not make any changes to the Development Program without prior written approval by NYCEDC. The deed shall restrict the Site to the Development Program for [30] years from the Closing Date.  |
| 1. **Construction Commencement Date**
 | [6] months from the Closing Date |
| 1. **Construction Completion Date**
 | Following the Construction Commencement Date, Developer shall prosecute construction of the Project with diligence and continuity and achieve substantial completion, as evidenced by receipt of a temporary certificate of occupancy (“TCO”) from DOB, within 36 months of the Construction Commencement Date; Developer shall then diligently and in good faith pursue a final certificate of occupancy for the Project.  |
| 1. **Transfers/Assignments**
 | Developer shall not be permitted to sell or otherwise assign its interest in the RFP Site for a period of [5] years following the Construction Completion Date. This restriction shall not apply to a foreclosure or a transfer in lieu of foreclosure under a mortgage held by a qualified institutional lender (to be defined in the Transaction Documents) securing construction financing or a permanent "take-out" loan with regard to such construction financing.  |
| 1. **Sustainability**
 | Project shall be compliant with all applicable laws, including Local Law 97. |
| 1. **Development Rights**
 | City to retain all excess development rights for the RFP Site  |
| 1. **Approvals**
 | In coordination with NYCEDC, Developer shall obtain any required approvals, including those required under City Charter 384(b)(4), and shall be responsible for all costs associated with such approvals. |
| 1. **Recording Costs and Transfer Tax**
 | Developer will be solely responsible for any and all transfer taxes calculated as if the RFP Site were owned by a private entity rather than by the City. |
| 1. **Outside Counsel**
 | In the event that a condominium structure is created as part of the Project, Developer will be required to pay for NYCEDC’s and the City’s condominium counsel. |
| 1. **Completion Bond / Guaranty**
 | A performance or completion bond or guaranty satisfactory to the City and NYCEDC, to secure the faithful performance and completion of the Project, shall be required. Any completion or performance bond must be issued by a surety company licensed or authorized to do business in New York State for 100% of the aggregate costs and expenses. If prior to substantial completion as evidenced by receipt of a TCO, the completion bond is cancelled or otherwise ceases to be in full force and effect, then, within ten (10) days after notice of the foregoing, Developer shall provide a replacement bond acceptable to the City in its sole discretion. |
| 1. **Environmental Remediation and Indemnification**
 | Developer is responsible for all costs associated with environmental remediation and shall indemnify the City, NYCEDC, and NYCLDC from any liability relating to environmental conditions.  |
| 1. **M/WBE Participation**
 | Developer shall make good faith efforts to ensure that participation of minority- and women-owned businesses (“MWBEs”) meets or exceeds its utilization goal of 25% of hard and soft costs of the design and construction of the Project. Developer shall submit its MWBE participation plan to NYCEDC for review and approval at or before the Closing Date. |
| 1. **Indemnification**
 | Developer shall forever defend, indemnify, and hold harmless the City, NYCLDC, NYCEDC, and their respective officials, directors, members, principals, servants, officers, agents, representatives and employees from and against any and all obligations, liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments of whatever kind or nature, known or unknown, contingent or otherwise arising from the Transaction Documents, the Parking Agreement (defined in the Parking Term Sheet), and/or the purchase and/or lease and/or the use and/or ownership of the RFP Site, including, without limitation, personal or bodily injury (including death) of or to any person or persons, including, without limitation from or related to the presence, release or threatened release, storage, transportation or disposal of hazardous materials, or any damage to property of any nature or any and all environmental liabilities and any claim the Stadium Tenant (defined in the Parking Term Sheet) may bring related to Developer’s breach of the terms of the Parking Agreement, including without limitation any claim by the Stadium Tenant for reimbursement of the cost of required replacement parking. This section shall survive the closing. The City’s and NYCEDC’s standard indemnification language will be included in the Transaction Documents.  |
| 1. **General Terms**
 | In addition to the key business terms set forth above, the Contract will include all provisions included in and conform to NYCEDC’s form Contract. |

**Additional Lease and PDA Terms:** If the Transaction Documents include a Lease and a PDA, the terms will include, but not be limited to, the items below in addition to those detailed above, as modified for a Lease or PDA.

