

RESOLUTION NO. 2020-\_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, TO CONSIDER APPROVAL, FOLLOWING FIRST READING/PUBLIC HEARING, OF A DEVELOPMENT AGREEMENT AS AUTHORIZED UNDER SECTION 118-4 OF THE CITY CODE, AND SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, BETWEEN THE CITY AND MARINA PARK, LLC (OR ONE OR MORE AFFILIATES THEREOF) (THE “DEVELOPER”), WHICH DEVELOPMENT AGREEMENT: (1) DELINEATES CONDITIONS FOR THE DEVELOPMENT OF THE CITY-OWNED PROPERTIES LOCATED AT 300-400 ALTON ROAD, THE CURRENT UPLAND SITE OF THE MIAMI BEACH MARINA (FOLIO NOS. 02-4203-009-9210, 02-4203-000-0010, AND 02-4203-009-9250) (COLLECTIVELY, THE “DEVELOPMENT SITE”), WITH SUCH DEVELOPMENT SITE LIMITED TO A MAXIMUM FLOOR AREA OF APPROXIMATELY 320,000 SQUARE FEET (OF WHICH THERE SHALL BE A MAXIMUM OF APPROXIMATELY 275,000 SQUARE FEET FOR RESIDENTIAL USES AND APPROXIMATELY 45,000 SQUARE FEET FOR RETAIL, RESTAURANT, OFFICE AND MARINA USES), WITH THE BUILDING CONSTRUCTED THEREON LIMITED TO UP TO 385 FEET IN HEIGHT, WITH UP TO 60 RESIDENTIAL UNITS, AND WHICH SHALL INCLUDE A PARK CONSISTING OF AT LEAST 1.0 ACRES (THE “MARINA PARK PROJECT”); (2) MEMORIALIZES THE CONDITIONS FOR THE CITY’S SALE TO MARINA PARK, LLC (OR AN AFFILIATE THEREOF) OF THE PORTION OF THE DEVELOPMENT SITE AND AIR PARCEL WITHIN WHICH THE APPROXIMATELY 275,000 SQUARE FOOT RESIDENTIAL PORTION OF THE MARINA PARK PROJECT IS TO BE CONSTRUCTED (“SALE OF RESIDENTIAL PARCEL”), AND THE CITY’S 99 YEAR LEASE TO AN AFFILIATE OF SUNTEX MARINA INVESTORS, LLC, OF THE DEVELOPMENT SITE (EXCLUDING THE RESIDENTIAL PARCEL) AND ASSOCIATED LEASE OF SUBMERGED LANDS FOR MARINA USE (THE “MARINA LEASE”); (3) MEMORIALIZES CONDITIONS FOR VACATING THE WESTERN HALF OF THE CITY’S RIGHT-OF-WAY AT ALTON ROAD ADJACENT TO THE DEVELOPMENT SITE, PURSUANT TO SECTION 82-37 OF THE CITY CODE AND SECTION 1.03(B)(4) OF THE CITY CHARTER (COLLECTIVELY, THE “CITY RIGHT-OF-WAY AREA”); (4) PROVIDES FOR THE DEVELOPER’S DESIGN, PERMITTING, AND CONSTRUCTION OF THE MARINA PARK PROJECT, INCLUDING RESILIENCY ENHANCEMENTS AND OTHER CAPITAL IMPROVEMENTS, AT DEVELOPER’S SOLE COST AND EXPENSE; AND (5) WITH THE FOREGOING SUBJECT TO AND CONTINGENT UPON APPROVAL OF THE MARINA LEASE AND THE SALE OF RESIDENTIAL PARCEL BY A MAJORITY OF THE VOTERS VOTING IN A CITY-WIDE REFERENDUM, PURSUANT TO SECTION 1.03(B)(1) OF THE CITY CHARTER; AND FURTHER, SETTING THE SECOND AND FINAL READING OF THE DEVELOPMENT AGREEMENT FOR A TIME CERTAIN.

