

RESOLUTION: _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING/PUBLIC HEARING, PURSUANT TO SECTION 82-37(A)(2) OF THE CITY CODE, A PURCHASE AND SALE AGREEMENT (“PSA”) BETWEEN THE CITY OF MIAMI BEACH (“CITY”) AND MARINA PARK RESIDENTIAL, LLC (THE “PURCHASER”), IN CONNECTION WITH THE PROPOSED DEVELOPMENT OF THE MARINA PARK PROJECT ON THE CITY-OWNED PROPERTIES LOCATED AT 300-390 ALTON ROAD, THE CURRENT UPLAND SITE OF THE MIAMI BEACH MARINA (FOLIO NOS. 02-4203-009-9210, 02-4203-000-0010, AND 02-4203-009-9250) (COLLECTIVELY, THE “DEVELOPMENT SITE”), WHICH PSA MEMORIALIZES THE TERMS FOR THE CITY’S SALE TO THE PURCHASER OF A PORTION OF THE DEVELOPMENT SITE AND A PARCEL OF AIR LOCATED ABOVE THE GRADE SURFACE OF THE DEVELOPMENT SITE (THE “RESIDENTIAL PARCEL”), FOR THE CONSTRUCTION OF THE APPROXIMATELY 275,000 SQUARE FOOT RESIDENTIAL PORTION OF THE MARINA PARK PROJECT, IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT BY AND AMONG THE CITY, MARINA PARK RESIDENTIAL, LLC AND MARINA PARK COMMERCIAL, LLC, APPROVED PURSUANT TO CITY COMMISSION RESOLUTION NO. 2020-_____; WITH SUCH PSA AND/OR RELATED AGREEMENTS PROVIDING, AMONG OTHER TERMS, FOR (1) A PURCHASE PRICE IN THE AMOUNT OF \$55,000,000.00, OF WHICH \$5,000,000 IS PAYABLE TO THE CITY AT CLOSING AND THE BALANCE OF WHICH IS PAYABLE IN SPECIFIED INSTALLMENTS, EVIDENCED BY A PROMISSORY NOTE AND SECURED BY A FIRST MORTGAGE ON THE RESIDENTIAL PARCEL, IN FAVOR OF THE CITY; AND (2) ADDITIONAL NON-CASH CONSIDERATION TO THE CITY IN THE AMOUNT OF \$22,500,000, FOR SPECIFIED CAPITAL IMPROVEMENTS TO BE CONSTRUCTED ON THE DEVELOPMENT SITE, WHICH ADDITIONAL NON-CASH CONSIDERATION IS SET FORTH IN THE DEVELOPMENT AGREEMENT AND/OR THE LEASE AGREEMENT BETWEEN THE CITY AND MB MARINA PARK, LLC, AN AFFILIATE OF SUNTEX MARINA INVESTORS, LLC, APPROVED PURSUANT TO CITY COMMISSION RESOLUTION NO. 2020-_____; FURTHER, APPROVING A RECIPROCAL EASEMENT AGREEMENT, PURCHASE MONEY PROMISSORY NOTE, PURCHASE MONEY MORTGAGE, AND MASTER SUBLEASE RECOGNITION AGREEMENT BETWEEN THE CITY AND MARINA PARK COMMERCIAL, LLC, EACH IN SUBSTANTIAL FORM, WITH SUCH CHANGES AND CORRECTIONS AS MAY BE APPROVED BY THE CITY MANAGER AND THE CITY ATTORNEY, IN ACCORDANCE WITH THE TERMS OF THE PSA AND REQUIREMENTS OF THIS RESOLUTION, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE PSA AND EXHIBITS THERETO; FURTHER, WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT OF SECTION 82-39 OF THE CITY CODE, FINDING THAT THE PUBLIC INTEREST WOULD BE SERVED BY WAIVING SUCH CONDITION; AND FURTHER, PROVIDING THAT THE SALE OF THE RESIDENTIAL PARCEL SHALL BE SUBJECT TO AND CONTINGENT UPON APPROVAL BY A MAJORITY OF THE VOTERS VOTING IN A CITY-WIDE REFERENDUM, PURSUANT TO SECTION 1.03(B)(1) OF THE CITY CHARTER.

