

RESOLUTION NO.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, TO CONSIDER APPROVAL, FOLLOWING FIRST 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 7400 OCEAN TERRACE, LLC, 7410 OCEAN TERRACE, LLC, 7420 OCEAN TERRACE INVESTMENT, LLC, 7436 OCEAN TERRACE, LLC, 7450 OCEAN TERRACE, LLC, 7441 COLLINS AVENUE INVESTMENT, LLC, 7439 COLLINS AVENUE INVESTMENT, LLC, 7433 COLLINS AVENUE INVESTMENT, LLC, 7421 COLLINS AVENUE INVESTMENT, LLC AND 7409 COLLINS AVENUE INVESTMENT, LLC (COLLECTIVELY, THE “DEVELOPER”), WHICH DEVELOPMENT AGREEMENT: (1) DELINEATES CONDITIONS FOR THE DEVELOPMENT OF THE PROPERTIES LOCATED AT 7409, 7421, 7433, 7435, 7437, 7439, 7441, AND 7449 COLLINS AVENUE, AND 7400, 7410, 7420, 7430, 7436, AND 7450 OCEAN TERRACE (COLLECTIVELY, THE “DEVELOPMENT SITE”), WITH SUCH DEVELOPMENT SITE TO BE DEVELOPED IN ACCORDANCE WITH THE REQUIREMENTS OF THE CITY’S OCEAN TERRACE OVERLAY DISTRICT, AS SET FORTH IN SECTIONS 142-870 AND 142-870.1 OF THE CITY CODE; (2) MEMORIALIZES THE CONDITIONS FOR VACATING THE CITY’S RIGHT-OF-WAY AT OCEAN TERRACE, BETWEEN 74TH STREET AND 75TH STREET, AS WELL AS PORTIONS OF 74TH STREET AND 75TH STREET, BETWEEN OCEAN TERRACE AND COLLINS AVENUE (COLLECTIVELY, THE “CITY RIGHT-OF-WAY AREAS”); (3) GRANTS TO THE CITY A PERPETUAL ROADWAY EASEMENT ACROSS THE VACATED CITY RIGHT-OF-WAY AREAS FOR UTILITIES AND PUBLIC VEHICULAR AND PEDESTRIAN USE AND ACCESS; (4) PROVIDES FOR THE DEVELOPER’S DESIGN AND CONSTRUCTION OF CERTAIN PUBLIC PARK AND STREETScape IMPROVEMENTS IN THE VICINITY OF OCEAN TERRACE, BETWEEN 73RD STREET AND 75TH STREET, AT DEVELOPER’S COST AND EXPENSE (WITH THE EXCEPTION OF CERTAIN CITY FEES); AND (5) WITH THE FOREGOING SUBJECT TO AND CONTINGENT UPON DEVELOPER’S SATISFACTION OF THE CONDITIONS SET FORTH IN THE DEVELOPMENT AGREEMENT AND THE CITY COMMISSION’S VACATION OF THE CITY RIGHT-OF-WAY AREAS AND ENACTMENT OF CERTAIN AMENDMENTS TO THE CITY’S FUTURE LAND USE MAP AND ZONING MAP, AT ITS SOLE DISCRETION; AND FURTHER, SETTING THE SECOND AND FINAL READING OF THE DEVELOPMENT AGREEMENT FOR A TIME CERTAIN.

WHEREAS, the City holds a right-of-way dedication to the following areas:

(1) a portion of Ocean Terrace, running from the centerline of 74th Street and the northern right-of-way line of 75th Street, consisting of a sixty (60) foot wide right-of-way, and containing approximately 25,200 square feet in total lot area; as shown on as shown on the Plat of the Townsite of Harding, recorded in Plat Book 34, Page 4 of the Public Records of Miami-Dade County (the “Harding Townsite Plat”);

(2) the north half of 74th Street, between Ocean Terrace and Collins Avenue, which consists of a 30-foot wide right-of-way containing approximately 8,880 square feet in total lot area; and

(3) a portion of 75th Street, between Ocean Terrace and Collins Avenue, which consists of a 40-foot wide right-of-way containing approximately 11,840 square feet in total lot area (collectively, (1) through (3) above, the “City Right-of-Way Areas”), each as shown on the Harding Townsite Plat, and depicted in the sketch attached as Exhibit “A” hereto; and

WHEREAS, various entities controlled by and affiliated with the principals of Ocean Terrace Holdings, LLC, namely, 7400 Ocean Terrace, LLC, 7410 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7436 Ocean Terrace, LLC, 7450 Ocean Terrace, LLC, and 7441 Collins Avenue Investment, LLC (collectively, the "Developer") own the properties abutting or in the vicinity of the City Right-of-Way Areas; which parcels are known as 7409, 7421, 7433, 7435, 7437, 7439, 7441, and 7449 Collins Avenue, and 7400, 7410, 7420, 7430, 7436, and 7450 Ocean Terrace (collectively, the "Property"); and