**WHEREAS**, the City Commission of the City of Miami Beach desires to maximize the performance of the property commonly referred to as the “Miami Beach Marina” (described more fully below) and upgrade its facilities, enhance the neighborhood through neighborhood-oriented commercial and retail spaces, improve resiliency with capital improvements focused on sustainability, provide a park with additional public green space in the City, and generate substantial lease and other revenues for the City; and

**WHEREAS**, the City is the owner of the properties located at 300-400 Alton Road, the current location of the Miami Beach Marina, Folio Nos. # 02-4203-000-0010, 02-4203-009-9210 and 02-4203-009-9250 (the “Development Site”); and

**WHEREAS**, the City is the lessee of the submerged lands area leased to the City and the Miami Beach Redevelopment Agency by the Board of Trustees of the Internal Improvements Trust Fund of the State of Florida, as more fully described in BOT File No. 130765469 ("Area 2"). The Development Site and Area 2, as depicted in **Exhibit "1"** to the Commission Memorandum accompanying this Resolution, shall be collectively referred to herein as the "Miami Beach Marina"; and

**WHEREAS**, since 1983, the Miami Beach Marina (excluding Lots 30/31 thereof) has been leased to Miami Beach Marina Associates, Ltd., for use solely as a boat port, marina and recreation facility offering dockage, mooring and other marina related services for use by the general public. The existing lease provides for an initial term expiring on January 1, 2022, and provides the Lessee with the right to renew three (3) times, for a period of ten (10) years for each renewal term, through January 1, 2052; and

**WHEREAS**, Suntex Marina Investors, LLC, an affiliate of Miami Beach Marina Associates, Ltd., the current lessee of the Miami Beach Marina ("Lessee"), and Marina Park, LLC, f/k/a Alton Road Mixed Use Investments, LLC and one or more affiliates thereof ("Marina Park, LLC" or "Developer"), are proposing a public-private partnership with the City for the purpose of developing and constructing a project on the Development Site that includes:

(1) a private luxury residential tower that would include approximately 60 residential units and approximately 275,000 gross square feet, with a maximum height of 385 feet; and

(2) a new Marina building and enhanced neighborhood retail uses on the site of the current Marina building, with a total of approximately 45,000 gross square feet of accessory restaurant, retail and office space, to upgrade the existing condition of the Marina facilities, which are dated and unattractive; and

(3) substantial green space, including a one (1) acre park which will be open to the general public, as well as other improvements, including resiliency enhancements and improvements to the public baywalk along the Miami Beach Marina (collectively, (1) – (3) above, the "Project" or "Marina Park Project"); and

**WHEREAS**, the Developer intends to develop the mixed-use residential and commercial Marina Park Project pursuant to a Florida Statute Chapter 163 development agreement entered into between the City and the Developer (the "Development Agreement"), and to develop, design and construct the Marina Park Project, at the Developer's sole cost and expense, including the resiliency and other capital improvements; and

**WHEREAS**, the Administration and Developer have negotiated the proposed Development Agreement, a copy of which is attached hereto as **Exhibit "3"** to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, in addition to the Development Agreement, the Marina Park Project includes four other major components that must be approved by the City Commission in order for the Marina Park Project to proceed (the first reading for which are all the subject of companion agenda items on the June 24, 2020 City Commission Agenda), namely:

- (1) The Purchase and Sale Agreement ("PSA") for the sale to an affiliate of Marina Park, LLC of a portion of the Development Site and the air parcel within which the approximately 275,000 square foot residential portion of the Project would be

constructed ("Residential Parcel"), with the sale of the Residential Parcel subject to approval by a majority of the voters voting in a City-wide referendum pursuant to Section 1.03(b)(1) of the City Charter ("Sale of Residential Parcel");

- (2) A new lease for the Miami Beach Marina (excluding the Residential Parcel), to an affiliate of Suntex Marina Investors, LLC, which would be effective on January 1, 2022 (following the expiration of the existing lease) and have a term of ninety-nine (99) years, with the new lease subject to approval by a majority of the voters voting in a City-wide referendum pursuant to Section 1.03(b)(1) of the City Charter ("New Lease");
- (3) The vacation of the western half of Alton Road that lies adjacent to the City-owned properties that are part of the Development Site, consisting of a fifty (50) foot wide right-of-way, containing approximately 25,500 square feet in total lot area, as depicted in **Exhibit "1"** to the Commission Memorandum accompanying this Resolution (the "City Right-of-Way Area");
- (4) Amendments to the City's Comprehensive Plan and Land Development Regulations, to permit public-private marina redevelopments (including residential and other uses), increase the maximum building height, and amend other design regulations (the "Proposed LDR Amendments");

