



To: Diana Gomez

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "C. Leen", is written over the name of the City Attorney.

RE: Legal Opinion Regarding Settlement Agreement with Astor Trolley, LLC

Date: August 9, 2016

I have reviewed the relevant documents, including Resolution Nos. 2014-152 and 2014-153 (both attaching the Memorandum of Understanding), the Settlement Agreement, Purchase and Sale Agreement, and related documents. Pursuant to section 2-201(e)(1) and (8) of the City Code, it is my opinion and interpretation that the \$3.9 million in funds comprising the purchase price are unrestricted as to their use, whereas the \$1 million development fee is restricted in the usual manner for regulatory fees to the appropriate departments. I am attaching Resolution Nos. 2014-152 and 2014-153 (both attaching the Memorandum of Understanding) to this opinion, as they are the best indicia of the Commission's intent. As you will see, there is no restriction as to use of the \$3.9 million in funds.

Of course, through the settlement, the Commission expects that the City's trolley service will have a sufficient storage/maintenance facility, with staff retaining discretion to achieve this objective subject to the Commission's oversight.

From: Leen, Craig
To: Paulk, Enga
Subject: FW: Trolley Settlement
Date: Tuesday, August 09, 2016 4:26:52 PM
Attachments: [image001.png](#)
[image002.png](#)
[Resolution No. 2014-152 and Memorandum of Understanding.pdf](#)
[Resolution No. 2014-153 and Memorandum of Understanding.pdf](#)

Please publish.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Tuesday, August 09, 2016 4:26 PM
To: Gomez, Diana
Cc: Ramos, Miriam; Fernandez, Frank; Iglesias, Peter; Suarez, Cristina
Subject: RE: Trolley Settlement

City Attorney Opinion

I have reviewed the relevant documents, including Resolution Nos. 2014-152 and 2014-153 (both attaching the Memorandum of Understanding), the Settlement Agreement, Purchase and Sale Agreement, and related documents. Pursuant to section 2-201(e)(1) and (8) of the City Code, it is my opinion and interpretation that the \$3.9 million in funds comprising the purchase price are unrestricted as to their use, whereas the \$1 million development fee is restricted in the usual manner for regulatory fees to the appropriate departments. I am attaching Resolution Nos. 2014-152 and 2014-153 (both attaching the Memorandum of Understanding) to this opinion, as they are the best indicia of the Commission's intent. As you will see, there is no restriction as to use of the

\$3.9 million in funds.

Of course, through the settlement, the Commission expects that the City's trolley service will have a sufficient storage/maintenance facility, with staff retaining discretion to achieve this objective subject to the Commission's oversight.

Craig E. Leen, City Attorney

Board Certified by the Florida Bar in

City, County and Local Government Law

City of Coral Gables

405 Biltmore Way

Coral Gables, Florida 33134

Phone: (305) 460-5218

Fax: (305) 460-5264

Email: cleen@coralgables.com

From: Gomez, Diana

Sent: Monday, August 08, 2016 10:11 AM

To: Leen, Craig

Cc: Ramos, Miriam; Fernandez, Frank; Iglesias, Peter

Subject: Trolley Settlement

Hi Craig,

Can you please review the Astor Development Settlement and let me know whether or not the \$3.9M settlement is dedicated solely for the Trolley Building or Trolley related use, or can it be used for anything, without restriction?

Please let me know as soon as possible.

Thanks.

Diana M. Gomez

Finance Director
City of Coral Gables
dgomez@coralgables.com
PH: 305.460.5275
FX: 305.460.5376

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2014-152

A RESOLUTION OF THE CITY COMMISSION OF CORAL GABLES, FLORIDA APPROVING A MEMORANDUM OF UNDERSTANDING WITH ASTOR TROLLEY, LLC AND MERRICK MANOR, LLC REGARDING THE SETTLEMENT OF CERTAIN LITIGATION WITH THE CITY INCLUDING THE SALE OF THE CITY LAND AT 4311 S. LE JEUNE ROAD; PROVIDING FOR INDEMNIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Coral Gables is a party to certain litigation now pending in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida styled *City of Coral Gables, Florida, vs. Astor Trolley, LLC and Merrick Manor, LLC f/k/a 4111 Le Jeune, LLC*, Case Number 13-29113-CA-40 (“Litigation”), which relates to the administrative proceeding pending before the Federal Transit Administration, Complaint No. 2013-0131; and

WHEREAS, the parties to the Litigation have agreed to settle the Litigation pursuant to the terms of the Memorandum of Understanding attached hereto as “Exhibit A” to this Resolution (the “MOU”); and

WHEREAS, after conducting a public meeting and considering the advice of the City Attorney and City Administration, the City Commission wishes to approve and enter into the attached MOU.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF CORAL GABLES THAT:

SECTION 1. Recitals. The foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of the Resolution upon adoption hereof.

