

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 LEASE AGREEMENT ("LEASE") BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND AN AFFILIATE OF SUNTEX MARINA INVESTORS, LLC (THE "LESSEE"), OF THE CITY-OWNED PROPERTIES LOCATED AT 300-400 ALTON ROAD, (FOLIO NOS. 02-4203-009-9210, 02-4203-000-0010, AND 02-4203-009-9250), AN APPROXIMATELY 3.51 ACRE SITE, MORE PARTICULARLY DESCRIBED IN THIS RESOLUTION (THE "LEASED PROPERTY"), FOR THE OPERATION OF THE MIAMI BEACH MARINA, WHICH LEASE SHALL PROVIDE FOR: (1) THE CONSTRUCTION OF A NEW FACILITY OF APPROXIMATELY 45,000 SQUARE FEET, FOR RETAIL, RESTAURANT, OFFICE AND MARINA USES, IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE LEASE AND THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND MARINA PARK, LLC (OR ONE OR MORE AFFILIATES THEREOF) FOR THE MARINA PARK PROJECT, APPROVED PURSUANT TO CITY COMMISSION RESOLUTION NO. 2020-\_\_\_\_\_ ("DEVELOPMENT AGREEMENT"); (2) THE CITY'S SUBLEASE TO THE LESSEE OF THE SUBMERGED LANDS AREA LEASED TO THE CITY AND MIAMI BEACH REDEVELOPMENT AGENCY BY THE BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENTS TRUST FUND OF THE STATE OF FLORIDA, AS MAY BE AMENDED (BOT FILE NO. 130765469) ("AREA 2"); (3) A TERM OF NINETY-NINE YEARS, COMMENCING ON JANUARY 1, 2022 AND EXPIRING DECEMBER 31, 2120; (4) ANNUAL RENT TO THE CITY, CONSISTING OF THE GREATER OF MINIMUM BASE RENT OR A FIXED PERCENTAGE OF THE GROSS REVENUES OF THE MIAMI BEACH MARINA, AMONG OTHER RENT; AND (5) LESSEE'S CONSTRUCTION, AT ITS SOLE COST AND EXPENSE, OF ADDITIONAL CAPITAL IMPROVEMENTS IN THE AGGREGATE AMOUNT OF \$50 MILLION WITHIN THE FIRST THIRTY (30) YEARS OF THE LEASE; FURTHER, PROVIDING THAT THE LEASE 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 THE CLOSING ON THE SALE OF THE RESIDENTIAL PARCEL, AS CONTEMPLATED IN THE DEVELOPMENT AGREEMENT AND RELATED AGREEMENTS ATTACHED AS EXHIBITS THERETO; 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; 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"); 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 portion of the Development Site consisting of platted Lots 22 through 29, and the northerly ten (10) feet of Lot 21 in Block 111 of the Ocean Beach Florida Addition No. 3 Plat, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County ("Area 1") and Area 2 has been leased by the City 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 ("the Existing Lease"); and

**WHEREAS**, Suntex Marina Investors, LLC, an affiliate of Miami Beach Marina Associates, Ltd., the current lessee of the Miami Beach Marina (the "Existing 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 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, 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 to an affiliate of Suntex Marina Investors, LLC, which would be effective on January 1, 2022 (immediately 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**, the foregoing components of the Marina Park Project are described more fully in the Commission Memorandum attached to this Resolution and incorporated by reference herein; 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 Sale of Residential Parcel; the (3) proposed vacation of the City Right-of-Way Area and (4) the Proposed LDR Amendments; and

**WHEREAS**, a draft of the New Lease is attached as **Exhibit "5"** to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, subject to and contingent upon voter referendum approval, the New Lease would also be contingent upon the Sale of the Residential Parcel, and shall become effective on Jan. 1, 2022, immediately upon the expiration of the Existing Lease, for a term of ninety-nine (99) years thereafter; and

**WHEREAS**, the leased premises under the New Lease shall consist of the entirety of the Development Site depicted in **Exhibit "1"** to the Commission Memorandum accompanying this Resolution, namely (i) Area 1; (ii) the platted Lots 30 and 31 in Block 111 of the Ocean Beach Florida Addition No. 3 Plat, as recorded in Plat Book 2, Page 81, of the Public Records of Miami-Dade County, and (iii) Area 2, provided, however, that the leased premises shall exclude the Residential Parcel (the "Leased Property"); and

**WHEREAS**, as set forth above, the lessee under the New Lease would be an affiliate of Suntex Marina Investors, LLC (the "Lessee"); and

**WHEREAS**, the City engaged two 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**, the Walter Duke and CBRE appraisals independently determined that the current fair market annual rate of the Marina Lease to be 10% of gross sales for the upland and Area 2 marina operations, 35% of parking revenue, and \$0.04 per gallon for fuel sales, which is commensurate with the current negotiated terms for the New Lease, the appraisal reports are attached as **Exhibit "7"** to Commission Memorandum accompanying this Resolution; and

**WHEREAS**, the New Lease provides that, except with respect to the first four (4) years of the New Lease, as described below, the rent will be the greater of (1) \$1,900,000, adjusted annually by CPI ("Minimum Guaranteed Rent"), with the year of commencement for the annual CPI increase subject to continued discussions; or (2) 10% of the Gross Revenues, \$.04 per gallon for all fuel sales, and 35% of revenues generated from parking, and provided, however, that if Lessee or any affiliate thereof operates a restaurant or retail establishment within the Leased Premises, rent for that space shall be based on the fair market rental value of the restaurant or retail premises instead of gross revenues (the "Annual Rent"); and

**WHEREAS**, during the first four (4) years of the New Lease, the guaranteed minimum base rent would be \$1,250,000 annually, adjusted by CPI, to account for a four (4) year construction period; and

