

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

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, APPROVING, FOLLOWING SECOND READING, A LEASE AGREEMENT ("LEASE"), AS AUTHORIZED UNDER SECTION 82-37 OF THE CITY CODE AND SECTION 1.03(B)(4) OF THE CITY CHARTER, BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND COMMUNITY FINANCE CORPORATION, AN ARIZONA NOT-FOR-PROFIT CORPORATION, OR AN AFFILIATE THEREOF ("LESSEE"), OF THE CITY-OWNED PROPERTY LOCATED AT 224 23RD STREET (THE "PROPERTY"), FOR THE CONSTRUCTION OF THE COLLINS PARK ARTIST WORKFORCE HOUSING PROJECT ON THE PROPERTY, A PROPOSED DEVELOPMENT WHICH SHALL INCLUDE (1) RESIDENTIAL WORKFORCE HOUSING UNITS, FOR ARTISTS, TEACHERS, AND OTHER INCOME-ELIGIBLE TENANTS; (2) RESIDENTIAL DORMITORY SPACE, INTENDED FOR USE BY MIAMI CITY BALLET, INC. (THE "BALLET"), TO SUPPORT THE MIAMI CITY BALLET'S DANCE EDUCATION AND OTHER PROGRAMS OR, IF AGREEMENT WITH THE BALLET CANNOT BE REACHED, ADDITIONAL WORKFORCE HOUSING UNITS; AND (3) GROUND FLOOR RETAIL OR CULTURAL SPACE (COLLECTIVELY, THE "PROJECT"); FURTHER, PROVIDING FOR THE PROJECT TO BE DEVELOPED, DESIGNED, FINANCED, CONSTRUCTED, AND OPERATED IN ACCORDANCE WITH THE TERMS OF THE LEASE AND THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND SERVITAS, LLC FOR THE PROJECT, APPROVED PURSUANT TO RESOLUTION NO. 2021-\_\_\_\_\_; AND FURTHER PROVIDING FOR A MAXIMUM TERM OF NINETY (90) YEARS, WITH AN INITIAL TERM OF FIFTY (50) YEARS, AND TWO (2) RENEWAL TERMS, FOR A PERIOD OF TWENTY (20) YEARS EACH, ON MUTUAL AGREEMENT OF THE CITY AND LESSEE; AND FURTHER, APPROVING THE DISTRIBUTIONS OF NET AVAILABLE CASH FLOW TO THE BALLET AS PROVIDED IN THIS RESOLUTION, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FINAL LEASE.

**WHEREAS**, the Mayor and City Commission has identified the need for workforce and affordable housing in the City as a key objective in the City's 2019 Strategic Plan: *Through the Lens of Resilience*; and

**WHEREAS**, in the City's 2040 Comprehensive Plan, the Mayor and City Commission has prioritized workforce and affordable housing, with the express goal "to encourage redevelopment that provides workforce and affordable housing" within the City; and

**WHEREAS**, in the City's 2019 Strategic Plan, the City has also committed to support, develop, coordinate and promote performance, visual and other cultural arts within the City, including elevating the Collins Park Cultural District, where the proposed

project is to be located; and

**WHEREAS**, the City is the owner of the property located at 224 23<sup>rd</sup> Street (the "Property"), the current site of a 21-space public parking lot, and desires to redevelop the Property as a mixed use residential workforce housing development, and further desires to prioritize housing for income-eligible artists and educators (the "Collins Park Artist Workforce Housing Project" or "Project"), to accomplish two of the City's strategic planning objectives; and

**WHEREAS**, on September 14, 2016, the Mayor and City Commission adopted Resolution No. 2016-29547, selecting The Concourse Group to identify public-private partnership (P3) opportunities to alleviate the cost and other burdens on the City associated with the development of workforce/affordable housing projects on City property, including with respect to the proposed Collins Park Artist Workforce Housing Project; and

**WHEREAS**, on December 14, 2016, the Mayor and City Commission adopted Resolution No. 2016-29679, approving a height waiver for the Collins Park Artist Workforce Housing Project, to authorize a height of up to 75 feet, finding that the waiver was necessary in order to provide optimal development and to allow for maximum capacity for artist/workforce housing; and

**WHEREAS**, the Miami City Ballet, Inc. (the "Ballet"), South Florida's premier classical ballet company, is a not-for-profit charitable cultural organization, headquartered in the vicinity of the Property, at 2200 Liberty Avenue, Miami Beach, Florida; and

**WHEREAS**, on January 18, 2019, the City issued a competitive solicitation (ITN 2019-099-KB) for the Project, which expressly encouraged proposers to incorporate the participation of the Ballet as part of the Project, in an effort to address the Ballet's dormitory housing needs and program the workforce housing component of the Project with a focus on attracting artists and area educators to the City; and