|  |  |
| --- | --- |
| 1. **Landlords**
 | City for Lot 100 and NYCEDC for Lot 123A  |
| 1. **Tenant**
 | [Legal Name]The Developer will consist of the following:[name of entity or individual, % equity owned][name of entity or individual, % equity owned] |
| 1. **Lease Administrator**
 | NYCEDC  |
| 1. **Lease Term**
 | 99 Years  |
| 1. **PDA Security Deposit**
 | Upon execution of the PDA, Developer shall make a $500,000 payment to NYCEDC as a one-time security deposit (“PDA Security Deposit”). NYCEDC will retain the PDA Security Deposit and upon Closing credit the PDA Security Deposit against the Lease Security Deposit or rent at the election of the Developer.  |
| 1. **Lease Base Rent**
 | Base Rent shall be [$XX]. Base Rent shall be reset at the 35th, 50th and 75th lease years to reflect the fair market rental value of the RFP Site as determined by an independent appraisal, the expense of which will be covered by the Developer.Base Rent shall escalate by 3% annually. Under no circumstances shall the Base Rent be less than either (i) the Base Rent in effect in the last year of the prior period or (ii) the cost for the Lease Administrator to administer the Lease. |
| 1. **Lease Security Deposit**
 | Upon execution of the Lease, Developer shall provide a security deposit which shall be equal to the first Lease year’s Base Rent and PILOT. At the start of each year of the Lease Term, Developer will supply the Lease Administrator with any amount needed to maintain the Lease Security Deposit in an amount equal to that year’s Base Rent and PILOT.  |
| 1. **Additional Preliminary Obligations – PDC Approval**
 | Within [180] days of execution of the PDA, Developer shall submit to NYCEDC all materials necessary for conceptual review of the Project by the City’s Public Design Commission (“PDC”) and then pursue preliminary and final design approval from PDC with diligence. |
| 1. **Additional Select Closing Conditions**
 | Conditions to be met by the beginning of the Lease Term include, but are not limited to: 1. Posting a payment bond or guaranty that complies with Section 5 of the New York State Lien Law with requirements as specified in the Lease;
2. Executed regulatory agreement(s)/restrictive declaration(s) with the New York City Department of Housing Preservation and Development (“HPD”); Developer shall not seek or receive housing financial assistance from the City or State;
3. All approvals and permits needed to commence construction; and
4. receipt of all PDC approvals.
 |
| 1. **Wage Levels / 485-x**
 | Developer agrees to comply with all requirements of the Affordable Neighborhoods for New Yorkers tax incentive, RPTL 485-x including, but not limited to, affordability and labor requirements. |
| 1. **Payment in Lieu of Taxes (“PILOT”)**
 | The Lease will require Developer to pay PILOT in an amount equivalent to taxes that would otherwise have been payable to the City if the RFP Site were owned in fee by a private entity rather than by the City. If the Project meets all of the requirements for a property-tax abatement available under any New York State law, such as RPTL Section 485-x, then Developer would be entitled to an abatement of PILOT payments consistent with such statute.Developer shall pay all transfer taxes, mortgage recording taxes, and sales taxes imposed by the City and the State of New York in connection with the transaction contemplated herein, regardless of the involvement of the City or NYCEDC in the transaction. |
| 1. **Payment Bond / Guaranty**
 | Developer shall post and maintain, or cause to be posted and maintained, a payment bond or other form of undertaking that complies with Section 5 of the New York Lien Law guaranteeing prompt payment of moneys due to all contractors, subcontractors and persons furnishing labor or materials. With respect to any payment guaranty provided in fulfillment of this requirement, the guarantor shall be subject to a net worth covenant and financial reporting requirements during the term of the guaranty. Any payment bond must be satisfactory to the City and NYCEDC and issued by a surety company licensed or authorized to do business in New York State for 100% of the aggregate costs and expenses. |
| 1. **General Terms**
 | In addition to the key business terms set forth above, the Lease and PDA will include all provisions included in and conform to the City’s or NYCEDC’s form Lease and PDA. |

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

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

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[DEVELOPER]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

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

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Capitalized terms not defined herein are defined in the request for proposals (“RFP”) to which this Appendix A-1 is attached. [↑](#footnote-ref-2)
2. Must be greater than 100 [↑](#footnote-ref-3)