RESPONSES TO CITY COUNCIL QUESTIONS - ITEM 5E. 2025-0890

In response to the questions on Item 5E 2025-0890 from the November 12, 2025 meeting, we wanted to clarify some terms and the broader structural context of the proposed agreements before diving into the specific questions on the following page. As depicted below, two entities are proposed: a **Property Owners Association (POA)** for the 29-acres and a **Commercial Condominium** for Parcel 4 only, which subdivides The Monarch into two ownership units: a Rec Center Unit and a Retail Unit. The diagram below summarizes key details of the two proposed entities for the Downtown East governance structure.

Downtown East Commercial Community, Inc.

- A <u>**Property Owners Association (POA)**</u> created to manage owners' membership, maintenance, design, etc. for the entire 29-acres
- **Associated Legal Documents:** Master Covenant, Certificate of Formation, Community Manual, Management Certificate, Organizational Consent, Notice of Applicability
- **"Common Areas"** include the plaza, street trees, street furnishings, irrigation, etc.
  - Shared maintenance costs and voting units amongst City and private property owners are based on weighted Assessment Units (derived from building square footages; Exbt. B of Master Covenant)
- **Assessment Units & Voting** are set up such that City, as owner of City Hall, the Rec Center, and Parking Structure, will always have a majority vote in the POA.

Parcel 4 (The Monarch) Commercial Condominium

- A <u>**Condominium Declaration/Association**</u> that subdivides the building on Parcel 4 into two distinct ownership units:
  1. Rec Center Unit, funded, owned, maintained by City
  2. Retail Unit, funded, owned, maintained by Griffin Swinerton
- **Associated Legal Documents:** Parcel 4 Master Condominium Declaration, Condo Plat, Application for Exclusive Use, Architectural Application & Approval, Parking Use Agreement
- **"Common Elements"** of Parcel 4 are very minimal (the building is 99% of the area)

The majority of Council's questions were related to the **Parcel 4 Condominium Declaration and Condominium Association**, which subdivides The Monarch into two ownership units: the Rec Center Unit (City) and the Retail Unit (Griffin Swinerton). Because Parcel 4 is being subdivided into only two ownership units for the Rec Center Unit (owned by City) and Retail Unit (owned by Griffin Swinerton), major decisions typically require consent by both owners (and thus 100% approval).

QUESTIONS PERTAINING TO THE PARCEL 4 (THE MONARCH) CONDOMINIUM DECLARATION

Because The Monarch is being subdivided into two ownership units between the Rec Center Unit (City) and Retail Unit (Griffin Swinerton), we don't believe changes are necessary to the Condominium Declaration and Condominium Association for Parcel 4 for the following reasons:

1. **Obsolescence of General Common Elements: Obsolescence of the Property (Sec. 9.4 and Sec. 9.6 – Condominium Declaration)**
    a. We do not see any 2-unit condominium regimes go below 100%. In a 2-unit scenario where the General Common Elements or Property are considered obsolete, a 100% vote of the members is necessary to ensure that the rebuilding/replacement of General Common Elements or the sale of the Property are agreed to by all parties. The Retail Unit would not be marketable if Griffin Swinerton didn't have the right to agree to such a major change. This percentage is customary in a 2-to-4-unit condominium regime.
2. **Parcel 4 only: Maximum 4 Units in Condominium Declaration:**
    a. We only anticipate 2 condominium units at this time, but for flexibility we reserved a maximum number of units for 4 in case either condominium owner (Rec Center or Retail) wanted to further subdivide its unit. The Texas Uniform Condominium Act requires that a maximum number of units in the condominium regime (Parcel 4) is stated from the outset. This 4 Unit max was a business term agreed upon by the City and Griffin Swinerton. This number could be set higher but this term was deliberately set at 4 to protect the business interests of both parties.
3. **Threshold to terminate and amend Master Declaration (Sec. 12.1, 12.2 – Condominium Declaration):**
    a. The revocation, termination, and amendment of the Master Declaration requires 80% of the Owners of the Condominium Association plus 67% of the Registered Mortgagees. The reason for these thresholds is to comply with Texas Uniform Condominium Act Sections 82.067 and 82.068. These numbers can vary but the customary percentage is 80%.
4. **Insurance Minimums (Attachment 5 – Condominium Declaration):**
    a. Limits of liability of $1,000,000 per each accident or occurrence and $2,000,000 general aggregate policy limit is standard practice for Commercial General Liability insurance in condominium regimes and is typical in traditional 2-unit commercial condominiums.

QUESTION PERTAINING TO THE 29-ACRE MASTER COVENANT

5. **Threshold Percentages for Amendment to the Certificate of Formation related document to the Master Covenant of the 29-acre POA:**
    a. **Recommend minimum 80% up to 100% vote of the Members**. With regard to Article IV of the Certificate of Formation, the rationale behind requiring an affirmative vote of Members holding one-hundred percent (100%) of the total number of votes of the Association to file an amendment to Article IV of the Certificate of Formation, is that Article IV of the Certificate of Formation contains the power of the Association. In (b), we limit the powers of the Association to bring certain claims (filed by a plaintiff lawyer). We always want there to be a high barrier of entry for a plaintiff lawyer bringing claims, where everyone is on board before proceeding. Thus, we want to require all owners and board members to be in agreement before a claim is brought, and we don't want future boards to have the ability to water down this requirement.