

RESOLUTION:_____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON FIRST READING, PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE, A PURCHASE AND SALE AGREEMENT ("PSA") BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND MARINA PARK, LLC (OR AN AFFILIATE THEREOF) (THE "PURCHASER") IN CONNECTION WITH THE PROPOSED DEVELOPMENT OF THE MARINA PARK PROJECT ON 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"), WHICH PSA MEMORIALIZES THE TERMS FOR THE CITY'S SALE TO THE PURCHASER OF A PORTION OF THE DEVELOPMENT SITE AND A PARCEL OF AIR LOCATED ABOVE THE GRADE SURFACE OF THE DEVELOPMENT SITE (THE "RESIDENTIAL PARCEL"), FOR THE CONSTRUCTION OF THE APPROXIMATELY 275,000 SQUARE FOOT RESIDENTIAL PORTION OF THE MARINA PARK PROJECT, IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND MARINA PARK, LLC (OR ONE OR MORE AFFILIATES THEREOF), APPROVED PURSUANT TO CITY COMMISSION RESOLUTION NO. 2020-_____; WITH SUCH PSA AND RELATED AGREEMENTS PROVIDING, AMONG OTHER TERMS, FOR (1) A PURCHASE PRICE IN THE AMOUNT OF \$55,000,000.00, OF WHICH \$5,000,000 IS PAYABLE TO THE CITY AT CLOSING AND THE BALANCE OF WHICH IS PAYABLE IN SPECIFIED INSTALLMENTS, EVIDENCED BY A PROMISSORY NOTE AND SECURED BY A FIRST MORTGAGE ON THE RESIDENTIAL PARCEL, IN FAVOR OF THE CITY; (2) ADDITIONAL NON-CASH CONSIDERATION TO THE CITY IN THE AMOUNT OF \$15,000,000, FOR SPECIFIED CAPITAL IMPROVEMENTS TO BE CONSTRUCTED ON THE DEVELOPMENT SITE; AND (3) A RECIPROCAL EASEMENT AGREEMENT, IN SUBSTANTIAL FORM, TO SEPARATE THE PURCHASER'S FEE INTEREST IN THE RESIDENTIAL PARCEL FROM THE CITY'S FEE INTEREST IN THE UNDERLYING DEVELOPMENT SITE, VIA A VERTICAL SUBDIVISION THEREOF; FURTHER, WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT OF SECTION 82-39(B) OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE SERVED BY WAIVING SUCH CONDITION; FURTHER, PROVIDING THAT THE SALE OF THE RESIDENTIAL PARCEL TO PURCHASER SHALL BE SUBJECT TO AND CONTINGENT UPON APPROVAL 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 PUBLIC HEARING, FOR THE SECOND AND FINAL READING OF THE RESOLUTION.

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");

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") (collectively, the Development Site and Area 2, the "Miami Beach Marina");

WHEREAS, since 1983, the Miami Beach Marina has been leased to Miami Beach Marina Associates, Ltd. ("Current Lessee"), 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 Marina Lease"); and

WHEREAS, the Existing Marina Lease provides for an initial term expiring on January 1, 2022, and also provides the Current 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 the Current 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;

(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;

(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 on the Development Site 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 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;

- (2) A new lease for the Miami Beach Marina (excluding the Residential Parcel), to an affiliate of Suntex Marina Investors, LLC ("Lessee"), 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"); 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 Development Agreement; (2) the New Lease; the (3) proposed vacation of the City Right-of-Way Area and (4) the Proposed LDR Amendments; and

WHEREAS, as set forth above, the Development Agreement for the Marina Park Project contemplates a PSA for the Residential Parcel, with the purchaser, an affiliate of Marina Park, LLC ("Purchaser; and

WHEREAS, the Purchaser, jointly and severally with the master sublessee of the Development Site, an affiliate of Marina Park, LLC ("Master Sublessee"), would be the Developer under the Development Agreement and would be under common control with the Master Sublessee, thereby aligning the Purchaser's rights under the PSA and Reciprocal Easement Agreement (as described below) with the Master Sublessee's obligations relative to the Project under the Development Agreement and the master sublease of the Development Site under the New Lease; and

WHEREAS, the proposed PSA is attached as **Exhibit "4"** to the Commission Memorandum accompanying this Resolution; 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 Purchaser has proposed a cash payment of \$55 million dollars to the City, and has offered additional non-cash consideration in the form of \$15 million dollars of capital improvements for the Development Site (which commitment is memorialized in the New Lease and/or Master Sublease); 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, the PSA will provide for a sale price of \$55 million, with the closing on the Sale of Residential Parcel shall take place on or before March 30 2021 ("Closing"), unless extended pursuant to the terms of the PSA; and

WHEREAS, the City shall be paid a purchase price of \$55 million for the Sale of 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 (the date the City Commission certifies the results of the November 3, 2020 election); and

WHEREAS, and in addition to the cash purchase price of \$55 million, Developer has proposed a non-cash contribution in the amount of \$15 million toward specified capital improvements to the Development Site, which will be memorialized in the New Lease; and

WHEREAS, the Closing shall be contingent upon the execution of the New Lease, which shall be effective on January 1, 2022, following the expiration of the existing Lease;

WHEREAS, 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 PSA 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

WHEREAS, 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, the PSA also contemplates a Reciprocal Easement Agreement among the City, the New Lessee/Master Sublessee and the Purchaser ("REA"), to accomplish the "vertical subdivision" of the Development Site to create two separate fee parcels: the fee interest in the Residential Parcel to be owned by the Purchaser 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). 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

WHEREAS, 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

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 RESOLVED, BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, on first reading, pursuant to Section 82-37(a)(2) of the City Code, a Purchase and Sale agreement ("PSA") between the City of Miami Beach ("City") and Marina Park, LLC (or an affiliate thereof) (the "Purchaser") in connection with the proposed development of the Marina Park Project on 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"), which PSA memorializes the terms for the City's sale to the Purchaser of a portion of the Development Site and a parcel of air located above the grade surface of the Development Site (the "Residential Parcel"), for the construction of the approximately 275,000 square foot residential portion of the Marina Park Project, in accordance with the terms and conditions of the Development Agreement between the City and Marina Park, LLC (or one or more affiliates thereof), approved pursuant to City Commission Resolution No. 2020-_____; with such PSA and related agreements providing, among other terms, for (1) a purchase price in the amount of \$55,000,000.00, of which \$5,000,000 is payable to the city at closing and the balance of which is payable in specified installments, evidenced by a promissory note and secured by a first mortgage on the residential parcel, in favor of the City; (2) additional non-cash consideration to the City in the amount of \$15,000,000, for specified capital improvements to be constructed on the Development Site; and (3) a reciprocal easement agreement, in substantial form, to separate the Purchaser's fee interest in the residential parcel from the City's fee interest in the underlying Development Site, via a vertical subdivision thereof; further, waive, by 5/7th vote, the competitive bidding requirement of Section 82-39(b) of the City Code, finding that the public interest would be served by waiving such condition; further, provide that the sale of the Residential Parcel to Purchaser shall be subject to and contingent upon approval 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 set the public hearing, for the second and final reading of the Resolution.

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 E. Granado 6-16-20
City Attorney PAZ Date