SECTION 2. Approval of the MOU. The City Commission hereby approves the attached MOU subject to all terms and conditions therein.

SECTION 3. Implementation. The City Manager, in conjunction with the City Attorney, is hereby authorized and directed to take all steps necessary to implement the terms of the MOU, including the negotiation and execution of the final settlement agreement and related documents.

SECTION 4. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS FOURTH DAY OF AUGUST, A.D., 2014.

(Moved: Quesada / Seconded: Lago)

(Yeas: Keon, Kerdyk, Lago, Quesada and Cason)

(Majority: (5-0) Vote)

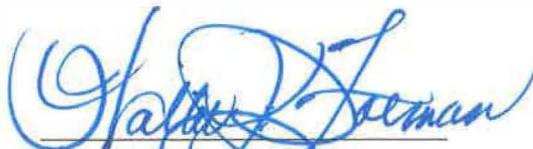
(Agenda Item: A-3.1)

APPROVED:



JIM CASON
MAYOR

ATTEST:



WALTER J. POEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY

MEMORANDUM OF UNDERSTANDING

This is a Memorandum of Understanding (“MOU”) made and entered into this 4th day of August, 2014 between the City of Coral Gables, Florida, a Florida municipality (the “City”) and Astor Trolley LLC, a Florida limited liability company (“Astor”) and Merrick Manor, LLC, f/k/a 4111 Le Jeune LLC, a Florida limited liability company (“Merrick”). Astor and Merrick are collectively referred to in this MOU as “Developer.”

I. RECITALS

Astor is the current owner of the land and building located at 3320 Southwest 37th Avenue in Miami, Florida (the “Astor Property”) and City is the owner of the land and building located at 4133 South Le Jeune Road, Coral Gables, Florida (the “City Property”); and

The City Property is currently used by the City for, among other things, the regular repair and storage of City’s eleven (11) vintage trolley-style public buses; and

Astor and the City entered into a Land Exchange Agreement (the “**LEA**”) on or about September 20, 2012, pursuant to which City agreed to convey the City Property to Astor in exchange for the Astor Property, subject to certain contingencies and obligations; and

Prior to the closing of the transaction contemplated under the LEA various disputes arose between the parties which resulted in the City initiating an action in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida styled *City of Coral Gables, Florida v. Astor Trolley, LLC and Merrick Manor, LLC, f/k/a 4111 le Jeune, LLC*, Case No. 13-29113-CA-40 (11th Jud. Cir., Miami-Dade County, Florida.) (the “City Action”); and

The parties, without admitting or conceding any liability or wrongdoing whatsoever relating to the LEA, have concluded that it is in their best interests to settle their disputes by entering into a settlement agreement and an amendment to the LEA to avoid protracted, time-consuming and costly litigation.

The purpose of this MOU is to set forth the principal terms of a settlement agreement and amended LEA.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:



II. TERMS

1. Transfer of Land. Upon execution of a settlement agreement and an amendment to the LEA by and between the parties, and payment of \$3.9 million, the City shall transfer the City Property to the Developer prior to October 4, 2014, and will lease back the facility for use of the City's trolley operations at a rate of \$1 per year, for a term not to exceed one (1) year unless otherwise agreed by the Developer, but for a minimum term of eight (8) months. After eight (8) months, the Developer may terminate the lease to proceed with construction on the property.

2. Development of Mixed Use Building. Contingent on obtaining an approval from the City Commission (pursuant to Article 3, Division 18 of the City Zoning Code), which is being reviewed in the Commission's quasi-judicial capacity, Developer shall be permitted to construct the project on the property at 4111 LeJeune Avenue in Coral Gables, FL (the Merrick Manor Project), which project shall:

- Be permitted to have up to 4.375 FAR;
- Be permitted to have up to 19% reduction in required parking;
- Shall not exceed 8 stories (87 feet) in height along LeJeune Road (commercial zone);
- Shall not exceed 10 stories (100 feet) in height along Laguna (industrial zone);
- Shall comply with the City's Mediterranean design guidelines, including , but not limited to, an arcade along LeJeune with an appropriately wide sidewalk;
- Shall include upgraded sewer capacity as needed; and
- mitigate any issues raised by their traffic consultant in an updated traffic study, as such mitigation is reasonably agreed upon by the City of Coral Gables' traffic consultant.

