

RESOLUTION: _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING/PUBLIC HEARING, PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE, A LEASE AGREEMENT (“LEASE”) BETWEEN THE CITY OF MIAMI BEACH (“CITY”) AND MB MARINA PARK, LLC, AN AFFILIATE OF SUNTEX MARINA INVESTORS, LLC (THE “LESSEE”), OF THE CITY-OWNED PROPERTIES LOCATED AT 300-390 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 BY AND AMONG CITY, MARINA PARK RESIDENTIAL, LLC AND MARINA PARK COMMERCIAL, LLC 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 (99) YEARS, COMMENCING ON JANUARY 1, 2022 AND EXPIRING DECEMBER 31, 2120; (4) ANNUAL RENT TO THE CITY, CONSISTING OF THE GREATER OF MINIMUM ANNUAL GUARANTEED RENT OR A FIXED PERCENTAGE OF THE GROSS REVENUES OF THE MIAMI BEACH MARINA; AND (5) LESSEE’S CONSTRUCTION, AT ITS SOLE COST AND EXPENSE, OF ADDITIONAL CAPITAL IMPROVEMENTS IN THE AGGREGATE AMOUNT OF \$40 MILLION WITHIN THE FIRST THIRTY-FIVE (35) 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 OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE SERVED BY WAIVING SUCH REQUIREMENT; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE UPON THE SATISFACTION OF THE FOREGOING CONDITIONS.

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 300-390 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 (“RDA”) 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. (the “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 Lease”); and

WHEREAS, the Existing Lease provides for an initial term expiring on January 1, 2022, and 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, Marina Park Residential, LLC, f/k/a Alton Road Mixed Use Investments, LLC (“Marina Park Residential”) and an affiliate thereof, Marina Park Commercial, LLC (“Marina Park Commercial, LLC”) (jointly and severally, the “Developer”), along with Suntex Marina Investors, LLC, an affiliate of the Current Lessee, 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 a maximum of 60 residential units and a maximum of 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 Miami Beach Marina building, with a maximum of approximately 45,000 gross square feet of accessory restaurant, retail and office space, to upgrade the existing condition of the Miami Beach Marina facilities, which are dated and unattractive; and

(3) substantial green space, including a contiguous, one (1) acre ground-level public park for the benefit of the general public, as well as other improvements, including resiliency enhancements and enhancements 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 enhancements 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 (the second readings for which are all the subject of companion agenda items on the July 29, 2020 City Commission Agenda), namely:

(1) The Purchase and Sale Agreement (“PSA”) for the sale to Marina Park Residential, LLC (“Purchaser”) of up to 0.3 acres of the Development Site, and an 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”), which PSA is attached as **Exhibit “4”** to the Commission Memorandum accompanying this Resolution;

(2) A new lease for the Miami Beach Marina (excluding the Residential Parcel), to MB Marina Park, LLC, an affiliate of Suntex Marina Investors, LLC (“Lessee”), which would be effective at the Closing for the Sale of Residential Parcel, with the term to commence on January 1, 2022 (following the expiration of the existing lease), for 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 (the “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 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 approved, on first reading: (1) the Development Agreement; (2) the New Lease; (3) the Sale of Residential Parcel; (4) the proposed vacation of the City Right-of-Way Area; and (5) the Proposed LDR Amendments; and

WHEREAS, the proposed New Lease is attached as **Exhibit “5”** to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the New Lease shall be subject to and contingent upon voter referendum approval of a majority of the voters voting in a City-wide referendum pursuant to Section 1.03(b)(1) of the City Charter and shall also be contingent upon the closing for the Sale of the Residential Parcel; and

WHEREAS, the New Lease would be effective at the closing for the Sale of the Residential Parcel, with the term to commence on January 1, 2022, immediately upon the expiration of the Existing Lease, for a term of ninety-nine (99) years thereafter; and

WHEREAS, the leased premises subject to the New Lease will be comprised of the Existing Lease premises and Lots 30-31, less the Residential Parcel (“Leased Premises”), as more particularly described in the New Lease; 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 appraisal reports, attached as **Exhibit “7”** to Commission Memorandum accompanying this Resolution, each concluded that the rental rates commensurate with the current negotiated terms for the New Lease -- 10% of gross sales for the upland and Area 2 marina operations, 35% of parking revenue, and \$0.04 per gallon for fuel sales -- represent fair market rental rates; and

WHEREAS, the New Lease provides that, except with respect to a four (4) year construction period, the annual rent will be the greater of (i) \$1,900,000, adjusted annually by CPI (“Minimum Annual Guaranteed Rent”); or (ii) 10% of the Gross Receipts (as defined in the New Lease) received by Lessee or its affiliates operating all or any portion of the Leased Property, \$.04 per gallon for all fuel sales, and 35% of revenues generated from parking (“Percentage Rent”); and

