

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

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY ADVERTISED PUBLIC HEARING, APPROVING THE AMENDED AND RESTATED GROUND LEASE AGREEMENT (THE "GROUND LEASE") BETWEEN THE CITY OF MIAMI BEACH AND CFC-MB I, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, FOR THE COLLINS PARK ARTIST WORKFORCE HOUSING PROJECT (THE "PROJECT"), SAID GROUND LEASE MODIFYING, ON A LIMITED BASIS, THE REQUIRED MIX OF INCOME-ELIGIBLE TENANTS OF THE WORKFORCE HOUSING UNITS AT THE COLLINS PARK ARTIST WORKFORCE HOUSING PROJECT, PROVIDED THAT ALL OF THE WORKFORCE HOUSING UNITS FOR THE PROJECT SHALL BE RENTED SOLELY TO ELIGIBLE INDIVIDUALS WITH HOUSEHOLDS EARNING 120% OR LESS OF THE AREA MEDIAN INCOME FOR MIAMI-DADE COUNTY, CONSISTENT WITH ALL APPLICABLE REQUIREMENTS RELATING TO WORKFORCE HOUSING AS PROVIDED IN CHAPTER 58 OF THE CITY CODE; APPROVING THE LEASE AGREEMENT (THE "FIRST FLOOR SUBLEASE") BETWEEN CFC-MB I, LLC (SUBLESSOR) AND THE CITY OF MIAMI BEACH (SUBLESSEE) FOR THE FIRST FLOOR RETAIL SPACE WITHIN THE PROJECT; AND FURTHER, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FINAL NEGOTIATED AGREEMENTS.**

**WHEREAS**, the City is the owner of the property located at 224 23<sup>rd</sup> Street within the Collins Park Cultural District (the "Property") and pursuant to an awarded competitive solicitation process, the City intends to redevelop the Property as a mixed-use residential workforce housing development that prioritizes housing for income-eligible artists, educators, and other members of the Miami Beach workforce (the "Collins Park Artist Workforce Housing Project" or "Project"); and

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

**WHEREAS**, on January 18, 2019, the City issued Invitation to Negotiate (ITN) 2019-099-KB, with a focus on attracting artists and area educators to the City and encouraging proposers to incorporate dormitory space for the Ballet into the Project; and

**WHEREAS**, on July 17, 2019, the Mayor and City Commission adopted Resolution No. 2019-30908, authorizing simultaneous negotiations with both ITN proposers, and following the withdrawal of Atlantic Pacific Communities, LLC, the City Commission

directed negotiation with the sole remaining proposer, Servitas, LLC (“Servitas” or “Developer”); and

**WHEREAS**, the Developer, in collaboration with Community Finance Corporation, 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, with preferential consideration for income-eligible artists, educators, and first responders, by securing the financing for the Project through sources other than the City and thereby freeing fiscal resources of the City for other governmental uses; and

**WHEREAS**, the Lessee would finance the design and construction of the Project through the issuance of tax-exempt 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 reviewed the Developer's proposed terms negotiated with the City Administration and unanimously recommended that the City proceed with the Project; and

**WHEREAS**, in recognition of the potential for neighborhood placemaking, the Finance and Economic Resiliency Committee also recommended that the City retain the ability, at its option, to lease the first floor space and to utilize any surplus Project revenues generated from the housing component in order to subsidize the City's costs to house a cultural partner in such space; and

**WHEREAS**, on October 18, 2020, the Mayor and City Commission adopted Resolution No. 2020-31435, accepting the Finance and Economic Resiliency Committee's recommendations, approving the Project Term Sheet, directing negotiation of a Development Agreement and Ground Lease, and referring the Project for review by the Planning Board; and

**WHEREAS**, on November 17, 2020, the Planning Board unanimously passed Resolution PB20-0407, transmitting the proposed Development Agreement and Ground Lease to the City Commission with a favorable recommendation, in accordance with the requirements of Section 1.03(b)(4) of the City Charter and the City's Land Development Regulations; and