The parties will continue to have the same obligations with regard to the City Streetscape Improvements, Undergrounding, and the Off-Site Improvements set forth and defined in the LEA. Additionally, the City shall provide to Developer an easement for the installation of a sewer line through the City's alley running from the Merrick Manor Project to Laguna Avenue.

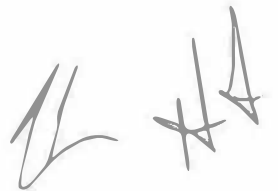
Handwritten signatures in blue ink, appearing to be initials or names, located in the bottom right corner of the page.

Developer shall comply with all other regulatory parameters of the City, including, but not limited to, obtaining final Board of Architect approval (subject to all rights and remedies, including appeal). The City will expedite its review of Developer's plans, making all reasonable efforts to review Developer's plans as soon as they are submitted to Development Services. Developer will contact Jane Tompkins, at 305-460-7231 jtompkins@coralgables.com to let her know when plans are submitted, so she can alert staff to prioritize the review.

3. City Fees. Developer shall pay an inclusive Fee of \$1 million for all impact fees, building fees, MOT fees, and Art in Public Places fees for the initial construction of the Merrick Manor Project. The Developer shall be required to meet all obligations of agencies other than the City.

4. City Condominium Unit. After obtaining a certificate of occupancy for the Merrick Manor Project, the Developer will convey a condominium unit on the first floor of approximately 500 square feet that the City plans to use as a Police substation, along with at least two regular parking spaces. The unit shall not be included in the calculation for FAR. The unit will have electricity, phone lines, and computer lines available for connection. The unit will have access to restrooms. Developer will consider making secured parking available at the project for the City's police SWAT vehicles. The City will provide the parameters for the vehicles to the Developer, who may in its discretion, determine if such accommodation is feasible.

The condominium unit will be subject to the condominium documents, which shall provide at a minimum: the unit may be freely transferable by the City without approval of the association, subject to the restriction imposed on other commercial unit owners (if any); the unit may be used as a police substation including office and administrative operations, and for any other use permitted under the City's Comprehensive Plan and Zoning Code, as well as any other governmental use; the rules, regulations, bylaws and other governing documents of the Association shall not in any way restrict the intended use of the unit as a police substation, including hours of operation; the unit shall only be subject to condominium assessments applicable to commercial unit owners and shall not be assessed more than its proportionate share for the entire building gross square footage; the Association shall not have the power to amend



any of these provisions without the agreement of the owner of the unit; and the parking spaces for the unit shall be assigned.

5. FF&E. To the extent possible, Developer will convey to City the FF & E described in the LEA, including, but not limited to, the hydraulic lift, the retractable electric drop cord & lights, the retractable compressed air reels, the retractable trolley exhaust reels, the air compressor and dryer, storage cabinets, work benches, pressure washer, pa system, card reader system, and fire alarm control system. The Developer will not transfer to the City any rights to the Astor Property (colloquially known as the “Coconut Grove property”), as defined in the LEA, and the City will not acquire or use it.

6. Attorney Fees and Third Party Costs. Each party will bear its own attorney fees and third party costs. Notwithstanding the foregoing, the City shall retain the \$78,000 already paid as Reimbursable Expenses pursuant to the Land Exchange Agreement.

7. Mutual Releases. The parties will exchange mutual releases in the Settlement Agreement.

8. Final Agreement. This MOU is a good faith expression of and instruction to the parties to enter into a final binding “Settlement Agreement” incorporating each of the foregoing terms and other reasonable and necessary terms to effectuate the interest of the parties. Such final Settlement Agreement must be executed by both parties with forty five (45) days of this MOU or this MOU shall expire and shall be of no force or effect.

[SIGNATURE PAGES TO FOLLOW]

Handwritten signatures of two individuals, likely representing the parties to the agreement.