WHEREAS, during the first four (4) years of the New Lease, the City would receive “Construction Rent”, consisting of the greater of either: (i) minimum annual guaranteed Construction Rent in the amount of \$1,250,000, adjusted annually by CPI or (ii) Percentage Rent of 7.5% of Gross Receipts. The cumulative excess of actual Construction Rent over the Minimum Annual Guaranteed Construction Rent during the four year Construction Rent period would be calculated at the conclusion of Construction Rent period, and payments to the City for such cumulative excess amounts, if any, would be amortized over a period of fifteen (15) years; and

WHEREAS, in addition to the Minimum Annual Guaranteed Rent, at the expiration of the Submerged Land Lease in 2052, the Lessee shall pay for 50% of any increases to the

Submerged Land Lease rent for any extended or new Submerged Land Lease, above the rate of the cumulative increase of CPI from 2020 through date of the new Submerged Land Lease, up to a cap of \$750,000 per year; and

WHEREAS, the New Lease contemplates the construction, pursuant to the Development Agreement, of a new “Replacement Facility” for the Miami Beach 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 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 Development Site for the construction of the Project (the “Master Sublease”), to Marina Park Commercial, LLC (the “Master Sublessee” or “Marina Park Commercial”); 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; and

WHEREAS, notwithstanding the Master Sublease, the Lessee will be responsible for all of the obligations under the New Lease, and City will look to only one party – the Lessee – for compliance with all New Lease terms, provided, however, that 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, in the event the Development Agreement is subsequently terminated and the New Lease remains in effect, the New Lease provides for a contingency to ensure that a new commercial facility is built by requiring that Lessee construct a \$22.5 million “Alternate Replacement Facility;” with the Mandatory Project Elements for the Alternate Replacement Facility (including the requirement to deliver a baseline 1.0 acre park to the City), and time periods for completion of the Alternate Replacement Facility, all delineated in the New Lease; and

WHEREAS, the New Lease requires the Lessee to implement an additional \$40 million in capital improvements for the operation of the marina (“Marina Improvements”), with \$15 million to be expended in years 1-10, \$12.5 million in years 11-20, and \$12.5 million in years 21-35; if the minimum spends cannot be completed in the time periods set forth above, New Lessee shall escrow all unspent amounts with the City, with the escrowed funds to be spent on Marina Improvements in the next period (subject to caps on the amounts that could be escrowed; and

WHEREAS, the New Lease incorporates specific Marina Standards for a “world-class” marina, with consolidated operations and maintenance obligations, for the new Replacement Facility (or Alternate Replacement Facility), Baywalk, Area 2 submerged lands and parking areas, with detailed schedule of fines in lieu of default, and with the Lease further providing for the City’s right to retain a third-party consultant to update the Marina Standards every 10 years to ensure world-class standards are maintained (as such standards may evolve in the industry) over the life of the ninety-nine (99) year term of the New Lease; and

WHEREAS, upon completion of the 1.0 acre park as part of the construction of the Project, the Lessee will deliver the Park to the City (and the Lease will be amended to exclude the completed Park from the boundaries of the Leased Property), with the City to thereby own and control the Park, separate from the Leased Property, as a public park for the benefit of the general public; and

WHEREAS, pursuant to Section 82-37 of the City Code, the New Lease requires 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, which Commission Memorandum, and exhibits thereto, are incorporated by reference as if fully set forth herein, the Administration recommends approval of the New Lease on second reading.

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 second reading/public hearing, pursuant to Section 82-37(a)(2) of the City Code, a lease agreement (“Lease”) between the City of Miami Beach (“City”) and MB Marina Park, LLC, an affiliate of Suntex Marina Investors, LLC (the “Lessee”), of the City-owned properties located at 300-390 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 by and among City, Marina Park Residential, LLC and Marina Park Commercial, LLC 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 (99) years, commencing on January 1, 2022 and expiring December 31, 2120; (4) annual rent to the City,

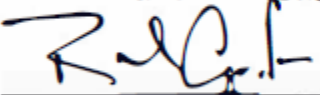
consisting of the greater of Minimum Annual Guaranteed Rent or a fixed percentage of the gross revenues of the Miami Beach Marina; and (5) Lessee's construction, at its sole cost and expense, of additional capital improvements in the aggregate amount of \$40 million within the first thirty five (35) 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 attached as exhibits thereto; and further, waiving, by 5/7th vote, the competitive bidding requirement of Section 82-39 of the City Code, finding that the public interest would be served by waiving such requirement, and further authorizing the Mayor and City Clerk to execute the Lease upon the satisfaction of the foregoing conditions.

PASSED AND ADOPTED this ____ day of July, 2020.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
 7/21/20

City Attorney *RAF* Date