

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING/PUBLIC HEARING, A SECOND 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, AS ASSIGNED TO TCH 500 ALTON, LLC, BY ASSIGNMENT OF DEVELOPMENT AGREEMENT DATED AS OF SEPTEMBER 27, 2019 (THE "DEVELOPER"), FOR THE DEVELOPMENT OF THE PROPERTIES LOCATED AT 500 ALTON ROAD, 630 ALTON ROAD, 650 ALTON ROAD, 1220 6TH STREET, 659 WEST AVENUE, 701 WEST AVENUE, 703 WEST AVENUE, 711 WEST AVENUE, 721 WEST AVENUE, 723 WEST AVENUE, 727 WEST AVENUE AND 737 WEST AVENUE (COLLECTIVELY, THE "DEVELOPMENT SITE"), AS AUTHORIZED UNDER SECTION 118-4 OF THE CITY CODE, AND SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, WHICH SECOND AMENDMENT PROVIDES, AMONG OTHER TERMS AND CONDITIONS, FOR: (1) SETTLEMENT OF THE DISPUTE ARISING FROM THE BOARD OF ADJUSTMENT'S RULING, DATED NOVEMBER 1, 2019, ALLOWING THE EXCLUSION OF COVERED STAIRS, ELEVATOR SHAFTS, MECHANICAL CHUTES AND CHASES FROM THE CALCULATION OF FLOOR AREA FOR THE PROJECT; (2) A REDUCTION OF THE MAXIMUM NUMBER OF RESIDENTIAL UNITS PERMITTED ON THE DEVELOPMENT SITE, FROM 410 UNITS TO A MAXIMUM OF 330 UNITS; (3) APPROVAL OF THE FINAL PLANS FOR THE 3.0 ACRE PUBLIC PARK THAT DEVELOPER SHALL CONSTRUCT ON BEHALF OF THE CITY, AT ITS SOLE COST AND EXPENSE; (4) EXPEDITED TIMEFRAMES FOR THE DEVELOPER TO COMPLETE CONSTRUCTION OF THE 3.0 ACRE PUBLIC PARK AND TO CONVEY OWNERSHIP OF THE PARK SITE TO THE CITY; (5) APPROVAL OF THE FINAL PLANS FOR THE 5<sup>TH</sup> STREET PEDESTRIAN BRIDGE PROJECT, WHICH DEVELOPER SHALL CONSTRUCT ON CITY'S BEHALF (THE "PEDESTRIAN BRIDGE PROJECT"), AND (6) APPROVAL OF THE FINAL BRIDGE PROJECT BUDGET, SUBJECT TO A MAXIMUM CITY CONTRIBUTION FOR BRIDGE PROJECT COSTS.**

**WHEREAS**, on December 12, 2018, following two duly noticed public hearings and extensive public testimony and discussion, the Mayor and City Commission adopted Resolution No. 2018-30647, approving a Development Agreement between the City and 500 Alton Road Ventures, LLC, 1220 Sixth, LLC, South Beach Heights I, LLC, and KGM Equities, LLC (the "Development Agreement"), for the development, design and construction of a mixed use residential and commercial project on the 500-700 Blocks of Alton Road (the "Project"). The development of this area is a priority for the City, as it lies at the entrance to South Beach via the MacArthur Causeway; and

**WHEREAS**, the Development Agreement was executed on or about January 9, 2019, and recorded in the public records of Miami-Dade County, Florida on February 12, 2019; and

**WHEREAS**, on September 27, 2019, the Development Agreement was assigned to TCH 500 Alton, LLC (the "Developer"), pursuant to that certain Assignment and Assumption of Development Agreement, dated as of September 27, 2019; and



**WHEREAS**, the Development Agreement contemplates that in order for the Project to proceed, the City would vacate 6<sup>th</sup> Street between West Avenue and Alton Road, and thereby convey ownership thereof to the Developer, to provide a unified development site that would permit the Developer to aggregate its development rights over the unified abutting parcels on the 500-700 blocks of Alton Road, and consolidate most of the available floor area within the residential tower for the Project, which would be located on the northeast quadrant of the 500 Block; and

**WHEREAS**, in consideration for the vacation of 6<sup>th</sup> Street and other terms set forth in the Development Agreement, the Developer is required to deliver certain key public benefits to the City, including, among other terms, the design, permitting and construction, at the Developer's sole cost and expense, of a 3.0 acre public park on the Development Site (the "Park Project"), with the 3.0 acre park site to be conveyed to the City (the "Park Site"). Once completed, the City would own and operate the Park Site as a municipal park for the benefit of the general public; and

**WHEREAS**, on July 17, 2019, the City Commission adopted Resolution No. 2019-30893, approving the First Amendment to the Development Agreement, to provide for the Developer to design, permit, and construct the Pedestrian Bridge Project on behalf of the City. The First Amendment was executed as of December 18, 2019; 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 5<sup>th</sup> Street, and shall connect to the Development Site at the southwest corner of the 500 Block of Alton Road; and

**WHEREAS**, on July 10, 2019, and in response to a request by the Developer, the Planning Director issued a determination reaffirming the City's longstanding position and concluding that the following elements are included within the definition of floor area: (1) voids in floors to accommodate elevator shafts; (2) voids in floors to accommodate mechanical/ventilation/trash shafts; and (3) voids in floors to accommodate stairwells, including voids to accommodate stairwells within accessory garages (the "Elements"). The Developer appealed the Planning Director's determination to the Board of Adjustment, and the appeal was heard on November 1, 2019; and

**WHEREAS**, in a clear departure from its limited quasi-judicial authority, the Board of Adjustment voted to reverse the July 10, 2019 determination, and effectively amend the Land Development Regulations—without the authority to do so—to create a new exclusion for the Elements from the definition of Floor Area (the "BOA Order"); and

