

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Council Auditor's Office Recommendations that have been addressed:

Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 1.10 / Exhibit C Project	Provided for approximately: 1. 700 spaces of surface parking 2. 400 residential units 3. 700 parking spaces in residential garages 4. 75,000 sq. ft. of retail at Live! 5. 40,000 sq. ft. of office space 6. An upscale hotel with approximately 150 to 250 rooms	Provides for a minimum threshold for project components: 1. Minimum of 600 parking spaces on pond 2. Minimum of 350 residential units 3. Minimum of 600 parking spaces in residential garages 4. Minimum of 75k sq ft retail at Live! 5. Minimum of 35k sq ft of office at Live!	Developer/Administration Amendment at auditor's suggestion of including required minimums (minimums determined by the Developer) Recommendation: Revise the number of hotel rooms to a minimum of 120 rooms to mirror Exhibit C.	Developer agrees. Number of hotel rooms has been updated to a minimum of 120 rooms.
Section 1.12 Developer Obligations	City obligated to make disbursements that are conditioned upon the timely and faithful performance by the Guarantors of their respective obligations under each Completion Guaranty, but if there is a default the City could withhold any disbursements.	The language was struck from this section	Developer/Administration Amendment Recommendation: This section still allows the Completion Guaranty to be terminated by any Guarantor for any reason other than Substantial Completion of any Component or an Event of Default by the City. We recommend the language be amended to only allow termination for completion or default.	Developer agrees. Language has been clarified that Guaranty can only be terminated in accordance with the terms of the Guaranty.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Completion Guaranty		<ol style="list-style-type: none"> 1. Confirms that guarantee is for lien-free substantial completion of the whole project 2. Names the Guarantor for the Hotel Component 3. Provides for the Completion Guaranty to be executed and delivered prior to the Commencement of Construction on the Horizontal Infrastructure 4. Strikes requirement of prior written consent of City to assign Completion Guaranty to substitute Guarantor 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Auditor Amendment 3. Developer/Administration Amendment <p>Recommendation: Add back language that was struck regarding prior consent of City referenced in bullet #4</p>	<p>Recommendation no longer applicable. Prior consent is required under the Completion Guaranty (Ex. F) for the Gecko guarantor (who is the side of the joint venture now providing all the evidence of financial capacity which will be revised from \$229 million to \$279 million) and the Cordish guarantor may only be assigned to a member of the Cordish family.</p>

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Guarantors	City approval of substitute guarantors required	<ol style="list-style-type: none"> 1. Identifies specific guarantor entities. 2. Cordish has the right to replace guarantor with a member of the Cordish family without City consent. 3. Gecko has the right to replace guarantor with a substitute guarantor that has a net worth of at least \$229 million with City consent. 	<ol style="list-style-type: none"> 1. Auditor Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment <p>Recommendations:</p> <ol style="list-style-type: none"> 1. We recommend the Cordish substitute guarantor require City consent and have a defined net worth requirement. 2. We recommend the combined net worth of the guarantors equal the necessary developer investment required to complete the project. 	<ol style="list-style-type: none"> 1. Recommendation no longer applicable. Cordish guarantor may only be assigned to a domestic entity owned or controlled by a member of the Cordish family. 2. Agreed upon change: Gecko Guarantor will be required to provide evidence of tangible net worth of at least \$279M (for the Mixed Residential Units, Hotel, and Live!) and any substitute guarantor that the City approves must be a US citizen or a domestic entity that demonstrates the same financial capacity.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Infrastructure Improvements		Includes improvement to other parking lots owned by the City in the Sports and Entertainment Complex.	Developer/Administration Amendment Recommendation: We recommend that improvements to other surface lots not be included as part of the Infrastructure Improvements.	Recommendation no longer applicable. Improvements to other surface lots are meant to capture additional parking revenue for the City and will require approval of the City.
Project Costs		<ol style="list-style-type: none"> 1. Costs related to development of adjacent property was struck 2. Costs related to existing buildings and fixtures was struck 3. Added language that Project Costs also include improvements made to the parking lots located in the Entertainment District 	<ol style="list-style-type: none"> 1. Auditor Amendment 2. Auditor Amendment 3. Developer/Administration Amendment Recommendation: As mentioned above, we recommend that improvements to other surface lots not be included as part of the Project Costs.	Recommendation no longer applicable as mentioned above in Infrastructure Improvements.
Section 5.1 Development Entitlements		The reversion rights of the Development Rights have been extended from 8 to 10 years	Developer/Administration Amendment Recommendation: The reversion rights of the Development Rights should be 8 years as approved by the DIA Board.	Developer agrees. The reversion rights of the Development Rights have been revised back to 8 years.

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 5.3(e), (f), and (g) – new City Obligations in Project Area</p>		<ol style="list-style-type: none"> 1. Clarifies City’s approval rights over Condominium documents and any amendments. 2. Prohibits Developer from converting any of the residential from rental to ownership. (COJ will not be in a position where its condo rights are subject to the rights of residential condo unit holders.) 3. Adds language that states the City will share in normal assessments for common expenses of the common elements of the Mixed-Use Component at 0.10%. 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment <p>Recommendation: We recommend that the City not share in the normal assessments for common elements of the Mixed-Use Component.</p>	<p>Recommendation no longer applicable. Per OGC, condominium law requires each owner have some share of assessments. The City was allocated a minimum amount of 0.10% to meet requirements of the law while also attempting to minimize the City’s potential financial impact.</p>
<p>Section 5.4 Developer Right of Access</p>			<p>Recommendation: The language regarding the performance bonds for the general contractor should be struck. This language has been included in Exhibit L Insurance and Bonding Requirements.</p>	<p>Developer agrees. Language regarding the performance bonds for the general contractor has been struck in this section since it did not belong and was included in Exhibit L.</p>

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 7.2 Use of City Funds	Could be used on additional scope for infrastructure or in other City-owned assets	Savings will be deposited into Facility Capital Fund to support Live! Maintenance obligations and preserve its value	Developer/Administration Amendment Recommendation: We recommend that the City retain the savings from the Infrastructure Improvements. The Developer is responsible for Live! Capital expenses.	Developer agrees. Language has been revised to allow City to retain savings from Infrastructure Improvements.
Section 8.3 Disbursement of City Fund for Non-Public Costs	Payments were to be disbursed based on actual Direct Costs incurred.	Payments will now be disbursed on the percentage of completion achieved.	Developer/Administration Amendment Recommendation: We recommend that payments be based on actual Direct Costs incurred.	Developer agrees. Language has been revised to reflect the City will pay the City's pro rata percentage based on the actual Direct Costs incurred, as certified to the Construction Inspector. Related to the disbursement requests, the Council Auditor's Office still prefers that in addition to this, the same support (i.e. invoices) that will be provided with the Live! Component and Infrastructure be provided for the payment requests related to the \$52.4 million net loan. However, Developer disagrees.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 8.4 Pari Passu and Pro Rata Disbursements</p>	<p>2. Disbursement of City Funds for the Mixed-Use Component and Hotel Component were expended on a pro rata basis based on work performed and invoiced basis.</p>	<p>1. Appoints construction inspector as person responsible for monitoring disbursement process to ensure pari passu nature (that City and Developer dollars are going in lockstep to the maximum extent possible)</p> <p>2. Disbursement of City Funds for the Mixed-Use and Hotel Components are expended on a pro rata basis based on the percentage of completion.</p>	<p>1. Developer/Administration Amendment 2. Developer/Administration Amendment</p> <p>Recommendations:</p> <p>1. Language should be added stating the pro rata percentage will be provided to the City at Closing. 2. Disbursement of City Funds for the Mixed-Use and Hotel Components should be on a work performed and invoiced basis.</p>	<p>1. Developer agrees. Language has been revised to require pro rata percentage be provided at closing. 2. Developer agrees. Language has been updated to reflect the City will pay the City's pro rata percentage based on the actual Direct Costs incurred.</p>
<p>Section 8.8 Cost Overruns</p>			<p>Recommendation: Language should be added to clarify the Additional City Infrastructure Contribution can only be utilized in accordance with Section 11.2.</p>	<p>Developer agrees. Language has been added to clarify the Additional City Infrastructure Contribution can only be utilized in accordance with Section 11.2.</p>