WHEREAS, the City Commission of the City of Miami Beach desires to maximize the performance of the property commonly referred to as the “Miami Beach Marina” (described more fully below) and upgrade its facilities, enhance the neighborhood through neighborhood-oriented commercial and retail spaces, improve resiliency with capital improvements focused on sustainability, provide a park with additional public green space in the City, and generate substantial lease and other revenues for the City; and

WHEREAS, the City is the owner of the properties located at 300-390 Alton Road, the current location of the Miami Beach Marina, Folio Nos. # 02-4203-000-0010, 02-4203-009-9210 and 02-4203-009-9250 (the “Development Site”);

WHEREAS, the City is the lessee of the submerged lands area leased to the City and the Miami Beach Redevelopment Agency by the Board of Trustees of the Internal Improvements Trust Fund of the State of Florida, as more fully described in (BOT File No. 130765469 (“Area 2”) (collectively, the Development Site and Area 2, the “Miami Beach Marina”);

WHEREAS, since 1983, the Miami Beach Marina has been leased to Miami Beach Marina Associates, Ltd. (“Current Lessee”), for use solely as a boat port, marina and recreation facility offering dockage, mooring and other marina related services for use by the general public. (the “Existing Lease”); and

WHEREAS, the Existing Lease provides for an initial term expiring on January 1, 2022, and also provides the Current Lessee with the right to renew three (3) times, for a period of ten (10) years for each renewal term, through January 1, 2052; and

WHEREAS, Marina Park Residential, LLC, f/k/a Alton Road Mixed Use Investments, LLC (“Marina Park Residential”) and an affiliate thereof, Marina Park Commercial, LLC (“Marina Park Commercial, LLC”) (jointly and severally, the “Developer”), along with Suntex Marina Investors, LLC, an affiliate of the Current Lessee, are proposing a public-private partnership with the City for the purpose of developing and constructing a project on the Development Site that includes:

(1) a private luxury residential tower that would include a maximum of 60 residential units and a maximum of approximately 275,000 gross square feet, with a maximum height of 385 feet; and

(2) a new Marina building and enhanced neighborhood retail uses on the site of the current Miami Beach Marina building, with a maximum of approximately 45,000 gross square feet of accessory restaurant, retail and office space, to upgrade the existing condition of the Miami Beach Marina facilities, which are dated and unattractive; and

(3) substantial green space, including a contiguous, one (1) acre ground-level public park for the benefit of the general public, as well as other improvements, including resiliency enhancements and enhancements to the public baywalk along the Miami Beach Marina (collectively, (1) – (3) above, the “Project” or “Marina Park Project”); and

WHEREAS, the Developer intends to develop the mixed-use residential and commercial Marina Park Project on the Development Site 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 the Marina Park Project, at the Developer’s sole cost and expense, including the resiliency and other capital improvements; and

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

WHEREAS, in addition to the Development Agreement, the Marina Park Project includes four other major components that must be approved by the City Commission in order for the Marina Park Project to proceed (the second readings for which are all the subject of companion agenda items on the July 29, 2020 City Commission Agenda), namely:

(1) The Purchase and Sale Agreement (“PSA”) for the sale to Marina Park Residential, LLC (“Purchaser”) of up to 0.3 acres of the Development Site, and the air parcel within which the approximately 275,000 square foot residential portion of the Project would be constructed (“Residential Parcel”), with the sale of the Residential Parcel subject to approval by a majority of the voters voting in a City-wide referendum pursuant to Section 1.03(b)(1) of the City Charter (“Sale of Residential Parcel”);

(2) A new lease for the Miami Beach Marina (excluding the Residential Parcel), to MB Marina Park, LLC, an affiliate of Suntex Marina Investors, LLC (“New Lessee”), which would be effective at the Closing for the Sale of Residential Parcel, with the term to commence on January 1, 2022 (following the expiration of the Existing Lease), for a term of ninety-nine (99) years, with the new lease subject to approval by a majority of the voters voting in a City-wide referendum pursuant to Section 1.03(b)(1) of the City Charter (the “New Lease”);

(3) The vacation of the western half of Alton Road that lies adjacent to the City-owned properties that are part of the Development Site, consisting of a fifty (50) foot wide right-of-way, containing 25,500 square feet in total lot area, as depicted in **Exhibit “1”** to the Commission Memorandum accompanying this Resolution (the “City Right-of-Way Area”);

(4) Amendments to the City’s Comprehensive Plan and Land Development Regulations, to permit public-private marina redevelopments (including residential and other uses), increase the maximum building height, and amend other design regulations (the “Proposed LDR Amendments”);

WHEREAS, the City engaged two independent appraisers, namely CBRE, Inc. (“CBRE”) and Walter Duke + Partners, Inc. (“Walter Duke”) to independently estimate the fair market value of the development rights in connection with the Sale of Residential Parcel (the square footage of which incorporated the 25,500 square feet associated with the to-be-vacated City Right-of-Way Area) and the fair market rental value for the New Lease; and

WHEREAS, Walter Duke's appraisal valued the Residential Parcel at \$70 million, and CBRE's appraisal valued the Residential Parcel at \$87 million. A copy of the updated CBRE and Walter Duke Appraisal Reports are attached as **Exhibit "7"** to the Commission Memorandum accompanying this Resolution; and

