

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, ON FIRST READING OF THIS RESOLUTION, THE VACATION OF THAT PORTION OF THE SOUTHERN HALF OF 21ST STREET, GENERALLY LOCATED BETWEEN APPROXIMATELY 150 FEET EAST OF COLLINS AVENUE AND MIAMI BEACH DRIVE, AND CONSISTING OF APPROXIMATELY 6,736 SQUARE FEET IN TOTAL AREA, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" TO THE MEMORANDUM ACCOMPANYING THIS RESOLUTION (THE "ROW"), IN FAVOR OF THE ABUTTING PROPERTY OWNER, BHI LIMITED MIAMI CORPORATION (THE "APPLICANT"); FURTHER, PROVIDING THAT THE VACATION OF THE CITY ROW SHALL BE SUBJECT TO AND CONDITIONED UPON THE APPLICANT'S DELIVERY OF CERTAIN PUBLIC BENEFITS TO THE CITY, INCLUDING A VOLUNTARY MONETARY PAYMENT IN THE AMOUNT OF \$7,400,000.00, A MAINTENANCE AGREEMENT PROVIDING FOR THE INSTALLATION AND PERPETUAL MAINTENANCE OF ADDITIONAL LANDSCAPING WITHIN THE CITY'S BEACH ACCESS AND BEACHWALK AREA EAST OF MIAMI BEACH DRIVE AS MORE PARTICULARLY DEPICTED IN EXHIBIT "E" TO THE MEMORANDUM ACCOMPANYING THIS RESOLUTION, AND 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, BY 5/7THS VOTE, 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; SETTING THE PUBLIC HEARING, PURSUANT TO SECTION 82-39(A) OF THE CITY CODE, FOR THE SECOND AND FINAL READING OF THE VACATION RESOLUTION; AND, FINALLY, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE AND REFERRING THE PROPOSED VACATION TO THE PLANNING BOARD PURSUANT TO CITY CHARTER SECTION 1.03(b)(4).

WHEREAS, the City holds a right-of-way dedication to the portion of the southern twenty-five (25) feet of 21 Street located approximately 150 feet east of Collins Avenue and running east for approximately 269.43 feet, consisting of approximately 6,736.28 square feet, and more particularly described in Exhibit "A" to the Memorandum accompanying this Resolution (the "ROW"); and

WHEREAS, BHI Miami Limited Corp. (the "Applicant") owns the property abutting the ROW, which is known as 100 21 Street and is identified by tax folio number 02-3226-001-0040 (the "Property"), more particularly described in Exhibit "B" to the Memorandum accompanying this Resolution; and

WHEREAS, Applicant's Property, currently known as the Seagull Hotel, consists of an 8-story structure constructed in 1950, and designed by architect Albert Anis; and

WHEREAS, the Applicant intends to redevelop the Property as a hotel development (the "Proposed Development"); and

WHEREAS, in conjunction with Proposed Development, the Applicant is requesting that the City vacate 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, the Applicant is proposing that the Proposed Development be developed as a unified development site, and the former right of way and the Applicant's Property would be joined via a covenant in lieu of unity of title following the effective date of the vacation, to permit Applicant to utilize the floor area associated with the ROW within the Proposed Development; and

WHEREAS, the Public Works Department obtained an appraisal for the market value of the ROW on January 13, 2021, which appraisal is attached as Exhibit "D" to the Memorandum accompanying this Resolution, and valued the ROW at \$7,400,000; and

WHEREAS, at FERC's January 22, 2021 meeting, the FCWPC recommended 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 payment of \$7,400,000 to the City, and (2) the Applicant 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

WHEREAS, the Applicant has further agreed to the installation and perpetual maintenance of additional landscaping adjacent to the Applicant's Property within the City's Beach Access and Beachwalk area depicted in Exhibit "E" to the Memorandum accompanying this Resolution, to be memorialized in a recorded Maintenance Agreement; and

WHEREAS, the Planning Department analysis of the vacation, pursuant to Section 82-38 of the City Code, is attached as Exhibit "F" to the Memorandum accompanying this Resolution; and

WHEREAS, Section 82-39(a) of the City Code provides that the lease or sale of public property also requires an advertised public bidding process, which requirement may be waived by 5/7th 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 area; and

WHEREAS, as the only persons entitled to the vacated ROW is the Applicant (as the abutting property owner and holder of the appropriate reversionary interests), 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, pursuant to the requirements of Section 1.03(b)(4) of the City Charter, the proposed vacation will be heard before the Planning Board on the March 23, 2021 meeting, where it must be approved by 4/7ths vote; and