**WHEREAS**, on July 17, 2019, the Mayor and City Commission adopted Resolution No. 2019-30908, authorizing simultaneous negotiations with both ITN proposers; following withdrawal from one of the ITN proposers, the City Commission directed negotiation with the sole remaining proposer, Servitas, LLC ("Servitas" or "Developer"); and

**WHEREAS**, Developer, in collaboration with Community Finance Corp., a not-for-profit corporation that exists to facilitate capital projects for governmental entities throughout the United States, has proposed a public-private partnership with the City that would advance the City's policy objectives of developing workforce housing, primarily for artists, educators and first responders, in the City by reducing the cost of capital for the Project and thereby freeing fiscal resources of the City for other governmental uses and reducing the occupancy costs of the Ballet; and



**WHEREAS**, the Developer intends to develop the mixed-use residential workforce housing Project pursuant to a Florida Statute Chapter 163 development agreement entered into between the City and the Developer (the "Development Agreement"); and

**WHEREAS**, the proposed development would consist of a 7-story building, designed by Shulman & Associates and PGAL Architects, with (1) approximately eighty (80) residential workforce housing units, for artists, teachers, and other income-eligible tenants; (2) dormitory housing, intended for use by the Ballet, to support the Ballet's dance education and other programs or, if agreement with the Ballet cannot be reached, up to sixteen (16) additional workforce housing units; and (3) ground floor retail or cultural space, with the building constructed on the Property to be limited to a maximum height of 75 feet, as approved by the City Commission; and

**WHEREAS**, as proposed, the City will enter into a development agreement with Servitas to govern the development of the Project, and in addition thereto, the City will enter into a long-term ground lease for the Property (the "Lease") with a nonprofit 501(c)(3) organization, Community Finance Corporation, or an affiliate thereof (the "Ground Lessee"); and

**WHEREAS**, the proposed Lease is attached as an exhibit to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, the Lessee would finance the design and construction of the Project through the issuance of tax-exempt and taxable project revenue bonds (which would be non-recourse to the City, with principal and interest payable solely from Project revenues); and

**WHEREAS**, on September 23, 2020, the Finance and Economic Resiliency Committee ("Finance Committee") reviewed the proposed transaction and unanimously recommended that the Administration proceed with the proposed Project, including the Development Agreement and Lease; and

**WHEREAS**, on October 18, 2020, the Mayor and City Commission accepted the recommendation of the Finance Committee, and referred the proposed Project to the Planning Board for its review; and

**WHEREAS**, pursuant to Section 1.03(b)(4) of the City Charter governing leases of ten years or longer of City-owned property, the Lease requires approval by a majority 4/7 vote of all members of the Planning Board, and a 6/7 vote of the City Commission; and

**WHEREAS**, on November 17, 2020, the Planning Board approved the proposed Lease pursuant to the requirements of Section 1.03(b)(4) of the City Charter, and voted to transmit the Development Agreement to the City Commission with a favorable recommendation, in accordance with the City's Land Development Regulations; and

**WHEREAS**, the Planning Department analysis of the Lease, pursuant to Section 82-38 of the City Code, is attached as an exhibit to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, as required by Section 82-39 of the City Code, the City engaged an independent appraiser to independently estimate the fair market value of the Lease of the Property, and a copy of the appraisal is attached as an exhibit to the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, on December 9, 2020, the Mayor and City Commission approved, on first reading, the Development Agreement and the Lease; and

**WHEREAS**, on January 13, 2021, the Mayor and City Commission approved, by a 5/7<sup>th</sup> vote, a waiver of the minimum and average unit size requirements for workforce housing in Section 142-337 (for up to ¼ of the studio units for the Project), and the parking requirements in Section 130-33 of the City Code, pursuant to Section 142-425(d) and 142-425(e) of the City Code; and

**WHEREAS**, the Lease would be effective at the Financial Closing for the Project (when the financing is in place and all permits and approvals for the commencement of construction have been obtained), for an initial term of fifty (50) years, with two renewal terms of twenty (20) years each, on mutual agreement of the parties; and

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

- Lessee, by and through its Developer, shall complete, or cause to be completed, the design, permitting and construction of the Project, in accordance with the terms and conditions set forth in the Development Agreement and the City Code, with Project costs, including Developer's fees, payable from the Project bond proceeds, and with City's financial contribution limited to City's payment of a maximum of \$200,000 for environmental remediation costs, if any; and
- The Project financing shall be non-recourse to the City (with no pledge of City revenue or covenant to budget and appropriate from any revenue source) and with the Lease and the Project financing to be subordinate to City's fee interest in the Property; and
- Any Project costs advanced or funded by the City (i.e. for environmental remediation) will be reimbursed to the City either at Financial Closing, or from the Project's net revenues, prior to any distribution of net revenues to any other Party; and



