

RESOLUTION NO.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, TO CONSIDER APPROVAL, FOLLOWING SECOND READING/PUBLIC HEARING, OF A DEVELOPMENT AGREEMENT, AS AUTHORIZED UNDER SECTION 118-4 OF THE CITY CODE, AND SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, BETWEEN THE CITY AND SOUTH BEACH HEIGHTS I, LLC, 500 ALTON ROAD VENTURES, LLC, 1220 SIXTH, LLC, AND KGM EQUITIES, LLC (COLLECTIVELY, THE "DEVELOPER"), WHICH DEVELOPMENT AGREEMENT: (1) DELINEATES THE CONDITIONS FOR THE DEVELOPMENT OF THE PROPERTIES LOCATED AT 500 ALTON ROAD, 630 ALTON ROAD, 650 ALTON ROAD, 1220 6TH STREET, 659 WEST AVENUE, 701 WEST AVENUE, 703 WEST AVENUE, 711 WEST AVENUE, 721 WEST AVENUE, 723 WEST AVENUE, 727 WEST AVENUE, AND 737 WEST AVENUE (COLLECTIVELY, THE "DEVELOPMENT SITE"), WITH SUCH DEVELOPMENT SITE LIMITED TO A MAXIMUM FLOOR AREA OF 571,000 SQUARE FEET (OF WHICH THERE SHALL BE A MAXIMUM OF 15,000 SQUARE FEET OF RETAIL), WITH ANY TOWER CONSTRUCTED THEREON TO BE LOCATED WITHIN THE NORTHEAST QUADRANT OF THE 500 BLOCK OF ALTON ROAD, LIMITED TO UP TO 519 FEET IN HEIGHT, AND WITH UP TO 410 UNITS; (2) MEMORIALIZES THE CONDITIONS FOR VACATING THE CITY'S RIGHT OF WAY AT 6TH STREET, BETWEEN ALTON ROAD AND WEST AVENUE ("CITY PARCEL" OR "CITY RIGHT-OF-WAY"); (3) GRANTS TO THE CITY A PERPETUAL ROADWAY EASEMENT ACROSS THE VACATED CITY PARCEL FOR UTILITIES AND PUBLIC VEHICULAR AND PEDESTRIAN USE AND ACCESS; (4) PROVIDES FOR THE DEVELOPER'S DESIGN, PERMITTING, CONSTRUCTION AND CONVEYANCE TO THE CITY OF A WORLD CLASS PUBLIC CITY PARK OF AT LEAST 3.0 ACRES WITHIN THE DEVELOPMENT SITE, WITH SUCH CITY PARK TO BE OWNED AND MAINTAINED BY THE CITY FOR PUBLIC PURPOSES; (5) PROVIDES FOR OTHER TERMS, INCLUDING, WITHOUT LIMITATION, DEVELOPER'S CONVEYANCE TO THE CITY OF A PERPETUAL ROADWAY EASEMENT OF AN UP TO 10 FOOT-WIDE STRIP OF LAND WITHIN THE DEVELOPMENT SITE FOR AN ADDITIONAL LANE ON 5TH STREET, BETWEEN ALTON ROAD AND WEST AVENUE, FOR UTILITIES AND PUBLIC VEHICULAR AND PEDESTRIAN USE; AND (5) WITH THE FOREGOING SUBJECT TO AND CONTINGENT UPON DEVELOPER'S SATISFACTION OF THE CONDITIONS SET FORTH IN THE DEVELOPMENT AGREEMENT, THE CITY COMMISSION'S VACATION OF 6TH STREET, AND ENACTMENT OF CERTAIN AMENDMENTS TO THE CITY'S COMPREHENSIVE PLAN AND LAND DEVELOPMENT REGULATIONS, ALL AT THE CITY COMMISSION'S SOLE DISCRETION.