WHEREAS, the Developer owns or has a legal or equitable interest in a reversionary interest in the public reservation area immediately east of Ocean Terrace between 74th and 75th Streets, more specifically described in Exhibit "B" (the "Reversionary Interest"); and

WHEREAS, the Developer intends to develop the Property as a mixed-use residential and commercial development (collectively, the "Proposed Development") pursuant to a Florida Statute Chapter 163 development agreement entered into between the City and the Developer (the "Development agreement"), and to develop, design and construct, at the Developer's sole cost and expense, certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street (the "Park/Streetscape Improvements"); and

WHEREAS, the Proposed Development shall be developed as a unified development site; and

WHEREAS, in conjunction with Proposed Development, the Developer is requesting that the City vacate the City Right-of-Way Areas abutting 7401, 7441, and 7449 Collins Avenue and 7400, 7410, 7420, 7430, 7436, and 7450 Ocean Terrace, and has submitted its application to the City's Public Works Department with respect thereto, to permit Developer to utilize the F.A.R. associated with the City Right-of-Way Areas within the Developer's Project (but with the City Right-of-Way Areas to continue to be used for pedestrian and vehicular travel); and

WHEREAS, with respect to the proposed vacation of the 4,380 square feet of City right-of-way abutting 7401 Collins Avenue, the proposed vacation shall be subject to and contingent on Developer's agreement with the property owner to include the vacated right of way area as part of the unified development site for the Project; and

WHEREAS, on March 22, 2019, and on June 14, 2019 the Finance and Citywide Projects Committee reviewed the proposed vacation and terms for the development agreement, and favorably recommended that the City Commission approve the proposed vacation and Development Agreement; and

WHEREAS, the three major components that must be implemented in order for the Project to proceed, including (1) the vacation of the City Right-of-Way Areas; (2) the Development Agreement, specifying with the terms and conditions for the development of the Project and completion of the Park/Streetscape Improvements; and (3) amendments to the City's Comprehensive Plan and Land Development Regulations;

WHEREAS, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the Planning Board, at its May 21, 2019 meeting, unanimously approved the proposed vacation; and

WHEREAS, on June 26, 2019, the Mayor and City Commission considered, on first reading, the companion agenda item with respect to the proposed vacation of the City Right-of-Way Areas; and

WHEREAS, in addition to the vacation of the City Right-of-Way Areas, 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

WHEREAS, on June 26, 2019, 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 the portions of the City Right-of-Way Areas designated PF, "Public Facility," and ROS, "Recreation and Open Space," to the Future Land Use categories of CD-2, "Commercial Medium Intensity" and MXE, "Mixed-Use Entertainment"; and (b) amend the City's Land Development Regulations to rezone the City Right-of-Way Areas from the current zoning classification of GU, "Government Use District," to CD-2, "Commercial Medium Intensity" and MXE, "Mixed-Use Entertainment," and extending the boundary of the Ocean Terrace Overlay Zone to encompass the City Right-of-Way Areas; 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 "G" to the Commission Memorandum accompanying this Resolution; and

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

- The Proposed Development will be developed based on, and in accordance with, the requirements of the Ocean Terrace Overlay District, as set forth in Sections 142-870 and 142-870.1 of the City Code. Within the Ocean Terrace Overlay District, the maximum height of a main use residential building shall not exceed 235 feet, and the maximum height of a main use hotel building shall not exceed 125 feet. The current main permitted uses in the Ocean Terrace Overlay District are (a) apartments; (b) apartment/hotels; (c) hotels; (d) commercial; and (e) uses that serve alcoholic beverages. Package alcohol stores are prohibited in the Ocean Terrace Overlay District; and
- In order to permit the Proposed Development to proceed as a unified development site, the City shall convey to the Developer the City Right-of-Way Areas, by quit claim deed, subject to the terms of the Development Agreement; and
- Simultaneous with the City's conveyance to the Developer of the City Right-of-Way Areas, the Developer shall grant to the City a perpetual, non-revocable utility, roadway and pedestrian access easement against the City Right-of-Way Areas for public vehicular and pedestrian use and access (as modified by the Park/Streetscape Improvements, which will pedestrianize portions of the City Right-of-Way Areas); and

