

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, TO CONSIDER APPROVAL, FOLLOWING FIRST READING/PUBLIC HEARING, OF A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT DATED JANUARY 9, 2019, BETWEEN THE CITY AND SOUTH BEACH HEIGHTS I, LLC, 500 ALTON ROAD VENTURES, LLC, 1220 SIXTH, LLC AND KGM EQUITIES, LLC (COLLECTIVELY, THE "DEVELOPER"), AS AUTHORIZED UNDER SECTION 118-4 OF THE CITY CODE, AND SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, WHICH FIRST AMENDMENT DELINEATES THE TERMS FOR THE DEVELOPER TO DESIGN, PERMIT, AND CONSTRUCT, ON BEHALF OF THE CITY, THE 5TH STREET PEDESTRIAN BRIDGE PROJECT, WHICH SHALL BE CONSTRUCTED WITHIN THE PUBLIC RIGHT OF WAY AREAS LOCATED NORTH AND SOUTH OF THE MACARTHUR CAUSEWAY AT THE ENTRANCE TO THE CITY ALONG THE EASTERN BOUNDARY OF BISCAYNE BAY, AND WHICH PEDESTRIAN BRIDGE SHALL SPAN OVER AND ACROSS (1) THE MACARTHUR CAUSEWAY, TO CONNECT THE BAYWALKS SOUTH OF 5TH STREET WITH THE AREA NORTH OF 5TH STREET, AND (2) WEST AVENUE ALONG 5TH STREET, TO CONNECT TO THE DEVELOPER'S PROPERTY AT THE SOUTHWEST CORNER OF THE 500 BLOCK OF ALTON ROAD (THE "PEDESTRIAN BRIDGE PROJECT"), WITH SUCH PEDESTRIAN BRIDGE PROJECT TO BE OWNED AND MAINTAINED BY THE CITY FOR PUBLIC PURPOSES; AND FURTHER, SETTING THE SECOND AND FINAL READING OF THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR A TIME CERTAIN.

WHEREAS, on November 6, 2018, the residents of Miami Beach overwhelmingly approved three ballot questions authorizing the City to issue General Obligation Bonds ("G.O. Bonds") to fund capital projects within the City in the areas of public safety, parks and recreation, and infrastructure;

WHEREAS, the G.O. Bond projects include, among other City projects, an allocation of \$10 million for the 5th Street Pedestrian Bridge Project, to provide for a pedestrian bridge over and across 5th Street and West Avenue, to connect the baywalks south of 5th Street with the area north of 5th Street (the "Pedestrian Bridge Project"); and

WHEREAS, on March 13, 2019, the Mayor and City Commission adopted Resolution No. 2019-30754, authorizing the issuance of the first tranche of G.O. Bonds, and as part thereof, approved the G.O. Bond Implementation Plan, which plan included the Pedestrian Bridge Project as one of the projects scheduled for implementation during the first tranche of G.O. Bond projects; and

WHEREAS, on December 12, 2018, the Mayor and City Commission adopted

Resolution No. 2018-30647, approving a Development Agreement between the City and the Developer for the development, design and construction of a mixed use residential and commercial project on the 500-700 Blocks of Alton Road, and providing for the Developer to develop, design and construct a 3.0 acre public park, which would be conveyed to the City and operated as a municipal park for the benefit of the general public;

WHEREAS, the Development Agreement, dated as of January 9, 2019, provides for the Developer to grant to the City a pedestrian pathway easement that would include a platform area for the connection of the Pedestrian Bridge Project north of 5th Street, and further provides that the City and the Developer agree to exercise diligent, good-faith efforts to negotiate and draft terms for the Developer to develop, design and construct the Pedestrian Bridge Project, with any such agreement with respect to the Pedestrian Bridge Project subject to the prior approval of the City Commission; and

WHEREAS, following the execution of the Development Agreement, the City and Developer have worked together to define the processes and refine the scope for implementing the Pedestrian Bridge Project and the City's overall vision for enhancing the development of the Pedestrian Bridge Project, for the use and enjoyment by all residents of and visitors to the City of Miami Beach; and