**WHEREAS**, the Development Agreement for the Marina Park Project contemplates a Purchase and Sale Agreement for the Residential Parcel, with the purchaser, an affiliate of Marina Park, LLC ("Purchaser"); and

**WHEREAS**, the City engaged two independent appraisers, namely CBRE, Inc. ("CBRE") and Walter Duke + Partners, Inc. ("Walter Duke") to independently estimate the fair market value of the development rights in connection with the Sale of Residential Parcel (the square footage of which incorporated the 25,500 square feet associated with the to-be-vacated City Right-of-Way Area) and the fair market rental value for the New Lease; and

**WHEREAS**, Walter Duke's appraisal valued the Residential Parcel at \$70 million, and CBRE's appraisal valued the Residential Parcel at \$80 million. A copy of the CBRE and Walter Duke Appraisal Reports are attached as **Exhibit "7"** to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, the proposed PSA for the Sale of Residential Parcel is attached as **Exhibit "4"** to the Commission Memorandum accompanying this Resolution. Among other terms, the PSA provides for payment to the City for the Sale of Residential Parcel in the amount of \$55 million, payable in specified installments of \$5 million each, with the balance evidenced by a promissory note and secured by a first mortgage on the Residential Parcel in favor of the City, and in addition to the cash purchase price of \$55 million, a non-cash contribution in the amount of \$15 million toward specified capital improvements to the Development Site will be memorialized in the New Lease; and

**WHEREAS**, the proposed New Lease for the Miami Beach Marina is attached as **Exhibit "5"** to the Commission Memorandum accompanying this Resolution. Among other terms, the New Lease would permit a master sublease of the leased property (the "Master Sublease"), either to an affiliate of Marina Park, LLC or an affiliate of Marina Park, LLC and New Lessee (the "Master Sublessee"); and

**WHEREAS**, the proposed Vacation Resolution, which is attached to the Commission Memorandum accompanying this Resolution, would vest the City with the fee interest in and to the City Right-of-Way Area. Pursuant to the Development Agreement, the Marina Park Project shall be developed as a unified development site, and the unified abutting parcels (consisting of the City Right-of-Way Area and Development Site) would be aggregated via a covenant in lieu of unity of title, to permit Developer to utilize the F.A.R. associated with the City Right-of-Way Area within the Marina Park Project. Following the vacation, the City Right-of-Way Area would continue to be owned by the City as a separate stand-alone parcel, and used solely for pedestrian and vehicular travel; and

**WHEREAS**, the Finance and Economic Resiliency Committee ("Finance Committee") reviewed the proposed transaction at its April 17, 2020 and May 22, 2020 meeting, and favorably recommended proceeding with the Marina Park Project, including the proposed (1) Development Agreement, (2) PSA, (3) New Lease, and (4) Vacation Resolution; and

**WHEREAS**, as set forth above, the proposed Development Agreement contemplates that the City Commission may approve, at its sole discretion, the Proposed LDR Amendments; and

**WHEREAS**, on May 26, 2020, the Land Use and Sustainability Committee favorably recommended the Proposed LDR Amendments, which Proposed LDR Amendments are scheduled to be heard by the Planning Board at its June 23, 2020 meeting; and

**WHEREAS**, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the approval of the proposed vacation is scheduled to be heard by the Planning Board, at its June 23, 2020 meeting; and

**WHEREAS**, on June 24, 2020, the Mayor and City Commission also considered, on first reading, the companion agenda items with respect to approval of: (1) the Sale of Residential Parcel; (2) the New Lease; the (3) proposed vacation of the City Right-of-Way Area and (4) the Proposed LDR Amendments; and

**WHEREAS**, the Planning Department analysis of the Sale of Residential Parcel, New Lease, and vacation, pursuant to Section 82-38 of the City Code, is attached as **Exhibit "2"** to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, Sections 163.3220 – 163.3243, Florida Statutes, and Section 118-4 of the City's Code require two public hearings for a Development Agreement; and

**WHEREAS**, the Development Agreement provides, among other provisions, the following terms and conditions:

- Developer shall develop the Project in accordance with the City's Land Development Regulations and the limitations set forth in the Development Agreement with respect to the Project, including, without limitation, the following conditions:
  - The private residential component of the Project will consist of approximately 275,000 square feet, and contain approximately 60 residential units, with restrictions on the rental, lease, use or occupancy of residential units within the Development Site for periods of less than six months and one day;