**WHEREAS**, the New Lease contemplates the construction, pursuant to the Development Agreement, of a new "Replacement Facility" for the Marina, with the Replacement Facility consisting of the commercial portion of the Marina Park Project, to be constructed as the podium structure underneath the residential tower for the residential portion of the Marina Park Project; and

**WHEREAS**, the Replacement Facility shall include approximately 45,000 square feet of accessory restaurant, retail, marina, and office space, to upgrade the existing condition of the Marina facilities; and

**WHEREAS**, the terms of 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 Lessee (the "Master Sublessee"); and

**WHEREAS**, to facilitate the financing of the commercial Replacement Facility, the City would agree to grant to the Master Sublessee and its lender a recognition and non-disturbance agreement providing that in the event of any termination of the New Lease, the Master Sublease would continue as a direct lease between the City, as landlord, and the Master Sublessee, as tenant, and the City would thereafter have all rights and privileges of the "landlord" under the Master Sublease, including the right to exercise those remedies under the Master Sublease that are triggered upon default by the Master Sublessee of its obligations under the Master Sublease (which obligations will include the Replacement Facility obligations under the Development Agreement) that remain uncured after the expiration of applicable grace and cure periods; and

**WHEREAS**, notwithstanding the Master Sublease, the Lessee will be responsible for all of the obligations under the Lease, and City will look to only one party – the Lessee – for compliance with all Lease terms. For clarity, all development and construction obligations would be in the Development Agreement, with Developer having the overall responsibility for delivery of the Marina Park Project; and

**WHEREAS**, the New Lease will incorporate and include the City's sublease to the Lessee of the Area 2 submerged lands leased to the City and the RDA by the Board of Trustees of the Internal Improvements Trust Fund of the State of Florida; and

**WHEREAS**, the New Lease will contemplate additional capital improvements to Area 1 and Area 2, as more particularly described below:

- \$35,000,000 will be committed to capital improvements towards Area 2, with \$15,000,000 completed in Years 1-10, \$10,000,000 in Years 11-20, and \$10,000,000 in Years 21-30;
- as part of the non-cash consideration for the sale of the Residential Parcel, as set forth in the Purchase and Sale Agreement, an additional \$15,000,000 will be committed by the Lessee for Area 1 improvements, including resiliency components in the park and bay walk to cover items above base park and base tenant improvements, with \$7,500,000 completed in Years 1-10, and the balance completed in Years 11-20; and

**WHEREAS**, the New Lease would obligate the Lessee to operate and maintain the marina as a "First Class" or "Class A" marina, and is intended to include criteria for ongoing maintenance and security standards for upkeep of the Leased Property, including the bay walk, parking garages providing marina-related parking, and the park to be constructed as part of the Development Agreement; and

**WHEREAS**, in the event that both the New Lease and the Sale of the Residential Parcel are approved by the voters in a City-wide referendum but, subsequently, the Developer is unable to obtain a final, non-appealable Design Review Board approval for the Marina Park Project, the New Lease obligates the Lessee to construct an "Alternate Replacement Facility" of similar size and scope to the facilities currently serving the Miami Beach Marina, to ensure that, at a minimum, a new commercial and retail facility is built on the Leased Property to maximize the performance of the Miami Beach Marina; and

**WHEREAS**, pursuant to Section 82-37 of the City Code, the New Lease will require two readings before the City Commission, with the second reading being a public hearing, and as the New Lease will require the waiver of competitive bidding under Section 82-39(b) of the City Code, the New Lease and Sale of Residential Parcel would be subject to approval by a 5/7 vote of the City Commission; and

**WHEREAS**, in addition to the heightened City Commission approval requirements set forth above, the New Lease will require approval by a majority of the voters voting in a Citywide referendum pursuant to Section 1.03(b)(1) of the City Charter; and

**WHEREAS**, for the reasons outlined in the Commission Memorandum accompanying this Resolution, the Administration recommends approval of the New Lease on first reading and recommends setting 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, on first reading, pursuant to Section 82-37(a)(2) of the City Code, a lease agreement ("Lease") between the City of Miami Beach ("City") and an affiliate of Suntex Marina Investors, LLC (the "Lessee"), of the City-owned properties located at 300-400 Alton Road, (Folio Nos. 02-4203-009-9210, 02-4203-000-0010, AND 02-4203-009-9250), an approximately 3.51 acre site, more particularly described in this Resolution (the "Leased Property"), for the operation of the Miami Beach Marina, which Lease shall provide for: (1) construction of a new facility of approximately 45,000 square feet, for retail, restaurant, office and marina uses, in accordance with the terms and conditions of the Lease and the Development Agreement between the City and Marina Park, LLC (or one or more affiliates thereof) for the Marina Park Project, approved pursuant to City Commission Resolution No. 2020-\_\_\_\_ ("Development Agreement"); (2) the City's sublease to 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 may be Amended (BOT File No. 130765469) ("Area 2"); (3) a term of ninety-nine years, commencing on January 1, 2022 and expiring December 31, 2120; (4) annual rent to the City, consisting of the greater of minimum base rent or a fixed percentage of the gross revenues of the Miami Beach Marina, among other rent; and (5) Lessee's construction, at its sole cost and expense, of additional capital improvements within the first thirty (30) years of the Lease; further providing that the Lease shall be subject to and contingent upon the approval by the majority of the voters voting in City-Wide referendum pursuant to Section 1.03(b)(1) of the City Charter and the closing on the sale of the Residential Parcel, as contemplated in the Development Agreement and related agreements; further, waiving, by 5/7<sup>th</sup> 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; and further setting the public hearing, for second and final reading of this 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

                     2/16/20  
City Attorney *RAT* Date