

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON SECOND READING/PUBLIC HEARING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF THE SOUTHERN HALF OF 21ST STREET, GENERALLY LOCATED BETWEEN APPROXIMATELY 150 FEET EAST OF COLLINS AVENUE AND MIAMI BEACH DRIVE, AND CONSISTING OF APPROXIMATELY 6,736 SQUARE FEET IN TOTAL AREA, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" TO THE MEMORANDUM ACCOMPANYING THIS RESOLUTION (THE "ROW"), IN FAVOR OF THE ABUTTING PROPERTY OWNER, BHI LIMITED MIAMI CORPORATION (THE "APPLICANT"); FURTHER, PROVIDING THAT THE VACATION OF THE CITY ROW SHALL BE SUBJECT TO AND CONDITIONED UPON THE APPLICANT'S DELIVERY OF CERTAIN PUBLIC BENEFITS TO THE CITY, INCLUDING A PAYMENT IN THE AMOUNT OF \$7,400,000.00, A MAINTENANCE AGREEMENT PROVIDING FOR THE INSTALLATION AND PERPETUAL MAINTENANCE OF ADDITIONAL LANDSCAPING WITHIN THE CITY'S BEACH ACCESS AND BEACHWALK AREA EAST OF MIAMI BEACH DRIVE AS MORE PARTICULARLY DEPICTED ON EXHIBIT "E" TO THE MEMORANDUM ACCOMPANYING THIS RESOLUTION, AND A PERPETUAL EASEMENT IN FAVOR OF THE CITY OVER THE ROW, TO ENSURE CONTINUED PUBLIC USE OF THE ROW FOR CITY ACCESS, PEDESTRIAN AND VEHICULAR TRAVEL, AND UTILITIES; AND WAIVING, BY 5/7THS VOTE, THE COMPETITIVE BIDDING REQUIREMENT, PURSUANT TO SECTION 82-38 OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; AND FURTHER, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A VACATION AGREEMENT, A COPY OF WHICH IS ATTACHED, IN SUBSTANTIAL FORM, AS EXHIBIT "F" TO THE COMMISSION MEMORANDUM ACCOMPANYING THIS RESOLUTION.

WHEREAS, the City holds a right-of-way dedication to the portion of the southern twenty-five (25) feet of 21 Street located approximately 150 feet east of Collins Avenue and running east for approximately 269.43 feet, consisting of approximately 6,736.28 square feet, and more particularly described in Exhibit "A" to the Memorandum accompanying this Resolution (the "ROW"); and

WHEREAS, BHI Miami Limited Corp. (the "Applicant") owns the property abutting the ROW located at 100 21 Street and identified by tax folio number 02-3226-001-0040 (the "Property"), more particularly described in Exhibit "B" to the Memorandum accompanying this Resolution; and

WHEREAS, Applicant's Property, currently known as the Seagull Hotel, consists of an 8-story structure constructed in 1950, and designed by architect Albert Anis; and

WHEREAS, the Applicant is proposing a major renovation of the existing structure in order to accommodate a new high-end luxury hotel operator, Bulgari Hotels & Resorts (the "Proposed Development"); and

WHEREAS, in conjunction with Proposed Development, the Applicant is requesting that the City vacate the ROW, and submitted its application to the City's Public Works Department with respect thereto; and

WHEREAS, in accordance with Article II, Sections 82-36 through 82-40, of the City Code, prior to approving a request for vacation, the following requirements must be satisfied: (1) the title of the Resolution approving the proposed vacation shall be heard by the City Commission on two separate meeting dates, with the second reading to be accompanied by a duly noticed public hearing; (2) the proposed vacation shall be transmitted to the Finance and Economic Resiliency Committee ("FERC") for its review; (3) the City's Planning Department shall prepare a written planning analysis, to be submitted to the City Commission concurrent with its consideration of the proposed vacation; and (4) the City shall obtain an independent appraisal of the fair market value of the property proposed to be vacated; and

WHEREAS, the Applicant is proposing that the Proposed Development be developed as a unified development site, and the ROW and the Applicant's Property would be joined via a unity of title or covenant in lieu of unity of title following the effective date of the vacation, to permit Applicant to utilize the floor area associated with the ROW within the Proposed Development; and