ASTOR TROLLEY, LLC

By: Henry Torres
Manager-Member

Print Name: Henry Torres

Date: 8/1/14

Witness Signature

Witness Signature

Printed Name

Printed Name

Date

Date

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was subscribed, sworn and affirmed to before me this _____ day of _____, 2014, by _____, as _____ of **ASTOR TROLLEY, LLC**, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of **ASTOR TROLLEY, LLC**, and who is personally known to me, or who provided the following identification _____

Notary Public, State of _____

(Print Notary Name)

Commission No.: _____

My commission expires: _____

**MERRICK MANOR, LLC, F/K/A 4111 LE
JEUNE, LLC**

By: *Henry Torres* 8/1/14
Manager-Member

Print Name: Henry Torres

Witness Signature

Witness Signature

Printed Name

Printed Name

Date

Date

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was subscribed, sworn and affirmed to before me this ____ day of _____, 2014, by _____, as _____ of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, and who is personally known to me, or who provided the following identification _____

Notary Public, State of _____

(Print Notary Name)

Commission No.: _____


My commission expires: _____

This MOU is contingent upon approval of the City Commission.

ATTEST:

CITY OF CORAL GABLES, FLORIDA

By: _____
City Clerk

By:  _____
City Attorney, pursuant to the authority granted
under Section 2-201(e)(6) of the City Code

Print Name: Walter J. Foeman

Print Name: Craig E. Leen

Date: _____

Date: 8/1/14

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was subscribed, sworn and affirmed to before me this ____ day of _____, 2014, by _____, as City Attorney for the **CITY OF CORAL GABLES, FLORIDA** pursuant to the authority granted under Section 2-201(e)(6) of the City Code who has sworn he/she is authorized to sign this Settlement Agreement on behalf of the **CITY OF CORAL GABLES, FLORIDA**, and who is personally known to me, or who provided the following identification _____

Notary Public, State of Florida

(Print Notary Name)

Commission No.: _____

My commission expires: _____

ASTOR TROLLEY, LLC

By: Henry Torres 8/19/14
Manager-Member

Print Name: Henry Torres

Date: _____

Susan DaCosta
Witness Signature

SUSAN DACOSTA
Printed Name

8/19/14
Date

Billy Y. Urquiza
Witness Signature

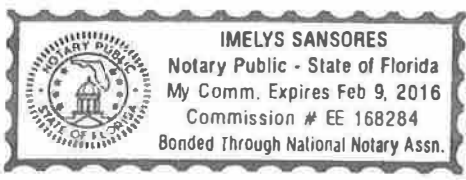
Billy Y. Urquiza
Printed Name

8/19/2014
Date

STATE OF Florida)

COUNTY OF Miami-Dade

The foregoing instrument was subscribed, sworn and affirmed to before me this 19th day of August, 2014, by Henry Torres, as Manager-Member of ASTOR TROLLEY, LLC, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of ASTOR TROLLEY, LLC, and who is personally known to me, or who provided the following identification _____



Imelys Sansores
Notary Public, State of Florida
Imelys Sansores
(Print Notary Name)

Commission No.: EE 168284

My commission expires: 02/09/2016

MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC

By: Henry Torres 8/19/14
Manager-Member

Print Name: Henry Torres

Susan Da Costa
Witness Signature

SUSAN DACOSTA
Printed Name

8/19/14
Date

Billy Y. Urguia
Witness Signature

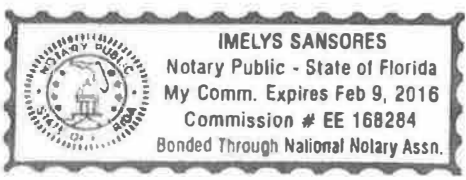
Billy Y. Urguia
Printed Name

8/19/2014
Date

STATE OF Florida)

COUNTY OF Miami Dade

The foregoing instrument was subscribed, sworn and affirmed to before me this 19th day of AUGUST, 2014, by Henry Torres, as Manager-Member of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, and who is personally known to me, or who provided the following identification _____



Imelys Sansores
Notary Public, State of Florida
Imelys Sansores
(Print Notary Name)

Commission No.: EE 168284

My commission expires: 02/09/2016

This MOU is contingent upon approval of the City Commission.

