

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 PORTIONS OF ALTON COURT (THE "ROW"), GENERALLY LOCATED BETWEEN LINCOLN ROAD AND 17TH STREET, NOT EXCEEDING 6,500 SQUARE FEET IN TOTAL AREA, AS REFLECTED IN THE SITE PLAN ATTACHED AS EXHIBIT "A" TO THE MEMORANDUM ACCOMPANYING THIS RESOLUTION, IN FAVOR OF THE ABUTTING PROPERTY OWNERS, BH THE ALTON LLC, ALTON JAL INC., MITCHELL PROPERTY INVESTMENTS LLC AND 1681 WEST VENTURES, LLC (COLLECTIVELY, THE "APPLICANT"); FURTHER, PROVIDING THAT THE VACATION OF THE CITY ROW SHALL BE SUBJECT TO AND CONDITIONED UPON: (A) THE APPLICANT'S DELIVERY OF CERTAIN PUBLIC BENEFITS TO THE CITY, INCLUDING THE APPLICABLE MONETARY CONTRIBUTION DEPENDING ON THE SQUARE FOOTAGE OF THE AREA TO BE VACATED AND WHETHER THE FLOOR AREA RATIO ("FAR") ASSOCIATED WITH THE VACATED ROW IS RETAINED BY THE CITY OR CONVEYED TO APPLICANT, AND (B) 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 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; FURTHER, AUTHORIZING THE ADMINISTRATION TO FINALIZE A VACATION AGREEMENT THAT INCORPORATES THE CONDITIONS SET FORTH IN THIS RESOLUTION, AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE VACATION AGREEMENT, SUBJECT TO FORM APPROVAL BY THE CITY ATTORNEY.

**WHEREAS**, the City holds a right-of-way dedication to the portion of Alton Court, between Lincoln Road and Seventeenth (17<sup>th</sup>) Street, consisting of approximately 8,000 square feet, and more particularly reflected on the Site Plan attached Exhibit "A" to the Memorandum accompanying this Resolution (the "ROW"); and

**WHEREAS**, BH The Alton LLC ("BHTA") owns those certain properties known as 1656, 1664, 1676, 1680 Alton Road and 1677 West Avenue and identified by tax folio numbers 02-3234-017-0160, 02-3234-017-0170, 02-3234-017-0180, 02-3234-017-0190, and 02-3233-017-0050 (the "BH Property"), Alton JAL Inc. ("ALTJ") owns those certain properties known as 1209 and 1245 Lincoln Road and identified by tax folio numbers 02-3234-017-0150 and 02-3233-017-0100 (the "AJ Property"), Mitchell Property Investments LLC, ("MPI") owns that certain property known as 1661 West Avenue and identified by tax folio number 02-3233-017-0090 (the "Mitchell Property") and 1681 West Ventures, LLC ("1681West" and together with BHTA, ALTJ and MPI, collectively, the "Applicant") owns that certain property known as 1681 West Avenue and identified by tax folio number 02-3233-017-0040 (the "1681West Property" and together with the BH Property, the AJ Property and the Mitchell Property, the "Property") as reflected in Exhibit "B" to the Memorandum accompanying this Resolution; and

**WHEREAS**, the City Commission has expressed an interest in diversifying the City's economy for the benefit of the City and its residents, particularly by making a concerted effort to attract the financial services and technology industries; and

**WHEREAS**, the City Commission believes that to achieve this objective, there is a need to increase the inventory of Class A Office space throughout the City; and

**WHEREAS**, the BHTA intends to redevelop the Alton Road folios that form part of the Property as a Class A Office development (the "Proposed Development"); and

**WHEREAS**, in conjunction with Proposed Development, BHTA is requesting that the City vacate certain portions of the ROW, and has 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**, BHTA is proposing that certain portions of the ROW be vacated and certain parcels included the Applicant's Property be joined via a covenant in lieu of unity of title following the effective date of the vacation, so that the Proposed Development can be developed as part of a unified development site thereby allowing Applicant to transfer floor area ratio ("FAR") from Applicant's West Avenue parcels to Applicant's Alton Road parcels to allow for additional Class A Office space within the Proposed Development; and

**WHEREAS**, BHTA further desires that the Mayor and City Commission consider allowing BHTA to utilize the FAR associated with the portions of the ROW being vacated (the "ROW FAR") to allow for the inclusion of more square footage of Class A Office in the Proposed Development; and