WHEREAS, the Purchaser, jointly and severally with its affiliate, Marina Park Commercial, LLC, which would serve as the master sublessee of the Development Site for the purposes of the construction of the Project ("Master Sublessee"), would be the Developer under the Development Agreement. As Purchaser and Master Sublessee would be under common control, the Development Agreement aligns the Purchaser's rights under the PSA and Reciprocal Easement Agreement (as described below) with the Master Sublessee's obligations relative to the Project under the Development Agreement and the master sublease of the Development Site under the New Lease; and

WHEREAS, the proposed PSA for the Sale of Residential Parcel is attached as **Exhibit "4"** to the Commission Memorandum accompanying this Resolution. Among other terms, the PSA provides for payment to the City for the Sale of Residential Parcel in the amount of \$55 million, payable in specified installments, with the balance evidenced by a promissory note and secured by a first mortgage on the Residential Parcel in favor of the City. In addition to the cash purchase price of \$55 million, Developer has agreed to spend a minimum of \$22.5 million toward specified capital improvements to the Development Site (including delivery of the baseline commercial building for the Project, and park improvements, resiliency enhancements, baywalk enhancements, Alton Road right-of-way enhancements, retail enhancements and additional art in excess of the required AIPP contribution), which commitments are memorialized in the Development Agreement; and

WHEREAS, the Finance and Economic Resiliency Committee ("Finance Committee") reviewed the proposed transaction at its April 17, 2020 and May 22, 2020 meeting, and favorably recommended proceeding with the Marina Park Project, including the proposed (1) Development Agreement, (2) PSA, (3) New Lease, and (4) Vacation Resolution; and

WHEREAS, on May 26, 2020, the Land Use and Sustainability Committee favorably recommended the Proposed LDR Amendments; and

WHEREAS, on June 23, 2020, the Planning Board approved the proposed vacation of the City Right-of-Way Area pursuant to the requirements of Section 1.03(b)(4) of the City Charter, and voted to transmit the Development Agreement and the Proposed LDR Amendments to the City Commission with a favorable recommendation, in accordance with the City's Land Development Regulations; and

WHEREAS, on June 24, 2020, the Mayor and City Commission approved, on first reading, the (1) Development Agreement; (2) the Sale of Residential Parcel; (3) the New Lease; the (4) proposed vacation of the City Right-of-Way Area and (5) the Proposed LDR Amendments; and

WHEREAS, the PSA will provide for a sale price of \$55 million, with the closing on the Sale of Residential Parcel shall take place on March 25, 2021 ("Closing"); and

WHEREAS, the City shall be paid a purchase price of \$55 million for the Sale of Residential Parcel, in the following installments, with the balance evidenced by a Promissory Note and secured by a First Mortgage in favor of the City:

- \$5 million at Closing;
- \$5 million, on or before January 1, 2022;
- \$5 million, on or before September 1, 2022; and
- \$40 million, \$40 million, due on the date all conditions precedent to Commencement of Construction have been satisfied (as provided in the Development Agreement); and

WHEREAS, as set forth above, in addition to the cash purchase price of \$55 million, Developer (one of the entities of which is the Purchaser) will spend a minimum of \$22.5 million in specified capital improvements to the Development Site, which commitment is memorialized in the Development Agreement; and

WHEREAS, the Promissory Note will be non-interest bearing until the earlier of (i) ninety (90) days after the Project Approvals (Design Review Board and Planning Board) are obtained or (ii) fifty four (54) months after the Effective Date, subject to extension as provided in the Agreement, and shall thereafter accrue interest at a rate equal to one percent (1.0%) above the LGIP Index Rate, as published by FLCLASS, and, commencing two years thereafter, the rate shall increase by 0.5% above the Interest Rate previously in effect, and shall continue to increase by 0.5% each year thereafter above the Interest Rate previously in effect, through the Maturity Date; and

WHEREAS, the PSA also contemplates a Reciprocal Easement Agreement among the City, the New Lessee/Master Sublessee and the Residential Parcel Purchaser, which would be executed at the Closing of the Sale of Residential Parcel, to accomplish the subdivision of the Development Site to create two separate fee parcels: the fee interest in the Residential Parcel (to be owned by Marina Park Residential, LLC) and the fee interest in the balance of the Development Site, which would remain owned by the City at all times (and leased to the New Lessee under the New Lease) ("REA"). After the construction of the Project, the Residential Parcel would be further subdivided pursuant to a declaration of condominium to create individual residential units for purchase and sale; and