**WHEREAS**, following the November 1, 2019 Board of Adjustment ruling, the Planning Director and the City filed a Petition for Writ of Certiorari in Circuit Court, seeking appellate review of the BOA Order (the "Petition") (altogether, the "Appeal"). Pursuant to City Code Section 118-9, the filing of the Petition operates to stay the BOA Order and all "work on the premises and all proceedings in furtherance of the action appealed from" (including the review or approval of any plans excluding the Elements from floor area calculations); and

**WHEREAS**, on December 11, 2019, the City Commission voted unanimously to refer to the Planning Board a draft Ordinance amending the definition of "floor area" set forth in City Code



Section 114-1. The Ordinance expressly codifies the Planning Director's historic interpretation, which has been consistent for more than 48 years, that "floor area" includes, without limitation, "stairwells, stairways, covered steps, elevator shafts at every floor (including mezzanine level elevator shafts), and mechanical chutes and chases at every floor (including mezzanine level)" (the "Clarifying LDR Amendment"); and

**WHEREAS**, in an effort to resolve the foregoing dispute relating to the Appeal, on December 11, 2019, the Administration and the City Attorney received guidance from the City Commission with respect to settlement negotiations which would protect the City against the City-wide increase in FAR potentially caused by the BOA Order and, relatedly, to address outstanding issues related to the Project, the Park Project, and the Pedestrian Bridge Project, with such terms to be memorialized in Second Amendment to the Development Agreement; and

**WHEREAS**, on December 17, 2019, the Planning Board unanimously voted to transmit the Clarifying LDR Amendment to the City Commission with a favorable recommendation; and

**WHEREAS**, on January 15, 2020, the Mayor and City Commission adopted the Clarifying LDR Amendment on first reading; and

**WHEREAS**, the Administration has negotiated the terms of the proposed Second Amendment to the Development Agreement, a copy of which is attached as Exhibit "B" to the Commission Memorandum accompanying this Resolution, and which Second Amendment provides for the following, among other terms:

- Settlement of the parties' legal dispute with regard to the subject matter of the Appeal, subject to and contingent upon the City Commission adopting the Clarifying LDR Amendment with an applicability clause that allows the Project to proceed based on the Board of Adjustment's November 1, 2019 interpretation (excluding elevator shafts, stairwells, mechanical chutes and chases from the calculation of floor area for the Project), provided there is no change in the height or floor plate/massing for the residential tower for the Project;
- Expedited timeframes for commencement and completion of the Park Project, with commencement of construction of the Park Project within 30 days of issuance of Full Building Permit, and completion of construction of the Park Project within the earlier of: (i) 36 months following issuance of the Building Permit, or (ii) 48 months from date of execution of the Second Amendment; and
- Expedited timeframe for the Closing (and conveyance of the Park Site to the City) not later than June 1, 2020, unless such date is extended by the City Manager, in writing, at his sole discretion, until environmental remediation/permitting matters are resolved; and
- Reduction in density for the Project, from a maximum of 410 residential units, to a maximum of 330 residential units; and
- Approval of final proposed designs for the Park Project that would satisfy the "world-class" park standard required by the Development Agreement, with Developer to be responsible for specific resiliency and sustainability enhancements and higher quality fitness equipment both as recommended by the Administration; and
- Approval of the final design for the Pedestrian Bridge Project, which shall include the artistic



design elements created by world-renowned artist Daniel Buren; and

- Approval of the Final Pedestrian Bridge Project Budget, in the amount of \$12,462,888, with Developer to be responsible for all costs in excess of an adjusted Maximum City Contribution of \$9,610,000; and
- Strengthening of the financial security to be provided to the City at Closing to ensure a source of funding is available for City to complete the Park Project and Bridge Project in the event Developer fails to do so, via a Letter of Credit to secure Developer's Park Project obligations and Developer's Bridge Project contribution; and
- Developer partial reimbursement of certain fees and expenses the City has incurred to date in connection with the Appeal and this Second Amendment.

**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 second reading/public hearing, a Second 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, as assigned to TCH 500 Alton, LLC, by Assignment Of Development Agreement dated as of September 27, 2019 (Tte "Developer"), for the development of the properties located at 500 Alton Road, 630 Alton Road, 650 Alton Road, 1220 6th Street, 659 West Avenue, 701 West Avenue, 703 West Avenue, 711 West Avenue, 721 West Avenue, 723 West Avenue, 727 West Avenue and 737 West Avenue (collectively, the "Development Site"), as authorized under Section 118-4 of the City Code, and Sections 163.3220 – 163.3243, Florida Statutes, which Second Amendment provides, among other terms and conditions, for: (1) settlement of the dispute arising from the Board of Adjustment's ruling, dated November 1, 2019, allowing the exclusion of covered stairs, elevator shafts, mechanical chutes and chases from the calculation of floor area for the Project; (2) a reduction of the maximum number of residential units permitted on the Development Site, from 410 units to a maximum of 330 units; (3) approval of the final plans for the 3.0 acre public park that Developer shall construct on behalf of the City, at its sole cost and expense; (4) expedited timeframes for the Developer to complete construction of the 3.0 acre public park and to convey ownership of the park site to the City; (5) approval of the final plans for the 5<sup>th</sup> Street Pedestrian Bridge Project, which Developer shall construct on City's behalf (the "Pedestrian Bridge Project"), and (6) approval of the Final Bridge Project Budget, subject to a Maximum City Contribution for Pedestrian Bridge Project costs.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of January, 2020.

**ATTEST:**

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Dan Gelber, Mayor

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Rafael E. Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Rafael Granado 2-4-20  
City Attorney RAP Date