**WHEREAS**, the proposed vacation was heard before the City Commission on June 22, 2022, at First Reading, with a recommendation to refer the item to the Finance and Economic Resiliency Committee for consideration; and

**WHEREAS**, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the proposed vacation was heard and approved by a majority of the members of the Planning Board at its June 21, 2022 meeting; and

**WHEREAS**, the Planning Department's analysis and favorable recommendation of the vacation, pursuant to Section 82-38 of the City Code, is attached to the Memorandum accompanying this Resolution; and

**WHEREAS**, the Public Works Department received an appraisal report on June 23, 2022 (the "Appraisal Report") that includes fair market valuations of (a) the ROW with all appurtenant rights, (b) the contemplated perpetual easement, (c) transferable FAR and (d) an investment value premium associated with the contemplated vacation; and

**WHEREAS**, the Appraisal Report is attached to the Memorandum accompanying this Resolution; and

**WHEREAS**, the Public Works Department has calculated that the following amounts would be appropriate monetary contributions to be proffered as a public benefit in connection with the proposed ROW vacation;

6,500 Square Feet including associated FAR	\$4,594,707
6,000 Square Feet including associated FAR	\$4,241,268
6,500 Square Feet without associated FAR	\$1,641,432
6,000 Square Feet without associated FAR	\$1,515,168; and

**WHEREAS**, the Administration recommends 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 voluntary monetary payment to the City of the applicable public benefit depending on the square footage of the area vacated and whether FAR is included or not, (2) the Applicants' 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 (3) Applicant's covenant that any FAR associated with the vacated ROW, if not retained by the City, will only be used on the Alton Road parcels; and

**WHEREAS**, Section 82-39(a) of the City Code provides that the lease or sale/conveyance of public property also requires an advertised public bidding process, which requirement may be waived by 5/7<sup>th</sup> 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 owners, subject to any retention of rights by the City; and

**WHEREAS**, 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**, Section 1.03 (b)(4) of the Charter also requires that the vacation be approved by 6/7<sup>ths</sup> vote of the City Commission whereby 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 such portion of the ROW as the City and Applicant shall agree upon shall be subject to and conditioned upon the Applicant and City executing a Vacation Agreement that includes the following terms and conditions:

- (1) Applicant shall provide the City with a voluntary monetary contribution to be determined by the City and Applicant; and
- (2) 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, shall create a unified development site, thereby permitting the aggregation of floor area ("FAR") across the unified abutting parcels; and
- (3) Applicant shall grant a perpetual, non-revocable easement in favor of the City, for the City's continued use of the ROW for City access, pedestrian and vehicular travel, and utilities; and
- (4) 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; and
- (5) 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 prior to the completion of the Proposed Development, 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; and
- (6) 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
- (7) The Vacation Agreement shall stipulate whether the City will retain or convey to the Applicant the FAR associated with the portion of the ROW to be vacated and, if the FAR is conveyed, a covenant that it will only be used for development on the Alton Road parcels.

**WHEREAS**, in the event of a breach by Application of the Vacation Agreement, 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 Administration recommends approval of the vacation on Second Reading Public Hearing on July 20, 2022, subject to the terms and conditions contained herein.

**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 by 6/7th vote, on Second Reading/Public Hearing of this Resolution, the vacation of portions of Alton Court (the "ROW"), generally located between Lincoln Road and 17th Street, not exceeding 6,500 square feet in total area, as reflected in the site plan attached as Exhibit "A" to the memorandum accompanying this Resolution, in favor of

the abutting property owners, BH the Alton LLC, Alton Jal Inc., Mitchell Property Investments LLC and 1681 West Ventures, LLC (collectively, the "Applicant"); further, providing that the vacation of the ROW shall be subject to and conditioned upon: (a) the Applicant's delivery of certain public benefits to the City, including the applicable monetary contribution depending on the square footage of the area vacated and whether the floor area ratio ("FAR") associated with the vacated ROW is retained by the City or conveyed to Applicant, and (b) 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 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; further, authorizing the Administration to finalize a vacation agreement that incorporates the conditions set forth in this Resolution, and further authorizing the Mayor and City Clerk to execute the vacation Agreement, subject to form approval by the City Attorney.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael G. Granado, City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

7-1-22