- The commercial component of the Project will consist of approximately 45,000 gross square feet, for accessory restaurant, retail, office and marina uses, provided, however, that there shall be no free-standing outdoor bars or night clubs;
  - The building on the Development Site would have a maximum height not-to-exceed 385 feet to the top of the roof, with the height to be calculated in accordance with the City's Land Development Regulations;
  - The Project would include a park of approximately 1 acre which will be open to the general public, as well as other improvements, including resiliency enhancements and improvements to the public baywalk along the Miami Beach Marina;
- Developer shall be solely responsible for all costs and expenses to develop, design, and construct the Marina Park Project, with no City funding for the Project; and
- The Development Agreement includes the City's approval, in its proprietary capacity as owner of the Development Site, of the preliminary concept design for the Marina Park Project. Notwithstanding the preceding, and in further recognition that the design for the Marina Park Project will evolve as part of the City's regulatory development process, including review and approval by the City's Design Review Board, the Development Agreement also requires the City's approval of substantial design changes to the Marina Park Project, including any change that materially affects the exterior façade or other exterior elements of the Hotel Project; and
- Developer shall submit its application to the Design Review Board within six (6) months of the Effective Date (defined as the later of (i) 30 days following the date the City Commission certifies the results of the November 3, 2020 election, or (ii) January 31, 2021), and shall obtain all requisite Project approvals within fifty-four (54) months following the Effective Date (subject to extension for force majeure or during the pendency of any lawsuit challenging the Project or any component thereof ("Lawsuits"), provided however, that any such extension for a Lawsuit shall be limited to a maximum period of 42 months; and
- Subject to voter referendum approval, the closing on the Sale of Residential Parcel shall take place on or prior to March 30, 2021 (the "Closing"), unless the Closing is extended by the Purchaser and City Commission pursuant to the terms of the PSA; and
- The City shall be paid a purchase price of \$55 million for the Residential Parcel, in the following installments, with the balance evidenced by a Promissory Note (which shall be non-interest bearing) and secured by a first mortgage in favor of the City:
  - \$5 million at Closing;
  - \$5 million, on or before January 1, 2022;
  - \$5 million, on or before September 30, 2022; and
  - \$40 million, due on the earlier of (a) ninety (90) days after the Project approvals have been obtained; or (b) fifty-four (54) months after the Effective Date; and
- Developer is committing to undertake \$35,000,000 in capital improvements for Area 2 over the course of 30 years, to be incorporated in to the New Lease and/or the Master Sublease, thereby aligning the Developer's obligations under the Development

Agreement with the obligations of the New Lessee under the New Lease and/or Master Sublessee's obligations under the Master Sublease; and

- In addition to the foregoing, non-cash consideration in the amount of \$15 million for resiliency and capital improvements to the Development Site (including the park and baywalk area) shall be memorialized in the New Lease and/or the Master Sublease; and
- The Closing shall be contingent upon the execution of the New Lease, which New Lease shall be subject to voter approval and effective on January 1, 2022, following the expiration of the existing Lease;
- The Development Agreement and PSA also contemplate a Reciprocal Easement Agreement among the City, the New Lessee/Master Sublessee and the Residential Parcel Purchaser, which would be executed at Closing of the Sale of Residential Parcel, to accomplish the subdivision of the Development Site to create two separate fee parcels: the fee interest in the Residential Parcel (to be owned by an affiliate of Marina Park, LLC) and the fee interest in the balance of the Development Site, which would remain owned by the City at all times (and leased to the New Lessee under the New Lease) ("REA"). After the construction of the Project, the Residential Parcel would be further subdivided pursuant to a declaration of condominium to create individual residential units for purchase and sale; and
- The REA would also serve to grant necessary easements including those of support, ingress and egress, and utilities, and contain covenants with respect to cost-sharing and maintenance between the New Lessee/Master Sublessee with respect to the Development Site and the Purchaser and successor owners with respect to the Residential Parcel; and
- Developer has proposed a twelve (12) year duration of the Development Agreement, within which time Developer shall complete the construction of the Project (with commencement of construction within eighteen (18) months following DRB approval, and the construction completion date within forty-eight (48) months from the commencement of construction), provided that the term shall be subject to extension for Force Majeure, City Delays, and Unavoidable Delays (as each of the foregoing terms is defined in the Agreement); and
- Transfers by Developer prior to the issuance of a certificate of occupancy (CO) for the Project shall be restricted, and only permitted if (1) Mr. David Martin (or a "Martin Entity," in the event of incapacity of Mr. Martin) controls the day-to-day development of the Project through C.O. and continues to own at least ten percent (10%) of the Project; and (2) transfers are to entities satisfying City's "Acceptable Owner" criteria, or are involuntary transfers (such as mortgage foreclosure), encumbrances in favor of lenders, transfers of minority interests and transfers for estate planning purposes; and
- As the New Lease and the Sale of Residential Parcel are each subject to approval by a majority of the voters voting in a City-wide referendum pursuant to the City Charter, the Development Agreement would be effective only upon the City Commission's adoption of a Resolution certifying the election results. Accordingly, the Closing would not take place, and no aspect of the proposed Project would proceed, unless the requisite approval of the voters is obtained for both the New Lease and Sale of Residential Parcel; and