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 8.9(a) Cost Savings</p>		<p>Language was added stating that cost savings for the Infrastructure Improvements be deposited into the Facility Capital Fund</p>	<p>Developer/Administration Amendment</p> <p>Recommendations:</p> <ol style="list-style-type: none"> 1. We recommend that the City retain the savings from the Infrastructure Improvements. The Developer is responsible for Live! Capital expenses. 2. Clarify that Verified Direct Costs do not include the 7.5% of Developer expense. 	<ol style="list-style-type: none"> 1. Developer agrees. Language has been revised to allow City to retain savings from Infrastructure Improvements. 2. Developer agrees. Language has been clarified to exclude Developer expense from Direct Costs of Infrastructure Improvements in determining the savings.
<p>Section 8.9(b)</p>			<p>Recommendation: Clarify that Direct Costs do not include the 7.5% of Developer expense.</p>	<p>Developer agrees. Language has been clarified to exclude Developer expense from Direct Costs of Live! Component in determining the savings.</p>

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 8.9(c) Cost Savings	Included residential parking garages as part of the Minimum Developer Investment	<ol style="list-style-type: none"> 1. Excludes residential parking garages 2. Includes costs of tenant improvements incurred by third party tenants or subtenants 3. The discount rate of the Hotel Completion Grant is increased from 3.5% to 6.75% 4. In the event there is a Shortfall, and the REV grant is terminated then the full \$12.5 million will still be applied as a credit for the Developer against the shortfall. 5. At the election of the Developer, the Shortfall can be deposited into the Facility Capital Fund 6. Clarifies that any reconciliation is subject to resolution of contractor litigation 	<ol style="list-style-type: none"> 1. Auditor Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment 4. Developer/Administration Amendment 5. Developer/Administration Amendment 6. Developer/Administration Amendment <p>Recommendations:</p> <ol style="list-style-type: none"> 1. The Developer should not have the option to pay any Shortfall, but rather should be a requirement. 2. Remove the Shortfall payment option to the Facility Capital Fund because the Developer is already responsible for future maintenance needs. 3. Return the discount rate of the Hotel Grant to the original value of 3.5%. 4. If the REV Grant is terminated the full amount should not be applied as a credit for the Developer in the reconciliation. 	<ol style="list-style-type: none"> 1. Developer agrees. Language has been clarified to require payment of any Shortfall by the Developer. 2. Developer agrees. Language has been revised to strike option to pay any Shortfall payment into the Facility Capital Fund. 3. Developer agrees. The discount rate for the Hotel Grant has been changed back to 3.5%. 4. Developer agrees. The REV Grant will not be part of the credit calculation if terminated.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 11.2 Reimbursement for Improvements	Additional \$15.1 would be available for a parking garage above the pond. Developer would match any COJ funds used to construct garage.	Clarifies that the \$15.1M is only for cost overruns if needed due to environmental conditions, subsurface conditions, requirements with respect to building the parking lot on the pond, and all such infrastructure work must be within the project.	Developer/Administration Amendment Recommendation: Language concerning the Developer electing to use City Funds to fund construction of a Parking Garage should be struck.	Developer agrees. The language has been removed from the agreement.
Section 16.9 Limitation on Conveyance of Components	No limit on Developer right to transfer after completion	<ol style="list-style-type: none"> 1. Developer agrees not to transfer Hotel or Mixed-Use Components for 5 years after substantial completion 2. Allows the Developer to transfer development rights to the Hotel Component to a hotel developer if a hotel developer requires ownership of the Hotel Component. 	Auditor Amendment Recommendations: The language should be revised to require that if the land for the Hotel component is conveyed to a third-party Developer, the Hotel owner not be allowed to transfer the property for 5 years.	Recommendation no longer applicable. Section 16.9 already requires that the Developer of the Hotel not be allowed to transfer it for 5 years after substantial completion.
Exhibit E Uses of City Funds for Project			Recommendation: We recommend a corrected Exhibit E be attached to the Development Agreement.	Developer agrees. Revised Exhibit E will be attached (Sources and Uses Schedule for Construction of the Project).

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Exhibit H Infrastructure Improvements		Vertical Infrastructure Improvements now include acquisition and installation of any gating, barriers, or structures to facilitate the collection of parking revenues on parking lots subject to the Parking Agreement	Developer/Administration Amendment Recommendation: As mentioned previously, we recommend that improvements to other surface lots not be included as part of the Project Costs. If surface lot improvements remain in the Project, we recommend the definitions of Vertical and Horizontal Infrastructure Improvements mirror Exhibit H.	Developer agrees. Improvements to other surface lots have remained as discussed above. Definitions of Vertical and Horizontal Infrastructure Improvements have been updated to mirror Exhibit H.

Guaranty

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 2 Scope		<ol style="list-style-type: none"> 1. Confirmed that guarantor obligations include payment of all cost overruns and deposit into breadbox trust 2. Confirmed COJ's obligation to disburse funds is conditioned upon guarantor's compliance with terms of development agreement 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Developer/Administration Amendment Recommendation: Due to the provisions in the development agreement that allow for Material Modifications to the project, we recommend language be added to the Guaranty to specify exactly what the Guarantors are guaranteeing will be constructed.	Developer agrees. Language was added to the Development Agreement requiring City Council approval if the project minimum requirements (i.e. residential units, hotel rooms, parking spaces and square footage) are not met.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 11 Assignment to Substitute Guarantor</p>		<p>Provides that any Gecko substitute guarantor has to have a minimum then current net worth of \$229M and any Cordish substitute guarantor has to be owned or controlled by a member of the Cordish family</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: We recommend that both Cordish and any Cordish substitute guarantor be required to have a defined minimum net worth.</p>	<p>Recommendation no longer applicable. Gecko guarantor will provide tangible net worth at level to fulfill developer investment to complete project. This has resulted in a change in the agreement whereby the Gecko guarantor will increase evidence of its financial capacity from \$229 million to \$279 million.</p>
<p>Section 14a Financial Information</p>		<p>Confirms that evidence of Gecko guarantor value was delivered to COJ</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: Additional evidence of Gecko guarantor should be provided to demonstrate net worth requirement has been met.</p>	<p>Developer agrees. Letter from the CFO of Flex-N-Gate (one of Mr. Khan's corporations) attesting to tangible net worth of \$279 million has been provided to the City. However, ideally independent verification is provided through audited financial statements or an irrevocable letter of credit.</p>