ATTEST:

CITY OF CORAL GABLES, FLORIDA

By: Walter Foeman
City Clerk

By: [Signature]
City Attorney, pursuant to the authority granted under Section 2-201(e)(6) of the City Code

Print Name: Walter J. Foeman

Print Name: Craig E. Leen

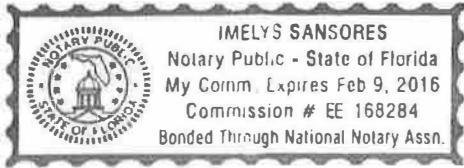
Date: August 19, 2014

Date: 8/19/14

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was subscribed, sworn and affirmed to before me this 19th day of August, 2014, by Craig E. Leen, as City Attorney for the **CITY OF CORAL GABLES, FLORIDA** pursuant to the authority granted under Section 2-201(e)(6) of the City Code who has sworn he/she is authorized to sign this Settlement Agreement on behalf of the **CITY OF CORAL GABLES, FLORIDA**, and who is personally known to me, or who provided the following identification _____



[Signature]
Notary Public, State of Florida
Imelys Sansores
(Print Notary Name)

Commission No.: EE 168284

My commission expires: 02/09/2016

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2014-153

A RESOLUTION OF THE CITY COMMISSION OF CORAL GABLES PURSUANT TO ARTICLE 3, DIVISION 18 OF THE CORAL GABLES ZONING CODE REVIEWING AND MAKING DETERMINATION REGARDING THE REQUEST FOR CITY COMMISSION APPROVAL OF GOVERNMENT SETTLEMENT AS TO CITY OF CORAL GABLES, FLORIDA V. ASTOR TROLLEY, LLC AND MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC, CASE NO. 13-29113-CA-40 (11TH JUDICIAL CIRCUIT, MIAMI-DADE COUNTY, FLORIDA), AND RELATING TO THE ADMINISTRATIVE MATTER PROCEEDING BEFORE THE FEDERAL TRANSIT ADMINISTRATION, COMPLAINT NO. 2013-0131; AND REVIEWING AND MAKING DETERMINATION REGARDING DEVELOPMENT REQUESTS AS TO THE PROPOSED MIXED USE DEVELOPMENT AT 301 ALTARA AVENUE, CORAL GABLES, FLORIDA, WHICH ARE PART OF THE PROPOSED GOVERNMENT SETTLEMENT.

WHEREAS, the City of Coral Gables is a party to certain litigation now pending in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida styled *City of Coral Gables, Florida, vs. Astor Trolley, LLC and Merrick Manor, LLC f/k/a 4111 Le Jeune, LLC*, Case Number 13-29113-CA-40 (“Litigation”), which relates to the administrative proceeding pending before the Federal Transit Administration, Complaint No. 2013-0131; both of which matters relate to Title VI of the Civil Rights Act; and

WHEREAS, the City Commission has reviewed the Request for City Commission Approval of Government Settlement, along with the proposed development, and the City Attorney Recommendation of Government Settlement, and comments and recommendations of City staff, including the designated Development Review Officer; and

WHEREAS, in accordance with the requirements in Article 3, Division 18 of the Zoning Code, the Commission held a quasi-judicial hearing at which testimony was taken and all interested parties had the opportunity to be heard; and

WHEREAS, the Commission has considered the record, and weighed the following criteria established in section 3-1805(A)(1)(a-h) of the Zoning Code:

- a. *The property is owned, or partially owned, by the City or will be owned, or partially owned, by the City as part of implementation of the Government Settlement;*
- b. *The proposed use of a property has a combined government and private use and facilitates important public policy objectives that are identified in the Comprehensive Plan, including but not limited to improvement of mobility alternatives to the automobile as described in the Mobility Element;*
- c. *Implementation of the Government Settlement is designed to redress the effects of alleged discrimination on the basis of a protected classification;*
- d. *Implementation of the Government Settlement resolves a federal or state administrative proceeding or will be made part of a consent order;*
- e. *Implementation of the Government Settlement will further the protection of the public health, safety or welfare, including but not limited to the remediation or prevention of allegedly discriminatory practices and the protection of the public health, environment, or natural resources;*
- f. *Implementation of the Government Settlement will facilitate the resolution of any potential conflict between the Zoning Code and a federal, state, or county statute or provision that pre-empts local regulation in accordance with Section 1-109.F of the Zoning Code;*
- g. *The proposed use is compatible with the nature, condition and development of adjacent uses, buildings and structures and will not adversely affect the adjacent uses, buildings or structures;*
- h. *The nature of the proposed development is not detrimental to the health, safety and general welfare of the community.*

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. The City Commission hereby finds that all eight of the factors in section 3-1805(A)(1)(a-h) of the Zoning Code are present and answers them affirmatively. After weighing the factors, the City Commission finds that the development requests should be granted for a mixed use development at 301 Altara Avenue, Coral Gables, Florida, that will include residential, commercial, and municipal uses.