- Both the Development Agreement and the Lease include restrictive covenants requiring the residential units to be offered as workforce housing units in accordance with Chapter 58 of the City Code, available only to tenants who earn less than 120% of Area Median Income, and with tenants being charged a maximum of 30% of the applicable AML, which restrictions shall be in place throughout the entire term of the Lease; and
- The Lease would permit a master sublease between the Lessee and the Ballet, for the second floor dormitory housing units, and at City's election, a master sublease with the City, for the ground floor space, to permit the City to coordinate and control cultural activations therein; and
- The Lease provides the City with the option to purchase the Lease prior to the expiration of the term, with the purchase price consisting of the amount of the then-remaining outstanding principal and interest on the Project revenue bonds (if any), plus closing costs and any other fees that may have been otherwise due to the Lessee at the time of the repurchase, if any; and

**WHEREAS**, the Lease specifies that the City shall receive, as rent under the Lease, 100% of the net revenues of the Project, after payment of all operating expenses, debt service and reserve requirements (the "Net Available Cash Flow"), throughout the Lease term; and

**WHEREAS**, as the Project involves a public-private partnership that expressly includes the goal of supporting the cultural activities of the Ballet, the City has agreed to designate the Ballet as a beneficiary of a portion of the Net Available Cash Flow generated from the operation of the Premises, subject to and contingent upon the Ballet remaining (i) headquartered in Miami Beach, Florida and (ii) in occupancy of the dormitory housing units for the Project, pursuant to a Master Sublease, and in good standing and not in default thereunder. Subject to the foregoing, all Net Available Cash Flow to be distributed each year in the following order of priority:

- First, to the City, until such time as the City has been fully reimbursed for all Project Costs (as such term is defined in the City Development Agreement) advanced or covered by the City in support of the development and construction of the Project;
- Second, to the Ballet, as a grant by the City to the Ballet, to offset the Ballet's annual rental charges for its use of the dormitory housing pursuant to the Master Sublease, which amount is estimated to be approximately \$363,000 (inclusive of common area maintenance and common area utility charges). In the event the Net Available Cash Flow is insufficient to cover the Ballet's annual rent under the Master Sublease in any given year, the Ballet shall nevertheless be responsible for payment of its rental obligations in accordance with the Master



Sublease (with no carry over or other right to reimbursement from the Net Available Cash Flow in any subsequent year);

- Third, and only after Ballet's annual rental obligation for the dormitory housing has been fully reimbursed in any given Lease Year, the remaining Net Available Cash Flow shall be retained by the City, first to cover any rental obligations of the City, in the event the Lessor elects to enter into a master sublease for the use of the ground floor for cultural purposes, with estimated rent at \$26 per square foot ("Ground Floor Master Sublease"), with any remaining Net Available Cash Flow to be used by the City for any other purpose, at its sole discretion; and

- Fourth, and only after City receives either (x) full reimbursement for its annual rental obligation pursuant to any Ground Floor Master Sublease, if City elects to enter into such agreement, Net Available Cash Flow shall be used to offset up to fifty percent (50%) of the Ballet's additional rental costs for Additional Dormitory Housing (as such term is defined in the City Development Agreement), or such greater amount as may be approved by the City Commission, in the event the Ballet elects to expand its Master Sublease to include Additional Dormitory Housing, with any remaining Net Available Cash Flow to be retained by the City, for use at its discretion; and

- In the event the above conditions are not satisfied relating to the Ballet remaining headquartered in Miami Beach and in good standing with respect to its occupancy of the dormitory housing units, all Net Available Cash Flow shall be retained by the City.

**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 a Lease Agreement ("Lease"), as authorized under Section 82-37 of the City Code and Section 1.03(b)(4) of the City Charter, between the City of Miami Beach ("City") and Community Finance Corporation, an Arizona not-for-profit corporation, or an affiliate thereof ("Lessee"), of the City-owned property located at 224 23<sup>rd</sup> Street (the "Property"), for the construction of the Collins Park Artist Workforce Housing Project on the Property, a proposed development which shall include (1) residential workforce housing units, for artists, teachers, and other income-eligible tenants; (2) residential dormitory space, intended for use by Miami City Ballet, Inc. (the "Ballet"), to support the Ballet's dance education and other programs or, if agreement with the Ballet cannot be reached, additional workforce housing units; and (3) ground floor retail or cultural space (collectively, the "Project"); further, providing for the Project to be developed, designed, financed, constructed, and operated in accordance with the terms of the Lease and the Development Agreement between the City and Servitas, LLC for the Project, approved pursuant to Resolution No. 2021-\_\_\_\_\_; and further providing for a maximum term of ninety (90) years, with an initial term of fifty (50) years, and two (2) renewal terms, for a period of twenty (20) years each, on mutual agreement of the City and Lessee; and further, approve the distributions of Net Available Cash Flow to the Ballet as set forth herein, and authorize the Mayor and City Clerk to execute the final Lease.

**PASSED and ADOPTED THIS** \_\_\_\_ day of January, 2021.

**ATTEST:**

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**RAFAEL E. GRANADO, CITY CLERK**

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**DAN GELBER, MAYOR**

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney **RAP** Date **1-5-21**