WHEREAS, the Public Works Department obtained an appraisal for the market value of the ROW on January 13, 2021, which appraisal is attached as Exhibit "D" to the Memorandum accompanying this Resolution, and valued the ROW at \$7,400,000; and

WHEREAS, the Applicant obtained an appraisal for the market value of the ROW, which appraisal is attached as Exhibit "C" to the Memorandum accompanying this Resolution, and valued the ROW at \$5,000,000; and

WHEREAS, at the January 22, 2021 FERC meeting, the Applicant accepted the City's higher appraisal value for the ROW at \$7,400,000, and the FERC recommended in favor of the proposed vacation of the ROW, with the vacation of the ROW subject to and conditioned upon the Applicant's delivery of certain public benefits to the City: (1) the Applicant's payment of \$7,400,000 to the City, and (2) the Applicant providing the City with a perpetual easement over the ROW to ensure continued public use of the ROW for City access, public pedestrian and vehicular travel, and the installation and maintenance of utilities; and

WHEREAS, the Applicant has further agreed to the installation and perpetual maintenance, at Applicant's sole cost and expense, of additional landscaping adjacent to the Applicant's Property within the City's Beach Access and Beachwalk area depicted in Exhibit "E" to the Memorandum accompanying this Resolution, to be memorialized in a recorded Maintenance Agreement; and

WHEREAS, on February 10, 2021, the Mayor and City Commission approved the vacation of the ROW on first reading, setting a date for the second reading/public hearing for the vacation of the ROW; and

WHEREAS, on April 27, 2021, following a presentation by the Applicant, the Planning Board approved the vacation of the ROW as required pursuant to Section 1.03(b)(4) of the City Charter; and

WHEREAS, the Planning Department analysis of the vacation, in accordance with Section 82-38 of the City Code, is attached as Exhibit "G" to the Memorandum accompanying this Resolution; and

WHEREAS, Section 82-39(a) of the City Code provides that the lease or sale of public property requires an advertised public bidding process, which requirement may be waived by 5/7th vote of the City Commission; and

WHEREAS, by operation of law, once the City vacates the ROW, the underlying fee interest in the ROW vests with the current abutting property owner; and

WHEREAS, as the only party entitled to the vacated ROW is the Applicant (as the abutting property owner and holder of the appropriate reversionary interests), the City Administration recommends that the Mayor and City Commission waive the competitive bidding requirement, finding that the public interest is served by waiving such condition; and

WHEREAS, as explained more fully in the Commission Memorandum accompanying this Resolution, incorporated by reference herein, the proposed vacation requires approval pursuant to Section 1.03 (b)(4) of the City Charter, which requires approval by a majority vote of the Planning Board and a 6/7ths vote of the City Commission; and

WHEREAS, subject to the foregoing approval requirements of the City Charter and City Code, the City Commission has the discretion to approve the vacation if the City Commission finds that the vacation meets the criteria established in Section 82-38 of the City Code and the public benefit proffered is compelling; and

WHEREAS, the vacation of the ROW shall be subject to and conditioned upon the Applicant and City executing a Vacation Agreement, a copy of which is attached, in substantial form, as Exhibit "F" to the Commission Memorandum accompanying this Resolution, that includes the following terms and conditions:

- (1) In consideration of the vacation, Applicant shall pay the City \$7,400,000 as part of its public benefit package, with the schedule of payments discussed below.
- (2) The vacation agreement will provide for the City to convey the ROW to the Applicant at an agreed-upon closing date (prior to the issuance of the building permit for the Proposed Development). As permitted under Section 1.03(c) of the City Charter (discussed more fully below) and Section 118-5 of the City Code, the Applicant, upon obtaining fee ownership of the ROW, would join the ROW and the Applicant's Property via a unity of title and create a unified development site, thereby permitting the aggregation of floor area ("FAR") across the unified abutting parcels.
- (3) As a condition of the proposed vacation, the Applicant would grant a perpetual, non-revocable easement in favor of the City, for the City's continued use of the ROW for vehicular, pedestrian and utility purposes, so that the public's use of 21st Street would not be altered or diminished in any way.