**WHEREAS**, on January 13, 2021, the Mayor and City Commission approved Resolution No. 2021-31553, authorizing the Development Agreement with the Developer; Resolution No. 2021-31554, authorizing the Ground Lease for the Project, with the City's option to enter into a master sublease for the first floor leasable space (the “Ground Floor Sublease”), subject to City payment of first floor rent, in order for the City to curate an appropriate street-level cultural activation compatible with the Collins Park Cultural District; and Resolution No. 2021-31555, authorizing a waiver of the minimum and average unit size requirements for up to ten (10) studio units in the Project and of the City Code's parking requirements with respect to the Project; and

**WHEREAS**, the Development Agreement includes standard contract protections in favor of the City, including a broad indemnification of the City, payment and performance bonds for construction, City to be named as an additional insured on required policies of insurances, and other contract protections reflecting City's limited participation as lessor of the Property; and

**WHEREAS**, as approved in Resolution Nos. 2021-31553 and 2021-31554, the Development Agreement and the Ground Lease each require the Project to maintain a unit mix (Target Unit Mix) with 50% of the units (40 units) to be rented to eligible residents with household income levels of 80% or less of the Area Median Income for Miami-Dade County (AMI) and the remaining 50% (40 units) of the units for eligible residents with household income levels at 120% or less of the AMI; and

**WHEREAS**, on June 6, 2021, the Historic Preservation Board ("HPB") unanimously approved a Certificate of Appropriateness for the Project's design and, subsequently, the Developer submitted a building permit application in September 2021; and

**WHEREAS**, post-pandemic economic conditions have borne witness to significant increases in overall construction costs, with recent pricing estimates of hard costs for the Project arriving at approximately 53% higher than was forecasted when the City Commission approved the Development Agreement and the Ground Lease in January 2021; and

**WHEREAS**, to partially address the increase in construction costs, Servitas has reduced its hard cost budget by over \$1,000,000 through value engineering; and

**WHEREAS**, to further address the increased Project cost, Servitas has proposed to create a subordinated debt tranche that will be repaid using rental revenues remaining after payment of the senior debt each period; and

**WHEREAS**, to ensure the Project's ability to pay the subordinated debt and maintain the necessary debt service coverage ratio (DSCR) required by the senior debt, Servitas seeks to create an increase in rental property revenues by adjusting, on a limited basis, the proposed unit mix for the housing program to provide 100% of the units (80 units) at 120% AMI; and

**WHEREAS**, Servitas' proposed tenant income eligibility rate adjustment would continue to satisfy requirements for workforce housing projects as defined in Chapter 58 of the City Code and would provide annual cash flow sufficient to ensure the economic viability of the Project; and

**WHEREAS**, the proposed Amended and Restated Ground Lease stipulates that when the annual budget for the Project is developed each year, the City and Servitas shall, if possible, modify the unit mix by reallocating units from 120% or less AMI units to

100% or less AMI and/or 80% or less AMI units to approach the Target Unit Mix as closely as possible taking into account the Project's economics as of the date each such Annual Budget is developed, including without limitation the Project's ability to repay the senior and subordinated bonds, to cover all operating expenses, and to pay ground lease rent to the City while maintaining the DSCR of the bond documents; and

**WHEREAS**, the Administration recognizes that the inflationary pressures which have raised Project construction costs have occurred through no fault of the Developer, and further, Servitas proposes a measured strategy of adding a limited amount of subordinated debt and adjustment to the Project's tenant income eligibility and unit mix in order to close a development financing gap and ensure Project stability following completion of construction; and

**WHEREAS**, the amount of subordinated debt that can be assumed by the Project without jeopardizing the Project's ability to maintain the required DSCR does not entirely cover the financing deficit faced by the Project; and

**WHEREAS**, the Development Agreement stipulates that the Developer shall not be obligated to pay any fees for the Project that can currently be waived under the City Code and further provides that the City may, in its sole and absolute discretion, adopt amendments to the City Code that permit the waiver or refund of all or a portion of City fees for the Project; and