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 14b Representation and Warranties</p>		<p>Adds in representations and warranties from the Cordish guarantors to COJ</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: We recommend the Cordish guarantor be required to provide financial information in the same manner as the Gecko guarantor.</p>	<p>Recommendation no longer applicable. Gecko guarantor will provide tangible net worth at level to fulfill developer investment to complete project. This has resulted in a change in the agreement whereby the Gecko guarantor will increase evidence of its financial capacity from \$229 million to \$279 million.</p>

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 15 Delivery of evidence of value</p>	<p>Was only required to provide evidence of net worth prior to execution of development agreement</p>	<p>Evidence of value for the Gecko Guarantor will be delivered at several stages: prior to development agreement execution, prior to commencement of construction for the Live! Component and commencement of construction for the Mixed-Use Component, and prior to commencement of construction of the Hotel Component. This will help ensure guarantor maintains certain value and is able to perform the guaranteed obligations.</p>	<p>Developer/Administration Amendment</p> <p>Recommendations:</p> <ol style="list-style-type: none"> 1. We recommend the Cordish guarantor be required to provide financial information at the same intervals as the Khan guarantor. 2. There is inconsistency between the Guaranty and Development Agreement regarding the date the Completion Guaranty is delivered to the City initially. The Development Agreement states the Guaranty will be delivered prior to the commencement of the Horizontal Infrastructure Improvements. We recommend the language in the Guaranty mirror the language in the Development Agreement. 3. Require evidence of financial capacity be provided at regular intervals until project completion. 	<ol style="list-style-type: none"> 1. Recommendation no longer applicable. Gecko guarantor will provide tangible net worth at level to fulfill developer investment to complete project. 2. Recommendation no longer applicable. Documents contain language stating Completion Guaranty will be delivered prior to commencement of Horizontal Infrastructure Improvements. 3. DIA recommendation to provide re-verification of net worth at commencement of each component, if more than 6 months apart, has been included in agreement. Developer did not agree to a more frequent time period.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Live! Lease

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Florida-Georgia Facility Events		Defined as Facility Events held on the two days before and/or the day of the annual Florida-Georgia Game.	Developer/Administration Amendment Recommendation: The definition needs to be clarified as to the "and/or". The Developer has indicated this should be changed to "and".	Developer agrees. Definition was revised.
Section 12 Capital Projects	Developer may make capital improvements to Live! at its sole cost.	Developer may make capital improvements at its sole cost and for any improvements in excess of \$5M, Developer will provide notice to COJ.	Developer/Administration Amendment Recommendation: The City should approve all improvements greater than \$5M to the Live! Component rather than just receive notification.	Developer compromised. Developer will give notice to City of any capital improvement in excess of \$100,000.

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Parking Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 3.11 Minor and Major District Events</p>		<p>During events that are expected to attract fewer than 25,000 patrons, Developer’s right to offer validated parking is limited to available spaces in the residential garages, pond parking and Lot M.</p> <p>During events that are expected to attract more than 25,000 patrons, Developer’s right to offer validated parking is limited to 400 spaces that are in the residential garages, pond parking or Lots C and D. COJ can also modify employee parking area during major events.</p> <p>During minor or major events, Developer agrees that validated parking can only be offered to hotel guests or customers who purchase goods or services at the project with a value that equals or exceeds the standard event charge for parking for the event(s)</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: Additional clarification is needed regarding the Developer’s ability to use the Residential Garage Public Spaces and Surface Parking Lot for complimentary or discounted validated parking during Major and Minor District Events. This will limit the parking revenue retained by the City, particularly as it relates to Jaguars games.</p>	<p>Developer agrees. Language was revised to clarify City will be compensated for 200 spaces at the average cost per space of surface parking for each Major District Event and now excludes Surface Parking Lot from being available for Developer’s use for Valet and/or Validated parking during such events.</p>

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 4.2 Management of Residential Parking Garages</p>	<p>Developer managed the residential parking garages</p> <p>Parking rates were at “market rates”</p> <p>Specifically named the City Council Auditors as being able to review/audit the books, records, and documents of the Parking Operator</p>	<p>COJ and the residential parking operator will cooperate to determine parking rates and policies in the residential garages</p> <p>Gives COJ the right to approve the management agreement for the residential parking garages</p> <p>Strikes language that parking operator will be paid a market rate fee</p> <p>City Council Auditors was specifically removed from the language concerning any review/audit of the Parking Operators books, records, and documents</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: Provide City Council Auditors with audit rights to review/audit the Parking Operator’s books, records, and documents.</p>	<p>Developer agrees. Language was added back to provide audit rights to the City Council auditors.</p>
<p>Section 4.3 Parking Revenues</p>	<p>Specifies the City shall retain all revenues except as otherwise expressly provided in the agreement</p>	<p>Adds language that the City retains all of the Residential Garage Public Spaces revenue.</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: The language in this section should mirror that of Section 12.6 of the Development Agreement.</p>	<p>Developer agrees. Language was revised to clarify the City’s right to retain revenue.</p>

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 4.8 Casualty and Condemnation		City will repair the surface parking areas in the event of any casualty or condemnation, consistent with its obligations for other parking around the sports complex.	Developer/Administration Amendment Recommendation: Language should be added to clarify the cost of casualty insurance for the Residential Parking Garages will be shared on a 50/50 basis between the City and Developer.	Developer agrees. Language was revised to clarify that casualty insurance will be part of Operating Costs and will be split 50/50.

Air Rights Easement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 4 Additional Improvements		Confirmed that Developer may make additional improvements to the pedestrian walkway at its cost. Any improvements in excess of \$750,000 (increasing at an annual rate of 2%) will require advance notice from Developer to COJ. Confirmed any such additional improvements will be at no cost to the City.	Developer/Administration Amendment Recommendation: The City should be made aware of all improvements to City-owned property that require the City to capitalize the asset.	Developer compromised. Developer will give notice to City of any capital improvement in excess of \$50,000.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Perpetual Access and Use Easement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
<p>Section 4 Additional Improvements</p>		<p>Confirmed that Developer may make improvements to the pedestrian walkway at its cost.</p> <p>Any improvements in excess of \$750,000 (increasing at an annual rate of 2%) will require advance notice from Developer to COJ.</p> <p>Confirmed any such additional improvements will be at no cost to the City.</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: The City should be made aware of all improvements to City-owned property that require the City to capitalize the asset.</p>	<p>Developer compromised. Developer will give notice to City of any capital improvement in excess of \$50,000.</p>

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Council Auditor's Office Recommendations that Remain Open
(Developers Disagree with Recommendations):

Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 1.12 Developer Obligations	City obligated to make disbursements that are conditioned upon the timely and faithful performance by the Guarantors of their respective obligations under each Completion Guaranty, but if there is a default the City could withhold any disbursements.	The language was struck from this section	Developer/Administration Amendment Recommendation: Include language that was struck regarding City disbursements.	Developer disagrees.
Section 8.9(c) Cost Savings	Included residential parking garages as part of the Minimum Developer Investment	<ol style="list-style-type: none"> 1. Excludes residential parking garages 2. Includes costs of tenant improvements incurred by third party tenants or subtenants 3. The discount rate of the Hotel Completion Grant is increased from 3.5% to 6.75% 4. In the event there is a Shortfall, and the REV grant is terminated then the full \$12.5 million will still be applied as a credit for the 	<ol style="list-style-type: none"> 1. Auditor Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment 4. Developer/Administration Amendment 5. Developer/Administration Amendment 6. Developer/Administration Amendment Recommendations: <ol style="list-style-type: none"> 1. The Minimum Developer Investment should not 	<ol style="list-style-type: none"> 1. Developer disagrees.

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
		<p>Developer against the shortfall.</p> <p>5. At the election of the Developer, the Shortfall can be deposited into the Facility Capital Fund</p> <p>6. Clarifies that any reconciliation is subject to resolution of contractor litigation</p>	<p>include the 7.5% Developer expense or the amount should be increased from \$229 million to \$257.1 million as reflected on the Sources and Uses schedule.</p> <p>2. Costs of tenant improvements should not be included as part of the Minimum Developer Investment.</p> <p>3. The Developer should not determine how the Shortfall is paid or deposited to the City.</p> <p>4. Remove cost overruns from reconciliation calculation.</p>	<p>2. Developer disagrees.</p> <p>3. Developer disagrees.</p> <p>4. Developer disagrees.</p>
<p>Section 14.6 Mixed-Use Component Minimum Investment</p>	<p>Minimum investment of \$95M is based on private funding</p>	<p>Minimum investment of \$95M is based on Direct Costs</p>	<p>Developer/Administration Amendment</p> <p>Recommendation: Revise language to base minimum investment on private funding.</p>	<p>Developer disagrees.</p>

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 16.9 Limitation on Conveyance of Components	No limit on Developer right to transfer after completion	<ol style="list-style-type: none"> Developer agrees not to transfer Hotel or Mixed-Use Components for 5 years after substantial completion Allows the Developer to transfer development rights to the Hotel Component to a hotel developer if a hotel developer requires ownership of the Hotel Component. 	Auditor Amendment Recommendation: The City should share in any profits realized by the Developer from the transfer of development rights to the Hotel.	Developer disagrees.

Guaranty – None

Live! Lease

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 5 Lease Term	<ol style="list-style-type: none"> The initial term was 35 years with four 10-year renewal options Tenant can exercise renewal options 180 days prior to the termination of the Lease Term Tenant could not exercise the third and fourth renewal option unless occupancy was at 85% and the facility is in compliance with the Facility Standard of Care 	<ol style="list-style-type: none"> The initial term is 50 years with two 10-year renewal options Tenant can exercise renewal options 180 days but no more than 5 years prior to the expiration of the then-current lease term Provides that occupancy must be 75% to renew. Provides that the Renewal Term shall be on the same terms and conditions as set forth in the Lease. 	<ol style="list-style-type: none"> Developer/Administration Amendment Developer/Administration Amendment Developer/Administration Amendment Recommendation: We recommend that performance requirements, such as certain sales targets or occupancy requirements, be included throughout the term of the lease.	Developer disagrees.

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Parking Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 6.22 Termination	Termination of the parking agreement is not a remedy available to the City if Developer breaches parking agreement	Clarifies neither party may cancel, rescind or otherwise terminate its obligations under the parking agreement because of the other party's breach	Developer/Administration Amendment Recommendation: Language should be added to protect both parties in the event of breach of contract.	Developer disagrees.

Air Rights Easement - None

Perpetual Access and Use Easement – None

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

No Recommendations:

Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 1.8 City / DIA Determinations	2. Private Capital Investment was \$226,800,000	1. Updated and expanded COJ and DIA determinations and expressly incorporate them into the agreement. 2. Clarified that minimum developer investment is \$229M	1. Developer/Administration Amendment 2. Auditor Amendment	
Article II Definitions				
Budget	COJ did not have approval of budget changes to Live! or infrastructure budgets	City Representative has approval over changes in excess of 10% to line items in Live! and infrastructure budgets	Developer/Administration Amendment at auditor’s suggestion for approval of changes in project (Developer determined percentage)	
Developer Improvement	Included an election by the Developer that a parking garage may constitute a Developer Improvement or an Infrastructure Improvement	The election has been removed	Auditor Amendment	
Substantial Completion		Clarifies that a temporary certificate of occupancy is required for hotel, residential and Live! (but not for infrastructure) to be deemed substantially complete	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Vertical Infrastructure	Provided that the Developer could elect one or more additional parking garages may constitute a Vertical Improvement	Removes ability to Developer to add additional parking garages as vertical infrastructure improvements	Developer/Administration Amendment	
Section 3.1 Exclusive Master Developer with City		Clarifies that City will retain title to the stormwater detention pond parking lot and retains any future development rights thereon	Auditor Amendment	
Section 3.3 Amendment to Master Development Plan		Clarifies that any a Material Modification must comply with all regulatory and governmental approvals, including any DDRB approvals	Auditor Amendment	
Section 5.3(g) – Old City Obligations in Project Area	City required to use commercially reasonable efforts to terminate the antenna easement	Covenant has been deleted from agreement	Developer/Administration Amendment	
Section 6.2 Notices to Proceed		Clarified to note that regulatory approvals include DDRB approvals	Developer/Administration Amendment	
Section 6.3 Survey		Clarifies that Developer is obligated to obtain survey at its sole cost and expense. COJ has right to approve legal description.	Developer/Administration Amendment	
Section 6.4 Title Insurance		Developer is required to obtain owner's title policy.	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 6.5 Defect in Title		Developer is required to provide City a notice of any title defects. City is to provide notice of defects it elects to cure, if any. If title defects cannot be cured, then the Developer can terminate the agreement or waive title defects	Developer/Administration Amendment	
Section 6.6 Interests Conveyed		Developer agrees to take title as is, where-is and with-all-faults	Developer/Administration Amendment	
Section 8.7 Loan Proceeds	Could be used on various project components	Can only be used for the Mixed-Use and Hotel Components	Developer/Administration Amendment (Auditor Amendment)	
Section 8.9 (d) Cost Savings		Clarifies that any reconciliation is subject to resolution of contractor litigation	Developer/Administration Amendment	
Section 9.8(a) Warranty and Guarantee of Infrastructure Improvements and Live! Component		Language was added that provides that the Developer shall have the right to enforce any rights or warranties with respect to the Infrastructure Improvements and Live! Component and collaterally assign such rights or warranties to any lender.	Developer/Administration Amendment	
Section 10.1 City Loan Documents		Language was added stating that following repayment in full of all notes and other costs and expenses for the City Loan Program the Developer will deposit any and all funds remaining in the Trust into the Facility Capital Fund.	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 10.2 Conditions to Disbursement Under City Loan Program		<ol style="list-style-type: none"> 1. Developer agrees to provide legal opinions regarding the developer members and to other covenants regarding the existence and governance of such developer members. 2. The City shall be entitled to recover from the Developer expenses incurred in connection with enforcement of City Loan Documents and expenses incurred in connection with the enforcement of the Developer Members to make the required payments into the City Defeasance Trust. 	Developer/Administration Amendment	
Section 11.3 Parking Garages		Strikes language granting Developer the right to build a garage above the pond parking.	Developer/Administration Amendment	
Section 12.2 Parking Facility Operation	Pricing for parking in residential garages will be consistent with rates downtown	<ol style="list-style-type: none"> 1. Clarifies that Developer will not get a management fee for managing the residential parking garages 2. Pricing for parking in residential garages will be no lower than average in downtown 3. Developer commits to no less than 200 Public Spaces in the residential parking garages. 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment 	
Section 12.3 Resident Parking		The revenue from Public Spaces in the Residential Garages will be retained by the City.	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 12.5 Valet Program	Lots M, N and P or any adjacent lots not otherwise in use will be used for Valet Program.	400 spaces within Lots C and D will be used for the Valet Program.	Developer/Administration Amendment	
Section 12.8 Hotel Parking		Clarifies that hotel guests will use the Surface Parking Lot and/or Lots M, N, and P	Developer/Administration Amendment	
Section 13.4 Waiver of Procurement Requirements		Confirms that any public art within the project will be procured consistent with the requirements in the ordinance code	Developer/Administration Amendment	
Section 13.7 Obligation to Commence Project; Development Schedule	Developer agreed to: 1. Apply for permits for environmental within 24 months of Effective Date of agreement. 2. Developer maximum timeline to complete project could be as long as approximately 12 years. 3. Hotel component had an additional 2 years for completion after rest of project.	Developer agrees to: 1. Commence remediation within 6 months of Effective Date of agreement 2. Apply for Regulatory Approval within 18 months of a Site Rehabilitation Completion Order (SRCO) 3. Complete construction within 36 months of receipt of all permits 4. Developer estimated timeline to complete project is approximately 7 years; however, there is no deadline for completion. 5. Hotel will be completed on same timeline as rest of project components A failure of the Developer to cause Substantial Completion of the Hotel Component shall not be deemed a default as to the other Components.	Developer/Administration Amendment based on discussions with Auditors	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
		The City has the right to enforce the Guarantors' obligations under the Completion Guaranty.		
Section 16.4 Permitted Disposition to Tenants		Allows the Developer to enter into leases or other contractual agreements with tenants for parts of the development without the City's consent. However, leases or other contractual agreements with tenants for Live! will be governed by the Live! Lease.	Developer/Administration Amendment	
Section 17.6 Component Development Agreement		At the request of the Developer a separate development agreement for the Mixed-Use Component or Hotel Component with the same provisions can be executed. Also, an amendment to this agreement can be made to remove the component and the city funds allocated to such component from this agreement.	Developer/Administration Amendment	
Section 19.4 Force Majeure		Clarifies that with respect to any delay caused by the current pandemic, a party must show evidence the delay was actually directly caused by the pandemic.	Auditor Amendment	
Section 19.14 No Recording		This agreement shall not be recorded or filed in the public land or other records of any jurisdiction. As part of the Closing Documentation the parties shall execute a Memorandum of Agreement.	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 19.22 Retention of Records; Audit	Inspection of records and audit was limited to the Infrastructure Improvements	Clarified to include documentation for the Project	Auditor Amendment	

Guaranty

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Title Guarantors		Identified the specific guarantor entities (LLC for Cordish and corporation for Gecko)	Auditor Amendment	
2nd Whereas Timing of Delivery		Clarified guaranty is to be delivered to COJ immediately prior to construction of horizontal infrastructure	Developer/Administration Amendment	
Section 4 Remedies		Expressly permits COJ to require specific performance as a remedy	Developer/Administration Amendment	
Section 7 Insurance		<ol style="list-style-type: none"> 1. Provides that if a guarantor receives payment of insurance in respect of any guaranteed obligations prior to performance of the guaranteed obligations, the amount will be held in trust for benefit of the COJ 2. Subordinates any debt between Developer and Guarantor to the guaranteed obligations 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Developer/Administration Amendment 	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Section 22 Termination		The Completion Guaranty will be reduced as Components are substantially completed. Upon substantial completion of the Project, the City will mark the Guaranty "cancelled".	Developer/Administration Amendment	
Section 27 Attorney's Fees	The party prevailing in a suit or proceeding shall be reimbursed for all reasonable attorney's fees	The City and Guarantors will each bear their own attorney's fees and costs.	Developer/Administration Amendment	
Section 30 City authority to change documents		Guarantors authorize COJ, without notice to the guarantors, to approve modifications to the plans and specs and to the development agreement	Developer/Administration Amendment	

Live! Lease

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
2 nd Whereas Clause	Provided for approximately 75,000 sq. ft. of retail/commercial space and 40,000 sq. ft. of office space	Provides for a minimum of 75,000 sq. ft. of retail and commercial spaces and a minimum of 35,000 sq. ft. of office space	Developer/Administration Amendment at auditor's suggestion of including required minimums (Developer selected the values)	
Section 2 Definitions				
Ancillary LED Screens		One or more LED Screens constructed as Infrastructure Improvements and may located within or outside the Facility Premises	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Facility Event		Added language stating that customer cover charges for entry shall not be deemed an advance ticket sale. A Landlord Event is deemed a Facility Event.	Developer/Administration Amendment	
Facility Standard of Care	Defined as keeping the facility in First Class condition consistent with comparable facilities	Updated to mean keeping the facility in good condition consistent with comparable facilities (other Live venues)	Developer/Administration Amendment	
Qualified Transferee	Must be an NFL team owner, or have 5 or more years of experience operating similar facilities, or a net worth of \$250M	<ol style="list-style-type: none"> 1. Must be an NFL team owner, have 5 or more years of experience operating similar facilities, regional shopping centers or urban mixed-use projects, and have a net worth of \$100M. 2. Clarifies that a written certification as certified by the chief financial officer or authorized officer can be used to demonstrate net worth. 3. Provides that net worth increases by CPI measured from the commencement date compared to the contemplated date of transfer 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment 	
Section 9(b) Operator Benefits	COJ had right to use the Live! facility on the day before and the day of the Florida-Georgia game	COJ now has the right to retain 50% of net ticket revenue (revenues less all costs) generated from events the two days before and the day of the Florida-Georgia Game.	Developer/Administration Amendment	