- In consideration for the City's conveyance of the City Right-of-Way Areas, Developer shall complete, or cause to be completed, the design, permitting and construction of the Park/Streetscape Improvements, consistent with the Concept Plan approved by the City Commission, and at Developer's sole cost and expense, except for the City's payment of a maximum of \$80,000 for zoning application fees, a maximum of \$300,000 to cover monthly parking passes at specified City parking lots for Developer's contractors for the Proposed Development and Park/Streetscape Improvements; and
- Developer shall complete the Park/Streetscape Improvements in two phases, with Phase 1 to be completed within 48 months following the Effective Date of the Development Agreement (the date the agreement is executed by the Parties and recorded), and with Phase 2 to be completed within 96 months following the Effective Date;
- Developer shall complete the Proposed Development within 96 months following the Effective Date, provided, however, that if Developer timely completes Phase 2 of the Park/Streetscape Improvements, Developer shall be entitled to a 36-month extension if Developer has timely completed Phase 2 of the Park/Streetscape Improvements within the timeframes set forth in the Development Agreement; and
- Developer has agreed to all of the conditions requested by the Planning Board and the Land Use and Development Committee, including provisions to ensure that the final Plans and Specifications for the Park/Streetscape Improvements (i) provide for public access to the beach to be maintained; (ii) include a continuous north/south beach walkway to be maintained during construction; and (iii) satisfactorily address ingress/egress for vehicles accessing the St. Tropez property at 7330 Ocean Terrace, vehicle drop offs for elderly visitors to the UNIDAD building at 7251 Collins Avenue, load-in/load-out needs for the North Beach Bandshell located at 7275 Collins Avenue, and a vehicular drop-off or other turn around at the east end of 75th Street; and
- City shall not issue a temporary certificate of occupancy or certificate of occupancy for the Proposed Development until Developer has substantially completed Phase 1 of the Park/Streetscape Improvements and satisfied its obligations to the City under the Development Agreement; and
- If an outdoor café is approved by the Historic Preservation Board ("HPB") as part of the HPB's review and approval of the Park/Streetscape Improvements, Developer would have the right to operate the café area in accordance with the minimum standards, criteria and conditions for sidewalk café permits, as set forth in the City Code, and
- Developer shall convey to the City any right, title and interest Developer has in the public reservation area depicted in Exhibit "B" of the Development Agreement (namely, its reversionary interest in the public reservation area), provided, however, that Developer would reserve its reversionary interest in the eastern 30 feet of the Ocean Terrace right of way (which area would revert to the Developer upon the adoption of the Vacation Resolution); and
- In consideration for the completion of the Park/Streetscape Improvements, in the event a hotel is developed as part of the Proposed Development, Developer shall have the right to utilize a maximum of 175 feet between 74th Street and 75th Street, for a beachfront

concession, to be offered through the City's beachfront concessionaire, the Boucher Brothers Miami Beach, LLC, subject to the terms of the Development Agreement; and

- As security for Developer's obligations to deliver to the City a completed and constructed Park/Streetscape Improvements, Developer shall deliver to the City, either (1) an agreement with the Developer's lender to fund the then remaining Park/Streetscape 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/Streetscape 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
- Developer has proposed a ten (10) year initial duration of the Development Agreement, with Developer requesting one automatic 15-year extension if Developer completes the Park/Streetscape Improvements within the timeframes set forth in the Development Agreement.

WHEREAS, for the reasons as outlined in the Commission Memorandum accompanying this Resolution, the Administration recommends approval of the Development Agreement on first reading, and set the second and final reading/public hearing for the July 17, 2019 City Commission meeting.

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 first 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 7400 Ocean Terrace, LLC, 7410 Ocean Terrace, LLC, 7420 Ocean Terrace Investment, LLC, 7436 Ocean Terrace, LLC, 7450 Ocean Terrace, LLC, 7441 Collins Avenue Investment, LLC, 7439 Collins Avenue Investment, LLC, 7433 Collins Avenue Investment, LLC, 7421 Collins Avenue Investment, LLC, and 7409 Collins Avenue Investment, LLC (collectively, the "Developer"), which Development Agreement: (1) delineates conditions for the development of the properties located at 7409, 7421, 7433, 7435, 7437, 7439, 7441, and 7449 Collins Avenue, and 7400, 7410, 7420, 7430, 7436, and 7450 Ocean Terrace (collectively, the "Development Site"), with such Development Site to be developed in accordance with the requirements of the City's Ocean Terrace Overlay District, as set forth in Sections 142-870 and 142-870.1 of the City Code; (2) memorializes the conditions for vacating the City's right-of-way at Ocean Terrace, between 74th Street and 75th Street, as well as portions of 74th Street and 75th Street, between Ocean Terrace and Collins Avenue (collectively, the "City Right-Of-Way Areas"); (3) grants to the City a perpetual roadway easement across the vacated City Right-Of-Way Areas for utilities and public vehicular and pedestrian use and access; (4) provides for the Developer's design and construction of certain public park and streetscape improvements in the vicinity of Ocean Terrace, between 73rd Street and 75th Street, at Developer's cost and expense (with the exception of certain City fees); and (5) with the foregoing subject to and contingent upon Developer's satisfaction of the conditions set forth in the Development Agreement and the City Commission's vacation of the City Right-Of-Way Areas and enactment of certain amendments to the City's Future Land Use Map and Zoning Map, at its sole discretion; and further, setting the second and final reading of the Development Agreement for a time certain.

PASSED and ADOPTED this 26th day of June, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael G. Granado, City Clerk

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

Ree C. St. 6/18/19
City Attorney Date
RAR