- (4) Applicant and the City shall enter into a Maintenance Agreement providing for installation (prior to the issuance of a Certificate of Occupancy) and perpetual maintenance of additional landscaping at the Applicant's sole cost in the portion of the City's Beach Access and Beachwalk area as depicted in Exhibit "E" to the Commission Memorandum accompanying this Resolution, which area is directly to the east of the ROW, and directly to the east of Applicant's Property (defined below as the "Proposed Maintenance Area").
- (5) Applicant shall pay all of the City's costs in connection with the proposed vacation of the ROW, including any City closing costs, recording fees, or outside legal fees that may be incurred by the City.
- (6) Applicant agrees that City's quit claim deed for the ROW shall contain a reverter clause, to provide for the ROW to revert back to the City in the event Applicant fails to satisfy all conditions of the Vacation Resolution and Vacation Agreement prior to the completion of the Proposed Development (except the installation and maintenance of the landscape improvements depicted in Exhibit "E," which shall be governed by the Maintenance Agreement), and with such reverter being without prejudice to any other rights or remedies that may be available to the City in the event the Applicant fails to satisfy the conditions of the Vacation Resolution/Vacation Agreement.
- (7) Applicant agrees that City shall not issue a Temporary Certificate of Occupancy or final Certificate of Occupancy (whichever comes first) for the Proposed Development until the Applicant has satisfied all conditions of the Vacation Resolution and the Vacation Agreement; and

WHEREAS, in the event the foregoing conditions of the Vacation Resolution or Vacation Agreement are not met, following notice to Applicant and a reasonable opportunity to cure, the Vacation Agreement shall be subject to termination, and in the event of any such termination, this Vacation Resolution shall be null and void; and

WHEREAS, the Applicant has proposed that the public benefit cash payment to the City in the amount of \$7,400,000 would be provided in installment payments, namely:

- (1) the Applicant shall make the first payment to the City, in the amount of \$750,000, within thirty (30) days following the Historic Preservation Board approval for the Proposed Development becoming final and non-appealable (the "First Installment"). The First Installment shall be refundable until the vacation of the ROW is effective pursuant to the terms of the Vacation Agreement; and
- (2) the Applicant shall make the second payment, in the amount of \$3,325,000, prior to the issuance of a building permit for the Proposed Development (the "Second Installment"). The vacation of the ROW shall be effective as of the date the Owner makes the Second Installment. Upon the Owner's payment of the Second Installment, both the First Installment and Second Installment be non-refundable; and

- (3) the Applicant shall make the third payment, in the amount of \$3,325,000, prior to the issuance of a temporary certificate of occupancy allowing public occupancy (the "TCO") or certificate of occupancy (the "CO"), whichever comes first, for the Proposed Development (the "Final Installment"). Further, the Applicant agrees that the City shall not issue the TCO or CO for the Proposed Development until the Final Installment Payment is made. The Final Installment shall be non-refundable; and

WHEREAS, for the reasons as set forth more fully in the Commission Memorandum accompanying this Resolution, the Administration recommends approval of the vacation at second reading/public hearing, subject to the terms and conditions contained in this Resolution and the Vacation Agreement.

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 of this Resolution, the vacation of that portion of the southern half of 21 Street, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive, and consisting of approximately 6,736.28 square feet in total area, as more particularly describe in Exhibit "A" to the Memorandum accompanying this Resolution (the "ROW"), in favor of the abutting property owner, BHI Limited Miami Corporation (the "Applicant"); further, providing that the vacation of the City ROW shall be subject to and conditioned upon the Applicant's delivery of certain public benefits to the City, including a voluntary monetary payment in the amount of \$7,400,000, a maintenance agreement providing for the installation and perpetual maintenance of additional landscaping within the City's beach access and beachwalk area east of Miami beach Drive as more particularly depicted on Exhibit "E" to the memorandum accompanying this Resolution, and a perpetual easement in favor of the City over the ROW, to ensure continued public use of the ROW for City access, pedestrian and vehicular travel, and utilities; further, waiving, by 5/7ths vote, the competitive bidding requirement, pursuant to Section 82-38 of the City Code, finding such waiver to be in the best interest of the City; and further, authorizing the Mayor and City Clerk to execute a Vacation Agreement, a copy of which is attached, in substantial form, as Exhibit "F" to the Memorandum accompanying this Resolution.

PASSED and ADOPTED this ____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael G. Granado, City Clerk

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

City Attorney

ff 5-20-21
Date