Council Auditor’s Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
<p>Section 10 LED Screens</p>	<p>All LED screens to be paid for by COJ</p>	<ol style="list-style-type: none"> 1. All “ancillary” LED screens will be paid for by COJ as part of the Infrastructure Improvements and main facility screen will be constructed as part of the Live! Component. 2. Developer is responsible for repair and maintenance of the LED screens at Developer’s cost. 3. Developer will operate all screens. Developer will give COJ 10% of the time on the ancillary LED screens to promote COJ events, the city and downtown, and public service announcements. This is consistent with the video board outside Daily’s Place. 4. COJ has the right to use the main facility screen during Landlord Events at Live! 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Developer/Administration Amendment 3. Developer/Administration Amendment 4. Developer/Administration Amendment 	
<p>Section 11 Landlord Use of Facility</p>	<p>Neither City or Landlord had the right to charge for admission to Landlord Events</p>	<ol style="list-style-type: none"> 1. City will have the right charge for admission to any City Event and retain the revenues. 2. Clarifies that City is responsible for all costs in connection with its use of Live! 	<ol style="list-style-type: none"> 1. Developer/Administration Amendment 2. Developer/Administration Amendment 	
<p>Section 14 Indemnity</p>		<p>Clarifies that Developer will defend COJ in any litigation and reimburse COJ for any costs incurred by it relating to such litigation</p>	<p>Developer/Administration Amendment</p>	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Section 15 Insurance		Developer agrees to maintain, at its cost, all-risk insurance and attaches exhibit for insurance requirements	Developer/Administration Amendment	
Section 16 Destruction of Facility	Developer retained 100% of insurance proceeds payable to Developer in the event of casualty	Developer and COJ split any insurance proceeds 50/50 in the event of casualty	Developer/Administration Amendment	
Section 19 Assignment		<ol style="list-style-type: none"> 1. Developer agrees not to transfer Live! for 5 years (Transfer Prohibition Period) 2. Transfers permitted without the consent of the City Representative now include <ol style="list-style-type: none"> a. Sublease for a portion of the Facility b. To any Person that acquires Tenant provided such assignee assumes all liabilities and obligations, has five or more years of experience owning or operating complexes similar to the Facility and had a net worth of at least \$100M 	<ol style="list-style-type: none"> 1. Auditor Amendment 2. Developer/Administration Amendment 	
Section 21 Default	Developer required to diligently cure within a reasonable time	Developer required to diligently and continuously cure within no more than 365 days	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Section 25 Construction Liens		In no event shall the interest of the City be subject to the liens for improvements made by Developer	Developer/Administration Amendment	
Section 27 Force Majeure		Language has been conformed to force majeure in all related documents. Clarifies that with respect to any delay caused by the current pandemic, a party has to show evidence the delay was actually directly caused by the pandemic.	Developer/Administration Amendment	
Section 29 Environmental Requirements		Requires Developer not bring any hazardous materials on site and to remove all hazardous materials at its cost. Developer indemnifies COJ for any losses if caused by Developer's use or disposal of hazardous materials. COJ has right to inspect premises to confirm Developer's compliance with environmental requirements.	Developer/Administration Amendment	
Section 30(q) Attorney's Fees		Each party shall be solely responsible for its own attorneys' fees and expenses. If COJ brings suit for the termination of the lease and is successful, Developer shall reimburse COJ for all reasonable attorneys' fees.	Developer/Administration Amendment	
Section 30(r) Rent Roll		Developer agrees to provide annual list of subtenants to COJ	Developer/Administration Amendment	
Section 30(s)-(w) Boilerplate		Added language regarding brokers, no partnership, no merger, and recordation	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Parking Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Recital D Parking Facilities	Includes Surface Parking Lot, Residential Parking Garages, and Lots M, N and P	Parking facilities now include Lots C and D	Developer/Administration Amendment	
Section 1.1(e) Employee Parking Area	Provided for employee parking in the surface and/or structure parking area (Surface Parking Lot and Lots M, N, and P). Provided for 750 employee spaces	Provides for employee parking in Lots C and D, which is further from the project and also further from the ballpark and arena, thereby freeing up spaces closer to the ballpark and arena for patrons to those events. Provides for 500 employee spaces. Allows COJ to provide alternative parking that is a comparable distance as Lots C and D	Developer/Administration Amendment	
Section 1.1(k) Hotel Parking Area	Provided for hotel parking in the surface parking areas	Clarifies that parking for the hotel will be the pond parking lot or on Lots M, N or P	Developer/Administration Amendment	
Section 1.1(r) Maintenance Costs		Defines Maintenance Costs as all costs for the maintenance or repair of the Surface Parking Areas or Residential Parking Garages to keep in good operating condition comparable to other parking facilities Downtown	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Section 1.1(s) Major District Event		Defines Major District Event as any event or events being held within the Sports and Entertainment Complex that will utilize a City venue in which more than 25,000 people are expected to attend	Developer/Administration Amendment	
Section 1.1(t) Minor District Event		Defines Minor District Event as any event or events being held within the Sports and Entertainment Complex that will utilize a City venue in which fewer than 25,000 people are expected to attend	Developer/Administration Amendment	
Section 1.1(y) Operating Costs		Operating Costs means all costs of operating the Surface Parking Areas or Residential Parking Garages in the ordinary course of business (including utilities, staff, cleaning, taxes, governmental charges, and insurance). Operating Costs shall not include any Maintenance Costs	Developer/Administration Amendment	
Section 1.1 (cc) Public Spaces in Residential Parking Garages		Provides for a minimum of 200 spaces for daily transient parking in the residential garages	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Section 1.1 (II) Valet Parking Area	<p>Provided for valet parking on the Surface Parking Lot, Lots M, N, and P, and any adjacent parking lot owned by the City not otherwise in use.</p> <p>Provided for 750 valet spaces</p>	<p>Provides that valet parking can be on Lots C and D (further from arena and ballpark)</p> <p>Provides for 400 valet spaces</p> <p>Allows COJ to provide alternative parking that is a comparable distance to Lots C and D</p>	Developer/Administration Amendment	
Section 3.1 Grant of Parking Rights		<p>Provides that COJ and Developer will cooperate in good faith to adopt practices, policies and procedures that ensure that parking spaces on the land serve the needs of the project</p>	Developer/Administration Amendment	
Section 3.3 Parking for Residents		<p>Clarifies that public spaces in residential garages will be available at all times for the parking of Customers (i.e. not employees, hotel guests or residents), other than for major (25k+) or minor (-25k) district events</p> <p>Requires Developer to cause the Residential Parking Operator to use efforts to separate the public spaces in the residential parking garages to ensure availability for Customers</p> <p>Confirms that City retains all revenue from Customers in the public spaces in the residential parking garages, subject to validation</p>	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Section 3.6 Employee Parking		Provides for employees to park at no charge within the Employee Parking Area	Developer/Administration Amendment	
Section 3.7 Ride Share Parking		Provides for Developer and COJ to agree on a designated area for ride-share parking at no cost	Developer/Administration Amendment	
Section 4.1 Management of Surface Parking Areas	Specifies that City shall engage the Parking Operator to manage the surface parking areas	Designates ASM as the parking manager of the surface parking lot	Auditor Amendment	
Section 4.4 Operation, Maintenance and Repair of Surface Parking Areas		Clarifies that the City is responsible for all operating costs and all maintenance costs relating to the surface parking areas.	Developer/Administration Amendment	
Section 4.5 Operation, Maintenance and Repair of Residential Parking Garages	COJ paid all maintenance and operating expenses relating the garages	COJ and the Developer share equally in operating costs relating to the garages pursuant to a budget prepared by Developer. The operating budget is subject to City Representative approval. City is responsible for all maintenance costs of the residential parking garages. All operating costs will be paid by Owner and the City will reimburse the Owner for 50% of all approved operating costs.	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed By	Conclusion
Section 5.1 Insurance		Provides that Developer will carry insurance to cover its activities relating to the surface parking lot, valet parking, employee parking, use of the garages and the validation program COJ will carry insurance relating to the surface parking areas and the residential garages (the cost of insurance in respect to the residential parking garages will be an operating expense and half will be paid by Developer)	Developer/Administration Amendment	
Section 5.7 Indemnification		Expands Developer indemnification obligations to include any accident relating to use of the parking (including in the residential garage or valet) and Developer's negligence	Developer/Administration Amendment	
Section 6.1 Assignment		Limits Developer's right to assign to an owner of a component	Developer/Administration Amendment	
Section 6.5 Force Majeure		Clarifies that with respect to any delay caused by the current pandemic, a party has to show evidence the delay was actually directly caused by the pandemic.	Developer/Administration Amendment	
Section 6.16 Enforcement		Provides for a timeline to cure any default	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Air Rights Easement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 3 Grant of Easement		Strikes provision that if elevated pedestrian walkway is removed and not replaced within 360 days, the easement automatically terminates	Developer/Administration Amendment	
Section 5 Maintenance of Improvements		Maintenance, repair, and replacement costs are all Developer responsibilities	Developer/Administration Amendment	
Section 6 Maintenance of Grantor Property		If improvements cause damage to City property, damage will be repaired at Developer's sole cost and expense	Developer/Administration Amendment	
Section 7 Indemnification		Express obligation by Developer to indemnify COJ for any losses relating to the use of the walkway, any negligence by the Developer, any breach by the Developer or construction of the walkway	Developer/Administration Amendment	
Section 8 Insurance		Requires Developer to purchase insurance at its cost and expense for the sole benefit of COJ	Developer/Administration Amendment	
Section 9 Mortgages		Permits Developer to mortgage and pledge its interest in the easement	Developer/Administration Amendment	
Section 10 Attorney Fees		In the event of any legal action, each party is responsible for its own attorney's fees	Developer/Administration Amendment	
Section 11 Property Repair		Developer is responsible for repairing damage arising out of Developer's construction, maintenance, or repair activities within the easement air space	Developer/Administration Amendment	
Section 17 Venue		Confirms that legal actions must be initiated in Duval County courts	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 19 Force Majeure		Force majeure expanded ; confirmed that a party must provide evidence to show any delay relating to current pandemic	Developer/Administration Amendment	
Sections 21-26 Boilerplate		Boilerplate provisions added (time is of the essence, waivers, independent contractors, counterparts, no third-party beneficiaries, approval)	Developer/Administration Amendment	