WHEREAS, the proposed Pedestrian Bridge Project shall be constructed within public right of way areas of the City of Miami Beach and the Florida Department of Transportation ("FDOT") that are adjacent to, and located to the north and south of, the MacArthur Causeway, between Biscayne Bay and West Avenue. The proposed Pedestrian Bridge Project shall span over and across the MacArthur Causeway and West Avenue along 5th Street, and shall connect to the Development Site at the southwest corner of the 500 Block of Alton Road, as generally depicted in the sketch set forth in the Commission Memorandum accompanying this Resolution; and

WHEREAS, the proposed concept design for the Pedestrian Bridge Project is attached as Exhibit "A" to the Commission Memorandum accompanying this Resolution ("Concept Plan"); and

WHEREAS, on May 8, 2019, the Mayor and City Commission approved Resolution No. 2019-30835, endorsing the proposed Concept Plan and authorizing the Administration to submit an application to the Design Review Board ("DRB") for its consideration of the proposed Concept Plan, subject to the City Commission's final approval of an amendment to the Development Agreement; and

WHEREAS, on June 4, 2019, the DRB approved the location, orientation, width, height, vertical clearance, access points, landscaping, and temporary enclosures for the bridge and walkways for the Pedestrian Bridge Project; provided, however, that the design of the permanent protective barriers, signage, materials, finishes, and other design elements shall be subject to further review and approval of the DRB; and

WHEREAS, as the Bridge Project will be located on public right of way areas of

both FDOT and the City, the Bridge Project is subject to permitting approval by City and FDOT; and

WHEREAS, the Administration has negotiated the terms of the proposed First Amendment to the Development Agreement, a copy of which is attached as Exhibit "B" to the Commission Memorandum accompanying this Resolution, and which First Amendment provides for the Developer to design, permit, and construct the Pedestrian Bridge Project on behalf of the City, for a maximum City contribution in a to-be-negotiated amount not to exceed \$10 million (less the City's estimated overhead/oversight costs with respect to the Bridge Project); and

WHEREAS, the First Amendment includes the standard contract protections the City requires with respect to all City construction projects, including, among other terms:

- standard provisions for payments to the Developer to be made on a reimbursement basis only for work in place;
- insurance requirements with general liability and excess liability coverage in the amount of \$25 million in the aggregate, based on City's Risk Management's insurance recommendations for the Bridge Project;
- Developer and its construction contractor's indemnification of the City for negligence in the performance of the contract;
- Performance bond and payment bond naming City as co-obligee, to guarantee the contractor's performance of the work and payment of subcontractors;
- termination rights (whether for cause or for the City's convenience, i.e., in the event FDOT permits cannot be obtained), with the City having the right to an assignment of the construction contract, the Plans and Specifications, and Permits and Approvals; and
- broad inspection and audit rights in favor of the City; and

WHEREAS, the Administration recommends that the City Commission approve the First Amendment on first reading, and the associated Concept Plan for the Pedestrian Bridge Project.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, following first reading/public hearing, a First Amendment to the Development Agreement dated January 9, 2019, between the City and South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC And KGM Equities, LLC (collectively, the "Developer"), as authorized under section 118-4 of the City Code, and Sections 163.3220 – 163.3243, Florida Statutes, which First Amendment delineates the terms for the Developer to design, permit, and construct, on behalf of the City, the 5th

Street Pedestrian Bridge Project, which shall be constructed within the public right of way areas located north and south of the MacArthur Causeway at the entrance to the City along the eastern boundary of Biscayne Bay, and which pedestrian bridge shall span over and across (1) the MacArthur Causeway, to connect the baywalks south of 5th Street with the area north of 5th Street, and (2) West Avenue along 5th Street, to connect to the Developer's property at the southwest corner of the 500 block of Alton Road (the "Pedestrian Bridge Project"), with such Pedestrian Bridge Project to be owned and maintained by the City for public purposes; and further, setting the second and final reading of the First Amendment to the Development Agreement for a time certain.

PASSED AND ADOPTED this _____ day of June, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

R. E. Granado 6/13/19
City Attorney RAP Date