- The Development Agreement provides that the vacation of the City Right-of-Way Area shall be subject to the conditions set forth in the Vacation Resolution, namely, that the vacation shall only be effective upon (1) approval of the Marina Lease and the Sale of Residential Parcel by a majority of the voters voting in a City-wide referendum, pursuant to Section 1.03(b)(1) of the City Charter; (2) the Closing on the Sale of Residential Parcel to Marina Park, LLC or an affiliate thereof; and (3) the execution of the Marina Lease, effective January 1, 2022; and
- The Development Agreement and PSA provide for contingencies in the event that Developer is unable to obtain the regulatory Project approvals, or in the event the New Lease is successfully challenged, which contingencies, among other terms, provide for the Developer and Lessee to indemnify, defend, and hold harmless the City in connection with any challenges or lawsuits regarding any component of the Project; and

**WHEREAS**, for the reasons as outlined in the Commission Memorandum accompanying this Resolution, the Administration recommends approval of the Development Agreement on first reading, and set the second and final reading/public hearing for the July 29, 2020 City Commission meeting.

**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 Development Agreement as authorized under section 118-4 of the City Code, and Sections 163.3220 – 163.3243, Florida Statutes, between the City and Marina Park, LLC (or one or more affiliates thereof) (the “Developer”), which Development Agreement: (1) delineates conditions for the development of the City-owned properties located at 300-400 Alton Road, the current upland site of the Miami Beach Marina (Folio Nos. 02-4203-009-9210, 02-4203-000-0010, and 02-4203-009-9250) (collectively, the “Development Site”), with such Development Site limited to a maximum floor area of approximately 320,000 square feet (of which there shall be a maximum of approximately 275,000 square feet for residential uses and approximately 45,000 square feet for retail, restaurant, office and marina uses), with the building constructed thereon limited to up to 385 feet in height, with up to 60 residential units, and which shall include a park consisting of at least 1.0 acres (the “Marina Park Project”); (2) memorializes the conditions for the city’s sale to Marina Park, LLC (or an affiliate thereof) of the portion of the Development Site and air parcel within which the approximately 275,000 square foot residential portion of the Marina Park Project is to be constructed (“Sale of Residential Parcel”), and the City’s 99 year lease to an affiliate of Suntex Marina Investors, LLC, of the Development Site (excluding the residential parcel) and associated lease of submerged lands for marina use (the “Marina Lease”); (3) memorializes conditions for vacating the western half of the City’s right-of-way at Alton Road adjacent to the Development Site, pursuant to Section 82-37 of the City Code and Section 1.03(b)(4) of the City Charter (collectively, the “City Right-of-Way Area”); (4) provides for the Developer’s design, permitting, and construction of the Marina Park Project, including resiliency enhancements and other capital improvements, at Developer’s sole cost and expense; and (5) with the foregoing subject to and contingent upon approval of the Marina Lease and the Sale of Residential Parcel by a majority of the voters voting in a City-wide referendum, pursuant to Section 1.03(b)(1) of the City Charter; and further, setting the second and final reading of the Development Agreement for a time certain.

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

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Rafael Granado      6/16/20  
City Attorney      Date  
PAZ