Perpetual Access and Use Easement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Exhibits	Included exhibits to show Grantor's parcel (Exhibit A) and Grantee's parcel (Exhibit B)	Exhibits to show easement area and benefitted property added to clarify easement area and replace existing Exhibit A and B. Exhibit C is added to include insurance requirements.	Developer/Administration Amendment	
Section 3 Grant of Easement	Granted easement on, over, and across the Grantor's Parcel for the purpose of pedestrian ingress and egress onto Grantee's Parcel, and for use by the public of Grantor's Parcel as public open space	Clarifies easement allows Grantee to i) construct, install, operate, maintain, improve, remove, repair, and/or replace the improvements within the Easement Area, ii) utilize sidewalks in the Easement Area for café seating, iii) utilize the Easement Area for concerts and other events, kiosks, communications equipment, and iv) control access area as needed to facilitate ticket sales and/or sale and consumption of alcoholic beverages.	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Section 5 Maintenance of Improvements		Maintenance, repair, and replacement costs are all Developer responsibility	Developer/Administration Amendment	
Section 6 Maintenance of Grantor Property		If improvements cause damage to City property, damage will be repaired at Developer's sole cost and expense	Developer/Administration Amendment	
Section 7 Indemnification		Express obligation by Developer to indemnify COJ for any losses relating to the use of the walkway, any negligence by the Developer, any breach by the Developer or construction of the walkway	Developer/Administration Amendment	
Section 8 Insurance		Requires Developer to purchase insurance at its cost and expense for the sole benefit of COJ	Developer/Administration Amendment	
Section 9 Mortgages		Permits Developer to mortgage and pledge its interest in the easement	Developer/Administration Amendment	
Section 10 Attorney Fees		In the event of any legal action, each party is responsible for its own attorney's fees	Developer/Administration Amendment	
Section 11 Property Repair		Developer is responsible for repairing damage arising out of Developer's construction, maintenance, or repair activities within the easement area	Developer/Administration Amendment	
Section 17 Venue		Confirms that legal actions must be initiated in Duval County courts	Developer/Administration Amendment	
Section 19 Force Majeure		Force majeure expanded ; confirmed that a party must provide evidence to show any delay relating to current pandemic	Developer/Administration Amendment	

Council Auditor's Office
Summary of Proposed Material Amendments in Lot J Development Agreement

Section	As-Filed Agreement	November 25, 2020 Revised Agreement	Proposed by	Conclusion
Sections 12-15 & Sections 21-26 Boilerplate		Boilerplate provisions added (incidental rights, running benefits and burdens, time is of the essence, waivers, independent contractors, counterparts, no third party beneficiaries, approval)	Developer/Administration Amendment	

Additional Item Added

DIA recommended that the office portion of the Live!, other than the office space used for management of the Project, be structured as a separate taxable condominium interest.

In lieu of this recommendation, in Section 4 of the Live! Lease, OGC is recommending an office base rent concept whereby the initial amount of the rent is calculated as the assessed value, as determined by the Property Appraiser, multiplied by all applicable millage rates plus any non-ad valorem assessments.