SECTION 3. In authorizing development of the property, and providing appropriate relief under Article 3, Division 18 of the Zoning Code, the City Commission grants the following development requests:

- (1) Up to 4.375 F.A.R.
- (2) Up to a 19% reduction in required parking
- (3) Up to 8 stories (87 feet) in height along LeJeune Road
- (4) Up to 10 stories (100 feet) in height along Laguna

Consistent with the findings discussed herein, these development requests have been granted to facilitate resolution of matters relating to Title VI of the Civil Rights Act.

SECTION 4. The development shall comply with other applicable provisions of the Zoning Code.

SECTION 5. That said Resolution shall become effective upon the date of its adoption.

PASSED AND ADOPTED THIS FOURTH DAY OF AUGUST, A.D., 2014.

(Moved: Quesada/ Seconded: Lago)

(Yeas: Kerdyk, Lago, Quesada, Keon and Cason)

(Majority: 5-0)

(Agenda Item: A-3)



JIM CASON
MAYOR

ATTEST:



WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY

MEMORANDUM OF UNDERSTANDING

This is a Memorandum of Understanding (“MOU”) made and entered into this 4th day of August, 2014 between the City of Coral Gables, Florida, a Florida municipality (the “City”) and Astor Trolley LLC, a Florida limited liability company (“Astor”) and Merrick Manor, LLC, f/k/a 4111 Le Jeune LLC, a Florida limited liability company (“Merrick”). Astor and Merrick are collectively referred to in this MOU as “Developer.”

I. RECITALS

Astor is the current owner of the land and building located at 3320 Southwest 37th Avenue in Miami, Florida (the “Astor Property”) and City is the owner of the land and building located at 4133 South Le Jeune Road, Coral Gables, Florida (the “City Property”); and

The City Property is currently used by the City for, among other things, the regular repair and storage of City’s eleven (11) vintage trolley-style public buses; and

Astor and the City entered into a Land Exchange Agreement (the “**LEA**”) on or about September 20, 2012, pursuant to which City agreed to convey the City Property to Astor in exchange for the Astor Property, subject to certain contingencies and obligations; and

Prior to the closing of the transaction contemplated under the LEA various disputes arose between the parties which resulted in the City initiating an action in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida styled *City of Coral Gables, Florida v. Astor Trolley, LLC and Merrick Manor, LLC, f/k/a 4111 le Jeune, LLC*, Case No. 13-29113-CA-40 (11th Jud. Cir., Miami-Dade County, Florida.) (the “City Action”); and

The parties, without admitting or conceding any liability or wrongdoing whatsoever relating to the LEA, have concluded that it is in their best interests to settle their disputes by entering into a settlement agreement and an amendment to the LEA to avoid protracted, time-consuming and costly litigation.

The purpose of this MOU is to set forth the principal terms of a settlement agreement and amended LEA.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:



II. TERMS

1. Transfer of Land. Upon execution of a settlement agreement and an amendment to the LEA by and between the parties, and payment of \$3.9 million, the City shall transfer the City Property to the Developer prior to October 4, 2014, and will lease back the facility for use of the City's trolley operations at a rate of \$1 per year, for a term not to exceed one (1) year unless otherwise agreed by the Developer, but for a minimum term of eight (8) months. After eight (8) months, the Developer may terminate the lease to proceed with construction on the property.

2. Development of Mixed Use Building. Contingent on obtaining an approval from the City Commission (pursuant to Article 3, Division 18 of the City Zoning Code), which is being reviewed in the Commission's quasi-judicial capacity, Developer shall be permitted to construct the project on the property at 4111 LeJeune Avenue in Coral Gables, FL (the Merrick Manor Project), which project shall:

- Be permitted to have up to 4.375 FAR;
- Be permitted to have up to 19% reduction in required parking;
- Shall not exceed 8 stories (87 feet) in height along LeJeune Road (commercial zone);
- Shall not exceed 10 stories (100 feet) in height along Laguna (industrial zone);
- Shall comply with the City's Mediterranean design guidelines, including but not limited to, an arcade along LeJeune with an appropriately wide sidewalk;
- Shall include upgraded sewer capacity as needed; and
- mitigate any issues raised by their traffic consultant in an updated traffic study, as such mitigation is reasonably agreed upon by the City of Coral Gables' traffic consultant.

The parties will continue to have the same obligations with regard to the City Streetscape Improvements, Undergrounding, and the Off-Site Improvements set forth and defined in the LEA. Additionally, the City shall provide to Developer an easement for the installation of a sewer line through the City's alley running from the Merrick Manor Project to Laguna Avenue.