WHEREAS, the REA would also serve to grant necessary easements including those of support, ingress and egress, and utilities, and contain covenants with respect to cost-sharing and maintenance; and

WHEREAS, the PSA also contemplates that the City would agree to grant to Marina Park Commercial, LLC (the Master Sublessee) and its lender a recognition and non-disturbance agreement, providing that in the event of any termination of the New Lease, the Master Sublease would continue as a direct lease between the City, as landlord, and the Master Sublessee, as tenant, and the City would thereafter have all rights and privileges of the "landlord" under the Master Sublease;

WHEREAS, the proposed Reciprocal Easement Agreement, Purchase Money Promissory Note, Purchase Money Mortgage, and Master Sublease Recognition Agreement between the City And Marina Park Commercial, LLC, each in substantial form, are attached as part of Exhibit “4” to the Commission Memorandum accompanying this Resolution, subject to such changes and corrections as may be approved by the City Manager and the City Attorney prior to Closing, in accordance with the terms and limitations set forth in the PSA and requirements of this Resolution; and

WHEREAS, the Closing shall be contingent upon the execution of the New Lease, which New Lease shall be subject to voter approval and would have a term commencing on January 1, 2022, following the expiration of the Existing Lease; and

WHEREAS, as the New Lease and the Sale of Residential Parcel are each subject to approval by a majority of the voters voting in a City-wide referendum pursuant to the City Charter, the Closing would not take place, and no aspect of the proposed Project would proceed, unless the requisite approval of the voters is obtained for both the New Lease and Sale of Residential Parcel; and

WHEREAS, the Development Agreement and PSA provide for contingencies in the event that Developer is unable to obtain the regulatory Project approvals, or in the event the New Lease is successfully challenged, which contingencies, among other terms, provide for the Developer to indemnify, defend, and hold harmless the City in connection with any challenges or lawsuits regarding any component of the Project; and

WHEREAS, for the reasons as outlined in the Commission Memorandum accompanying this Resolution, which Commission Memorandum, and exhibits thereto, are incorporated by reference as if fully set forth herein, the Administration recommends approval of the Purchase and Sale Agreement for the Sale of the Residential Parcel (and exhibits thereto) on second reading.

NOW THEREFORE, BE IT 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, pursuant to Section 82-37(a)(2) of the City Code, a Purchase and Sale agreement (“PSA”) between the City of Miami Beach (“City”) and Marina Park, LLC (the “Purchaser”), in connection with the proposed development of the Marina Park Project on the City-owned properties located at 300-390 Alton Road, the current upland site of the Miami Beach Marina (Folio nos. 02-4203-009-9210, 02-4203-000-0010, and 02-4203-009-9250) (collectively, the “Development Site”), which PSA memorializes the terms for the City’s sale to the Purchaser of a portion of the Development Site and a parcel of air located above the grade surface of the Development Site (the “Residential Parcel”), for the construction of the approximately 275,000 square foot residential portion of the Marina Park Project, in accordance with the terms and conditions of the Development Agreement by and among the City, Marina Park Residential, LLC and Marina Park Commercial, LLC, approved pursuant to City Commission Resolution No. 2020-_____; with such PSA and/or related agreements providing, among other terms, for (1) a purchase price in the amount of \$55,000,000.00, of which \$5,000,000 is payable to the City at closing and the balance of which is payable in specified

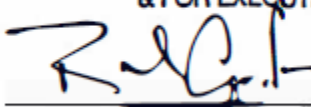
installments, evidenced by a promissory note and secured by a first mortgage on the Residential Parcel, in favor of the City; (2) additional non-cash consideration to the City in the amount of \$22,500,000, for specified capital improvements to be constructed on the Development Site, which additional non-cash consideration is set forth in the Development Agreement and the Lease Agreement between the City and MB Marina Park, LLC, an affiliate of Suntex Marina Investors, LLC, approved pursuant to City Commission Resolution No. 2020-____; further, approving the Reciprocal Easement Agreement, Purchase Money Promissory Note, Purchase Money Mortgage, and Master Sublease Recognition Agreement between the City and Marina Park Commercial, LLC, each in substantial form, with such changes and corrections as may be approved by the City Manager and the City Attorney, in accordance with the terms of the PSA and requirements of this Resolution, and authorizing the Mayor and City Clerk to execute the PSA and exhibits thereto; further, waiving, by 5/7th vote, the competitive bidding requirement of Section 82-39 of the City Code, finding that the public interest would be served by waiving such condition; and further, providing that the sale of the Residential Parcel shall be subject to and contingent upon approval by a majority of the voters voting in a City-wide referendum, pursuant to Section 1.03(b)(1) of the City Charter.

PASSED AND ADOPTED this ____ day of July, 2020.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney RAP Date 7/21/20