Recommended Amendments to Bill 2020-648

1. Revise CIP project names in bill to agree with Exhibits 4 and 5 (CIP Project Information Sheets)
2. Revise project names in bill to agree with Exhibit 3 (Revised Budget Ordinance Schedule B4)
3. Update square footage of restaurant and retail space and office space for Live! District Entertainment Venues, number of residential units, number of parking spaces, and number of hotel rooms to agree with revised Development Agreement
4. Update term of Live! Lease to agree with revised Lease Agreement
5. Add Lots C and D to agree with revised Parking Agreement
6. Include specific sections of Ch. 500 being waived
7. Include subsections 55.108 (23) and (24) within Sec. 55.108 waivers
8. Strike language invoking the exception to Sec. 126.07(g)
9. Correct title of Chapter 191, Ordinance Code
10. Strike language in bill title providing oversight by Sports and Entertainment Office
11. Update estimated cost of project from \$445,000,000 to \$450,300,000
12. Clarify language on page 7, line 5 regarding cost overruns
13. Clarify language on page 7, lines 8-11 regarding savings on the hotel and residential components
14. Correct account name in the Explanation of Appropriation from Sports and Entertainment – Lot J Live! to Public Works – Lot J Live!
15. Attach Revised Exhibit 2 to include executed BT and correct account information
16. Attach Revised Exhibit 5 CIP Information Sheet to correct department name and scriveners' error
17. Place revised agreements On File to reflect all changes adopted by Council
18. Include Council Auditor's Office in all audit rights provided to the City throughout all On File documents
19. Authorize technical changes and scrivener errors to be corrected in the bill and all On File documents

CUMBER & BECTON AMENDMENT #1

Council Members Cumber and Becton offer the following amendment to File No. 2020-648:

- (1) Amend the Development Agreement to include a 1.5% hotel room surcharge for a term of 50 years to be remitted to the City's General Fund with the intent to offset the City's operational and maintenance costs on the Lot J facilities;
- (2) On **page 7, line 27, and page 11, lines 7, 9, 13, 16-17, 19-20, and 27, strike "On File" and insert "Revised On File"**;
- (3) Remove **On File** document and replace with a **Revised On File** document, which revises the Development Agreement to include a 1.5% hotel room surcharge;
- (4) The Office of General Counsel is authorized to make all necessary changes to the On File documents and to 2020-648 consistent with the changes set forth herein to effectuate the Council's action;
- (5) On **page 1, line 1**, amend the introductory sentence to add that the bill was amended as reflected herein.

Form Approved:

Office of General Counsel

Legislation Prepared By: Margaret M. Sidman

GC-#1405006-v1-2020-648_Cumber_and_Becton_12_03_.docx

RESOLUTION 2020-12-01

A RESOLUTION OF THE DOWNTOWN INVESTMENT AUTHORITY (“DIA”) RECOMMENDING THAT CITY COUNCIL ADOPT ORDINANCE 2020-0648, SUBSTITUTING THE RECENTLY REVISED EXHIBITS THERETO, SUBJECT TO THE RECOMMENDED CONDITIONS IN THE STAFF REPORT DATED DECEMBER 1, 2020, ATTACHED HERETO AS EXHIBIT ‘A’, AS AMENDED IN SECTION 4 OF THIS RESOLUTION; AUTHORIZING THE DIA CHIEF EXECUTIVE OFFICER TO EXECUTE ANY CONTRACTS AND DOCUMENTS AND OTHERWISE TAKE ALL NECESSARY ACTION IN CONNECTION WITH ORDINANCE 2020-0648 AS ADOPTED; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Downtown Investment Authority has reviewed Ordinance 2020-0648 and all attachments thereto, including the Development Agreement; and

WHEREAS, at a publicly noticed meeting the DIA voted to recommend that City Council adopt Ordinance 2020-0648 subject to those conditions in the staff report dated December 1, 2020, attached hereto as Exhibit ‘A’,

NOW THEREFORE, BE IT RESOLVED, by the Downtown Investment Authority:

Section 1. The DIA finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. The DIA recommends that City Council adopt Ordinance 2020-0648 subject to those conditions in the staff report dated December 1, 2020, attached hereto as Exhibit ‘A’, as amended in Section 4 of this Resolution.

Section 3. The DIA authorizes its Chief Executive Officer to execute any contracts and documents and otherwise take all necessary action in connection with Ordinance 2020-0648 as adopted.

Section 4. The DIA recommends the following conditions for approval:

1. The Development Agreement should include plain, specific language requiring City approval of infrastructure budgets prior to construction. Consistent with the language in Section 8.9 (a), any dispute of budgets may be resolved between the City Representative and the Developer. (in Infrastructure)
2. We are supportive of the City’s matching contribution to the Live! component, not to exceed \$50 million.
3. We recommend that the office portion of the Live! other than the office space used for management of the Project, be structured as a separate taxable condominium interest.
4. The Multi-Family REV Grant should be viewed as the first available incentive in the capital stack and we strongly support its inclusion
5. Based on the financial feasibility analysis above, we believe the hotel grant is likely warranted (would depend on extent of Live! Contribution to the cost of the Component) and should be included in the capital stack for the Project. However, we would recommend consideration of a room surcharge of not more than 1% as suggested by the Council Auditor.
6. The Development Agreement should include plain, specific language requiring City approval of infrastructure budgets prior to construction. Consistent with the language in Section 8.9 (a), any dispute of budgets may be resolved between the City Representative and the Developer. (in Budget)

7. The quality and comparable complex references should be included in the definitions.
8. A minimum restaurant, bar, entertainment venue size should be established for the parcel subject to Live! Lease. (Material Modification in Article III excludes a reduction in size)
9. The office space within the Live! Component (beyond that required for management of Project) should be treated as a taxable condominium interest under private ownership.
10. Conform the Development Agreement to the actual Allocation of Development Rights approved by DIA pursuant to Resolution 2020-11-03 and return to the as filed 8-year time frame.
11. We believe this section requires further revision and negotiation and that funds should be returned to the City general fund in the event the Minimum Developer Investment is not achieved, however we understand that the new structure was requested by some on behalf of City Council to ensure adequate maintenance funds were available for facility maintenance and ongoing upgrades. The required minimum capital investment necessary to qualify for the REV for the Mixed-Use component should be modified to eliminate the garage.
12. Clarify the extent of the City's liability within the Infrastructure budget for environmental remediation if it is intended to be capped.
13. In light of the importance of the Guaranty as security for performance, we believe that re-verification of net worth at the commencement of each component, if more than 6 months apart, should be provided.
14. The Live! lease should be modified to add an acknowledgement of the City's right to receive certain parking revenue, consistent with Section 12.6 of the Development Agreement and Section 3.5 of the Lot J Parking Agreement.
15. Based on our experience with oversight and management of the MPS contract, we recommend that this definition be revised to exclude all general and administrative expenses of the operator.
16. The Development Agreement, Parking Agreement and Amendment 15 documents should be modified to acknowledge the City's access to revenue-producing parking within the Surface Lot and public spaces within the Mixed-Use garages during Jaguar games and other "Non-Operative Period Events and Designated Events" (see Section 4 of the Amendment).
17. The Parking Agreement should be revised to include language that is consistent with Section 12.6 of the Development Agreement to expressly grant the City the right to retain the revenue generated by transient daily paid parkers utilizing the public spaces within the garages and the Surface Lot. Section 12.6 goes further to state that the City will also receive parking revenue from paid attendees of Jaguars NFL games, the Florida-Georgia Game, the Tax Slayer Gator Bowl, Monster Jam, other Stadium Events, events at the baseball grounds, events at the VyStar Veterans Memorial Arena, events at Daily's Place, and any Major or Minor District Event (those being defined terms within the Development Agreement).

Section 5. The DIA forwards to City Council for its consideration the DIA Staff report attached hereto.

Section 6. This Resolution 2020-12-01 shall become effective on the date it is signed by the Chair of the DIA Board.