WHEREAS, the City holds a right of way dedication to a fifty (50) foot wide right-of-way, known as 6th Street, running from West Avenue to Alton Road, as set forth in Exhibit "A" to the Commission Memorandum accompanying this Resolution, consisting of approximately 12, 719.3 square feet in total lot area, as shown on (a) the Amended Plat of the Fleetwood Subdivision, recorded in Plat Book 28, page 34 of the Public Records of Miami-Dade County (the "Fleetwood Plat") and (b) the Amended Plat of Aquarium Site, recorded in Plat Book 21, Page 83 of the Public Records of Miami-Dade County, and approved by the City (the "City Right-of-Way" or "City Parcel"); and

WHEREAS, South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC, and KGM Equities, LLC (collectively, the "Developer") owns the property to the south of, north of, and abutting, the City Right-of-Way; which parcels are known as 500 Alton Road, 630 Alton Road, 650 Alton Road, 1220 6th Street, 659 West Avenue, 701 West Avenue, 703 West

Avenue, 711 West Avenue, 721 West Avenue, 723 West Avenue, 727 West Avenue and 737 West Avenue (the "Development Site");

WHEREAS, Developer wishes to develop the Development Site as a mixed-use residential and commercial development (collectively, the "Project") pursuant to a Florida Statute Chapter 163 development agreement between the City and the Developers (the "Development Agreement"), which, among other terms, shall require the Developer to construct and convey to the City a completed, world-class park, consisting of a minimum of 3.0 acres; and

WHEREAS, the Developer wishes to obtain ownership of the City Right-of-Way, to provide a unified development site with respect to the proposed Project on the Development Site; and

WHEREAS, two of the Developer entities (500 Alton Road Ventures, LLC and 1220 Sixth, LLC) are the owners of the property abutting the south side of 6th Street; and a third of the Developers, South Beach Heights I, LLC, is the owner of the property abutting the north side of 6th Street (collectively these three entities shall be the "Applicants"); and

WHEREAS, in conjunction with the proposed Project, the Applicants have requested that the City vacate the City Right-of-Way, and have submitted their application to the City's Public Works Department with respect thereto; and

WHEREAS, on July 27, 2018, the Finance and Citywide Projects Committee reviewed the proposed vacation, and recommended a term sheet, which term sheet has served as the basis for the negotiation of the Development Agreement; and

WHEREAS, the term sheet outlined three major components that must be implemented in order for the Project to proceed, including (1) the vacation of the City Right-of-Way; (2) the Development Agreement, specifying with the terms and conditions for the development of the Project; and (3) amendments to the City's Comprehensive Plan and Land Development Regulations¹;

WHEREAS, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the Planning Board, at its October 23, 2018 meeting, approved the proposed vacation by a 7-0 vote; and

WHEREAS, on November 14, 2018, the Mayor and City Commission conducted the first reading of the title of the agenda item with respect to the proposed vacation of the City Right-of-Way; and

WHEREAS, on November 14, 2018, the Mayor and City Commission conducted a public hearing and considered, on first reading, the proposed Development Agreement; and

WHEREAS, in addition to the vacation of the City Right-of-Way, and as a condition thereto, the proposed Development Agreement contemplates that the City Commission will approve certain amendments to the City's Comprehensive Plan and Land Development Regulations; and

¹ On October 17, 2018, the Mayor and City Commission adopted Resolution No. 2018-30555, sponsored by Commissioner Mark Samuelian, to specify that the foregoing major components for the Project would "travel" together and be considered by the City Commission on the same date(s).

WHEREAS, on November 14, 2018, the Mayor and City Commission considered, on first reading, companion agenda items, with the proposed amendments to the City's Comprehensive Plan and Land Development Regulations, to: (a) amend the Comprehensive Plan to change the designation of those portions of the Development Site designated within the CPS-2 District and RM-2 District to the CD-2 District designation; (b) amend the City's Land Development Regulations to rezone those portions of the Development Site in the CPS-2 District and RM-2 District to the CD-2 District; and (c) amend the City's Land Development Regulations to authorize up to 519 feet in height for a tower within the CD-2 District; and (d) regulate uses, among other terms (collectively, the "LDR Amendments"); and

WHEREAS, Sections 163.3220 – 163.3243, Florida Statutes, and Section 118-4 of the City's Code require two public hearings for a Development Agreement; and

WHEREAS, the Administration and Developer have negotiated the Development Agreement, a copy of which is attached hereto as Exhibit "3" to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the Development Agreement provides, among other provisions, the following terms and conditions:

- Developer shall convey to the City that portion of the Development Site consisting of a minimum of 3.0 acres, in fee simple, by special warranty deed (the "Park Site"), on which the Developer shall design, permit and construct, at its sole cost and expense, a public City park (the "Park") based upon the Park Concept Plan approved by the City Commission and incorporated as an exhibit to the Development Agreement, and which Park, once completed, will be owned, maintained, and programmed by the City for public purposes; and
- Developer shall develop the Project in accordance with the City's Land Development Regulations and the limitations set forth in the Development Agreement with respect to the Project, including, without limitation, the following conditions:
 - any tower built on the Development Site would be located within the northeast quadrant of the 500 Block of Alton Road, and with a height not-to-exceed 519 feet to the top of the roof, and with a floor plate of any residential floor within the tower not-to-exceed 13,800 square feet of floor area ratio; and
 - the tower will contain up to 410 units (including multi-family residential units, single-family detached units, townhomes, condominiums, and apartments), , with up to a total of nine (9) or three percent (3%) of such units, whichever is less, consisting of "Amenity Guest Apartment Units" available only to owners/residents of the 410 unit residential building (and their guests), and further providing that except with respect to the Amenity Guest Apartment Units, any agreements for the rental, lease, use or occupancy of residential units within the Development Site for periods of less than thirty (30) days shall be expressly prohibited;
 - the Project may include up to 15,000 square feet of retail uses; and
 - no parking, whether surface or underground, will be constructed on any part of the Park Site.

- In order to permit the Project to proceed as a unified development site, the City shall convey to the Developer by quit claim deed, the City Parcel pursuant to and subject to the terms of the Vacation Resolution to 500 Alton Road Ventures, 1220 Sixth, LLC, and South Beach Heights I, LLC, as the abutting property owners to 6th Street; and
- Simultaneous with the City's conveyance to the Developer of the City Parcel, the Developer shall grant to the City a perpetual, non-revocable utility, roadway and pedestrian access easement against the City Parcel, to provide a through street on 6th Street for public vehicular and pedestrian use and access (the "6th Street Easement"), which 6th Street Easement will provide that the City will be responsible for the maintenance, repair, safety and security of 6th Street and all improvements thereon, and which shall reserve to the Developer the right to construct a pathway and related improvements not less than 15 feet above the surface of 6th Street as part of the Project; and
- Developer shall design and construct, at the Developer's cost and expense, an elevated terminus/platform to serve as the launching site for the City's future development of a public pedestrian path and bridge connecting the baywalk south of 5th Street across 5th Street onto the Development Site. Developer shall grant to the City access easements related thereto, including a "Pedestrian Pathway Easement" for a pedestrian path within the Development Site, and a separate "West Avenue Sidewalk Easement" for pedestrian and bicycle use along West Avenue, between 5th Street and 6th Street; and
- Developer shall grant to the City a perpetual, non-revocable roadway easement against an up to 10 foot wide strip of land located within the Development Site, to provide an additional lane on 5th Street from Interstate 395 (the "5th Street Easement") for public vehicular and pedestrian use and access, which 5th Street Easement will provide that if the City develops an additional lane on 5th Street, the City will be responsible for the design, construction, maintenance, repair, safety and security of the 5th Street lane and all improvements thereon; and
- Developer shall complete, or cause to be completed, the construction of the unfinished baywalks along 1000 West Avenue (Mirador 1000 Condo), 1100 West Avenue (Mondrian Hotel), and 1200 West Avenue (Mirador 1200 Condo) (collectively, the "Baywalks") subject to City's obtaining the permits and necessary consents for the Baywalks, and City's payment to the Developer for construction work completed on the Baywalks, in the amount not-to-exceed \$762,682.58, less expenses incurred by the City related to securing the permits thereof; and
- Developer will demolish the existing South Shore Hospital building within six (6) months following the earlier of: (i) six (6) months following the City Commission's adoption of a proposed Ordinance amending Section 142-306 of the Land Development Regulations of the City Code, to allow for the reconstruction of a building that is non-conforming as to height in the CD-2 district; or (ii) six months following the Project Zoning Approval and Park Zoning Approval, and the applicable appeal periods thereof or, in the event an appeal is filed, the resolution of any such appeal; and
- The closing, whereby City conveys the City Parcel to the Developer, and Developer simultaneously conveys the Park Site to the City, as well as all easements and other

agreements required by the Development Agreement ("Closing"), shall occur not later than four (4) years following the Effective Date, and provided that Developer has completed the construction of Phase 1 of the Park Project (as described more fully below) and satisfied the environmental contingencies; and