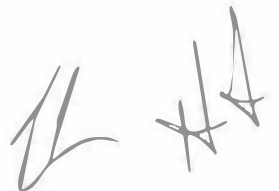


Developer shall comply with all other regulatory parameters of the City, including, but not limited to, obtaining final Board of Architect approval (subject to all rights and remedies, including appeal). The City will expedite its review of Developer's plans, making all reasonable efforts to review Developer's plans as soon as they are submitted to Development Services. Developer will contact Jane Tompkins, at 305-460-7231 jtompkins@coralgables.com to let her know when plans are submitted, so she can alert staff to prioritize the review.

3. City Fees. Developer shall pay an inclusive Fee of \$1 million for all impact fees, building fees, MOT fees, and Art in Public Places fees for the initial construction of the Merrick Manor Project. The Developer shall be required to meet all obligations of agencies other than the City.

4. City Condominium Unit. After obtaining a certificate of occupancy for the Merrick Manor Project, the Developer will convey a condominium unit on the first floor of approximately 500 square feet that the City plans to use as a Police substation, along with at least two regular parking spaces. The unit shall not be included in the calculation for FAR. The unit will have electricity, phone lines, and computer lines available for connection. The unit will have access to restrooms. Developer will consider making secured parking available at the project for the City's police SWAT vehicles. The City will provide the parameters for the vehicles to the Developer, who may in its discretion, determine if such accommodation is feasible.

The condominium unit will be subject to the condominium documents, which shall provide at a minimum: the unit may be freely transferable by the City without approval of the association, subject to the restriction imposed on other commercial unit owners (if any); the unit may be used as a police substation including office and administrative operations, and for any other use permitted under the City's Comprehensive Plan and Zoning Code, as well as any other governmental use; the rules, regulations, bylaws and other governing documents of the Association shall not in any way restrict the intended use of the unit as a police substation, including hours of operation; the unit shall only be subject to condominium assessments applicable to commercial unit owners and shall not be assessed more than its proportionate share for the entire building gross square footage; the Association shall not have the power to amend



any of these provisions without the agreement of the owner of the unit; and the parking spaces for the unit shall be assigned.

5. **FF&E.** To the extent possible, Developer will convey to City the FF & E described in the LEA, including, but not limited to, the hydraulic lift, the retractable electric drop cord & lights, the retractable compressed air reels, the retractable trolley exhaust reels, the air compressor and dryer, storage cabinets, work benches, pressure washer, pa system, card reader system, and fire alarm control system. The Developer will not transfer to the City any rights to the Astor Property (colloquially known as the "Coconut Grove property"), as defined in the LEA, and the City will not acquire or use it.

6. **Attorney Fees and Third Party Costs.** Each party will bear its own attorney fees and third party costs. Notwithstanding the foregoing, the City shall retain the \$78,000 already paid as Reimbursable Expenses pursuant to the Land Exchange Agreement.

7. **Mutual Releases.** The parties will exchange mutual releases in the Settlement Agreement.

8. **Final Agreement.** This MOU is a good faith expression of and instruction to the parties to enter into a final binding "Settlement Agreement" incorporating each of the foregoing terms and other reasonable and necessary terms to effectuate the interest of the parties. Such final Settlement Agreement must be executed by both parties with forty five (45) days of this MOU or this MOU shall expire and shall be of no force or effect.

[SIGNATURE PAGES TO FOLLOW]

Handwritten signatures of two individuals, likely representing the parties to the agreement.

ASTOR TROLLEY, LLC

By: Henry Torres
Manager-Member

Print Name: Henry Torres

Date: 8/1/14

Witness Signature

Witness Signature

Printed Name

Printed Name

Date

Date

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was subscribed, sworn and affirmed to before me this _____ day of _____, 2014, by _____, as _____ of **ASTOR TROLLEY, LLC**, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of **ASTOR TROLLEY, LLC**, and who is personally known to me, or who provided the following identification _____

Notary Public, State of _____

(Print Notary Name)

Commission No.: _____

My commission expires: _____

MERRICK MANOR, LLC, F/K/A 4111 LE
JEUNE, LLC

By: Henry Torres 8/1/14
Manager-Member

Print Name: Henry Torres

Witness Signature

Witness Signature

Printed Name

Printed Name

Date

Date

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was subscribed, sworn and affirmed to before me this ____ day of _____, 2014, by _____, as _____ of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, and who is personally known to me, or who provided the following identification _____

Notary Public, State of _____

(Print Notary Name)

Commission No.: _____


My commission expires: _____

This MOU is contingent upon approval of the City Commission.