WHEREAS, Section 1.03 (b)(4) of the Charter also requires that the vacation be approved by 6/7ths 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 the ROW 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 contribution of \$7,400,000 under a payment schedule to be determined in a Vacation Agreement to be executed by the Applicant and the City; and
- (2) the vacation of that portion of the southern half of the 21st Street right-of-way, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive, and consisting of approximately 6,736 square feet in total area ("ROW") along the front of the Seagull Hotel property. The ROW is more particularly described in Exhibit "A" to the Memorandum accompanying this Resolution. 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, would create a unified development site, thereby permitting the aggregation of floor area ("FAR") across the unified abutting parcels; and
- (3) Applicant would grant a perpetual, non-revocable easement in favor of the City, for the City's continued use of the ROW for vehicular, pedestrian and utility purposes, so that the public's use of 21st Street would not be altered or diminished in any way; and
- (4) Applicant and the City shall enter into a Maintenance Agreement providing for installation (prior to the issuance of a Certificate of Occupancy) and perpetual maintenance of additional landscaping at the Applicant's sole cost in the portion of the City's Beach Access and Beachwalk area as depicted in Exhibit "C" to the Memorandum accompanying this Resolution that is directly to the east of the ROW and directly to the east of Applicant's Property (defined below as the "Proposed Maintenance Area"); and
- (5) 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
- (6) 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, except the installation and maintenance of the landscape improvements depicted in Exhibit "C" to the Memorandum accompanying this Resolution, which shall be governed by the Maintenance Agreement, and 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

- (7) 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

WHEREAS, in the event the foregoing conditions of the Vacation Agreement, excluding the obligations under the Maintenance Agreement, which shall be solely governed by that Agreement, are not met, 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 Applicant has proposed that the voluntary cash payment to the City in the amount of \$7,400,000 would be provided in installment payments, namely:

- (1) an initial refundable installment payment of \$750,000 due 30 days following land use board approvals becoming final and non-appealable; and
- (2) a second refundable installment payment of \$3,325,000 due prior to the Building Department's issuance of a building permit for the renovation project; and
- (3) a final installment payment of \$3,325,000 due prior to the Building Department's issuance of a Temporary Certificate of Occupancy or Certificate of Occupancy (whichever comes first) for the new construction. As proposed by the Applicant, the \$7,400,000 proposed by Applicant would become non-refundable upon the owner obtaining the temporary certificate of occupancy; and

WHEREAS, the Administration and Applicant will continue to discuss the proposed payment schedule, in an effort to improve on the terms prior to the Planning Board's consideration of this matter, as the Interim City Manager has recommended that a greater portion of the \$7,400,000 million be provided up-front, with all payments to become non-refundable at the closing of the transaction, and the Applicant has expressed a willingness to work with the Administration to accommodate the Interim City Manager's request, within a framework that would permit for the Project to be financeable; and

WHEREAS, the Administration recommends approval of the vacation at first reading on February 10, 2021, subject to the terms and conditions contained herein, and recommends scheduling second reading for public hearing on April 21, 2021.

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, on First Reading of this Resolution, the vacation of that portion

of the southern half of 21 Street, generally located between approximately 150 feet east of Collins Avenue and Miami Beach Drive, and consisting of approximately 6,736.28 square feet in total area, as more particularly describe in Exhibit "A" to the Memorandum accompanying this Resolution (the "ROW"), in favor of the abutting property owner, BHI Limited Miami Corporation (the "Applicant"); further, providing that the vacation of the City ROW shall be subject to and conditioned upon the Applicant's delivery of certain public benefits to the City, including a voluntary monetary payment in the amount of \$7,400,000, a maintenance agreement providing for the installation and perpetual maintenance of additional landscaping within the City's beach access and beachwalk area east of Miami beach Drive as more particularly depicted on Exhibit "E" to the memorandum accompanying this Resolution, and 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, by 5/7ths vote, 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, Setting the public hearing, pursuant to Section 82-39(a) of the City Code, for the second and final reading of the vacation resolution; and, finally, accepting the recommendation of the Finance and Economic Resiliency Committee and referring the proposed vacation to the Planning Board pursuant to City Charter Section 1.03(b)(4).

PASSED and ADOPTED this ____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael G. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

2-3-21

Date