**WHEREAS**, the Developer and the Administration are exploring applicable fee reductions or waivers that may require later administrative or legislative approval, including without limitation, reductions or waivers of concurrency, mobility, sustainability and other fees applicable to construction projects in the City; and

**WHEREAS**, the Developer has agreed to cap its developer fee at a cost to the Developer of approximately \$600,000 and, in exchange, the City has agreed to fund a deficit in permitting costs of up to \$532,451; and

**WHEREAS**, in order to curate an appropriate street-level activation compatible with the Collins Park Cultural District, the City Commission also incorporated the Finance and Economic Resiliency Committee's recommendation to utilize surplus Project revenues generated by the residential housing component in order to subsidize the City's rental costs associated with the First Floor Sublease;

**WHEREAS**, pursuant to the terms of the Ground Lease, the City provided timely notice of intent to invoke its option to lease back the 2,248 square foot ground floor retail space (the "Premises") and the parties have negotiated the First Floor Sublease, providing, among other provisions, the following terms and conditions:

- The Initial Term is five (5) years, with seven (7) Renewal Terms of five (5) years each, exercised at the City's option; and

- Annual Rent is \$26.00 per square foot, as provided for in the Ground Lease, with three months free rent in Lease Year 1 and two percent (2%) annual escalations thereafter; and
- In the event the City Commission does not appropriate sufficient funding for the rental payments, the City may terminate the Ground Floor Sublease on 90 days' notice; and
- The City may use the space for uses specific to City business or enter into a lease agreement or management agreement with Eligible Subtenants that are 501(c)(3) not-for-profit and tax-exempt entities, preferably with a cultural or performing arts purpose, and subject to Landlord's reasonable consent; and
- Landlord will provide and bear the cost of all utilities (e.g., water and sewer service and garbage collection) except for electricity, telephone, cable, and internet, which are the responsibility of the City (or the City's subtenant); and
- Landlord shall bear costs and expenses for all repair, maintenance, and replacement of the building (including the Premises) including, without limitation, all HVAC, plumbing, electrical, glass, security, and structural components and systems and all appliances, fixtures, and other appurtenances contained in or serving the Premises except as may be damaged by an act or omission of gross negligence or willful misconduct by Tenant or any Eligible Subtenants; and

**WHEREAS**, in furtherance of the Project's public purpose, which provides significant community benefits and promotes the City's stated strategic goals, the Administration recommends that the Mayor and City Commission authorize the execution of an Amended and Restated Ground Lease for the Collins Park Artist Workforce Housing Project and a First Floor Sublease with the City as Sublessee; and

**WHEREAS**, given the prioritization of workforce and affordable housing in the City's 2040 Comprehensive Plan and the City's 2019 Strategic Plan: *Through the Lens of Resilience*, which includes the explicit objective of elevating the Collins Park Cultural District, the City Commission desires to ensure the success of the Project, the City's first workforce housing development project, including activating the ground floor with cultural arts programming.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that, (1) the City, as lessor, is hereby authorized to enter into the Amended and Restated Ground Lease with CFC-MB I, LLC, an Arizona limited liability company, for the Collins Park Artist Workforce Housing Project (the "Project"), said Agreement modifying, on a limited basis, the required mix of income-eligible tenants of the workforce housing units at the Project, provided that all of the workforce housing units for the Project shall be rented solely to eligible individuals with households earning 120% or less of the area median income for Miami-Dade County, consistent with all applicable requirements relating to workforce housing as provided in Chapter 58 of the City Code; (2) the City, as sublessee, is hereby authorized to enter into the First Floor Sublease with CFC-MB I, LLC for the first floor of the Project; and (3) the Mayor and City Clerk are hereby authorized to execute the final negotiated agreements.

PASSED and ADOPTED THIS \_\_\_\_ day of \_\_\_\_\_ 2022.

ATTEST:

\_\_\_\_\_  
RAFAEL E. GRANADO, CITY CLERK

\_\_\_\_\_  
DAN GELBER, MAYOR

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney *ne* 2-17-22  
Date