- The Developer shall apply for a phased Building Permit for the Project, the first phase of which may include either the commercial or the residential component of the Project, or both the commercial and the residential components of the Project (the "Initial Building Permit"), within six (6) months after the Closing, provided, however, that the City will not issue a Building Permit for the residential component of the Project until the Closing; and
- Developer shall complete the construction of the Park Project in three (3) phases, as follows:
 - (1) completion of Phase 1 of the Park Project within the earlier of: (i) eighteen (18) months following the Park Zoning Approval and the expiration of all appeal periods, or (ii) forty-eight (48) months from the Effective Date of the Development Agreement;
 - (2) completion of Phase 2 of the Park Project within forty-eight (48) months following the initial Building Permit for the Project (which initial Building Permit must be applied for not later than six (6) months following the Closing); and
 - (3) completion of Phase 3 of the Park Project within eight (8) years following the Effective Date; and
- To facilitate the phased delivery of the Park Project, City agrees to (1) the closure of 6th Street for construction staging and laydown, for a period of thirty (30) months, commencing with the issuance of the Building Permit for the residential components of the Project, and (2) payment in the not-to-exceed of \$600,000 to cover the costs of City Parking Department monthly parking passes for up to 200 parking spaces at the Alton & 5th Parking Garage, for use by Developer's construction contractors and personnel; and
- City will not issue a temporary certificate of occupancy ("TCO") or certificate of occupancy ("CO") for the residential component of the Project until Developer has completed the construction of the entire Park Project and satisfied its obligations to the City under the Development Agreement, and City shall not issue a TCO or CO for the commercial components of the Project until Phase 1 and Phase 2 of the Park Project are completed; and
- Developer may withdraw the Project Zoning Applications and Park Zoning Applications and terminate the Development Agreement if the City Commission does not adopt amendments to the Land Development Regulations to waive zoning application fees for the Project and the Park, or to permit previously paid impact fees and TCMA contributions in connection with prior improvements constructed on the Property to be used, credited and applied for and against the impact fees and TCMA contributions that are otherwise due and payable for the Project and Park Project; and
- As security for Developer's obligations to deliver to the City a completed and constructed Park, Developer shall deliver to the City, either (1) an agreement with the Developer's

lender to fund the then remaining Park construction amount directly to the City in the event the Developer defaults on its obligations; or (2) a letter of credit in favor of the City, in an amount equal to the Park construction amount (based on the guaranteed maximum price contract for the construction of the Park), which would permit City to draw on the funds, and complete the construction of the Park, in the event the Developer fails to do so; and

WHEREAS, for the reasons as outlined in the Commission Memorandum accompanying this Resolution, the Administration recommends approval of the Development 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, following second reading/public hearing, of a Development Agreement, as authorized under Section 118-4 of the City Code, and Sections 163.3220 – 163.3243, Florida Statutes, between the City and South Beach Heights I, LLC, 500 Alton Road Ventures, LLC, 1220 Sixth, LLC, and KGM Equities, LLC (collectively, the “Developer”), which Development Agreement: (1) delineates the conditions for the development of the properties located at 500 Alton Road, 630 Alton Road, 650 Alton Road, 1220 6th Street, 659 West Avenue, 701 West Avenue, 703 West Avenue, 711 West Avenue, 721 West Avenue, 723 West Avenue, 727 West Avenue, and 737 West Avenue (collectively, the “Development Site”), with such Development Site limited to a maximum floor area of 571,000 square feet (of which there shall be a maximum of 15,000 square feet of retail), with any tower constructed thereon to be located within the northeast quadrant of the 500 Block of Alton Road, limited to up to 519 feet in height; (2) memorializes the conditions for vacating the City’s Right-of-Way at 6th Street, between Alton Road and West Avenue (“City Parcel”); (3) grants to the City a perpetual roadway easement across the vacated City Parcel for utilities and public vehicular and pedestrian use and access; (4) provides for the Developer’s design, permitting, construction and conveyance to the city of a world class public City park of at least 3.0 acres within the Development Site, with such City Park to be owned and maintained by the City for public purposes; (5) provides for other terms, including, without limitation, Developer’s conveyance to the City of a perpetual roadway easement of an up to 10 foot-wide strip of land within the Development Site for an additional lane on 5th Street, between Alton Road and West Avenue, for utilities and public vehicular and pedestrian use; and (5) with the foregoing subject to and contingent upon Developer’s satisfaction of the conditions set forth in the Development Agreement, the City Commission’s vacation of 6th Street, and enactment of certain amendments to the City’s Comprehensive Plan and Land Development Regulations, all at the City Commission’s sole discretion.

PASSED and ADOPTED this 12th day of December, 2018.

ATTEST:

Dan Gelber, Mayor

Rafael G. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Rafael G. Granado 12-4-18

City Attorney *RAP* Date