ATTEST:

CITY OF CORAL GABLES, FLORIDA

By: _____
City Clerk

By:  _____
City Attorney, pursuant to the authority granted
under Section 2-201(e)(6) of the City Code

Print Name: Walter J. Foeman

Print Name: Craig E. Leen

Date: _____

Date: 8/1/14

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was subscribed, sworn and affirmed to before me this ____ day of _____, 2014, by _____, as City Attorney for the **CITY OF CORAL GABLES, FLORIDA** pursuant to the authority granted under Section 2-201(e)(6) of the City Code who has sworn he/she is authorized to sign this Settlement Agreement on behalf of the **CITY OF CORAL GABLES, FLORIDA**, and who is personally known to me, or who provided the following identification _____

Notary Public, State of Florida

(Print Notary Name)

Commission No.: _____

My commission expires: _____

ASTOR TROLLEY, LLC

By: Henry Torres 8/19/14
Manager-Member

Print Name: Henry Torres

Date: _____

Susan Dacosta
Witness Signature

SUSAN DACOSTA
Printed Name

8/19/14
Date

Billy Y. Urguia
Witness Signature

Billy Y. Urguia
Printed Name

8/19/2014
Date

STATE OF Florida)

COUNTY OF Miami-Dade

The foregoing instrument was subscribed, sworn and affirmed to before me this 19th day of August, 2014, by Henry Torres, as Manager-Member of ASTOR TROLLEY, LLC, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of ASTOR TROLLEY, LLC, and who is personally known to me, or who provided the following identification _____



Imelys Sansores
Notary Public, State of Florida
Imelys Sansores
(Print Notary Name)

Commission No.: EE 168284

My commission expires: 02/09/2016

MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC

By: Henry Torres 8/19/14
Manager-Member

Print Name: Henry Torres

Susan Da Costa
Witness Signature

SUSAN DACOSTA
Printed Name

8/19/14
Date

Billy Y. Urguia
Witness Signature

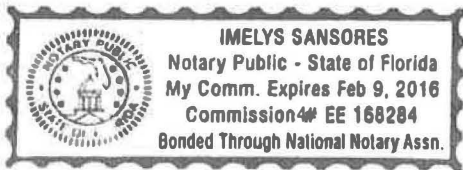
Billy Y. Urguia
Printed Name

8/19/2014
Date

STATE OF Florida)

COUNTY OF Miami-Dade

The foregoing instrument was subscribed, sworn and affirmed to before me this 19th day of August, 2014, by Henry Torres, as Manager-Member of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, who has sworn he/she is authorized to sign this Settlement Agreement on behalf of **MERRICK MANOR, LLC, F/K/A 4111 LE JEUNE, LLC**, and who is personally known to me, or who provided the following identification _____



Imelys Sansores
Notary Public, State of Florida
Imelys Sansores
(Print Notary Name)

Commission No.: EE 168284

My commission expires: 02/09/2016

This MOU is contingent upon approval of the City Commission.

ATTEST:

By: Walter Foeman
City Clerk

CITY OF CORAL GABLES, FLORIDA

By: [Signature]
City Attorney, pursuant to the authority granted under Section 2-201(e)(6) of the City Code

Print Name: Walter J. Foeman

Print Name: Craig E. Leen

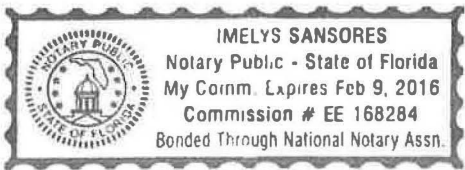
Date: August 19, 2014

Date: 8/19/14

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing instrument was subscribed, sworn and affirmed to before me this 19th day of August, 2014, by Craig E. Leen, as City Attorney for the CITY OF CORAL GABLES, FLORIDA pursuant to the authority granted under Section 2-201(e)(6) of the City Code who has sworn he/she is authorized to sign this Settlement Agreement on behalf of the CITY OF CORAL GABLES, FLORIDA, and who is personally known to me, or who provided the following identification _____ n _____



[Signature]
Notary Public, State of Florida
Imelys Sansores
(Print Notary Name)

Commission No.: EE 168284

My commission expires: 02/09/2016