

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND ECONOMIC RESILIENCY COMMITTEE AT ITS JUNE 23, 2023 MEETING, DIRECTING THE ADMINISTRATION TO NEGOTIATE AN IMPROVEMENT AND MAINTENANCE AGREEMENT FOR THE 100-300 BLOCKS OF THE LINCOLN ROAD RIGHT-OF-WAY, CONSISTENT WITH THE TERM SHEET NEGOTIATED PURSUANT TO RESOLUTION NO. 2022-32444, WITH THE FINAL AGREEMENT SUBJECT TO THE PRIOR APPROVAL OF THE MAYOR AND CITY COMMISSION; AND FURTHER, AUTHORIZING THE CITY MANAGER TO EXECUTE THE NECESSARY LAND USE BOARD APPLICATIONS RELATED TO THE PROPOSED IMPROVEMENTS AND SUBSTANTIALLY IN ACCORDANCE WITH THE CONCEPT PLANS ATTACHED TO THE TERM SHEET.

WHEREAS, on September 14, 2022, at the request of Commissioner Alex Fernandez, the City Commission referred a discussion item (C4 AB) to the Land Use and Sustainability Committee (LUSC), the Public Safety Neighborhood and Quality of Life Committee (PSNQLC), and the Finance and Economic Resiliency Committee (FERC) regarding the possibility of improvements to the 100-300 Blocks of Lincoln Road intended to enhance the pedestrian and vehicular experience with a vision to revitalize the area; and

WHEREAS, Di Lido Beach Resort LLC, the owner of the property located at 1 Lincoln Road (Ritz-Carlton Hotel, South Beach) and EBJ Sagamore LLC, the owner of the property located at 1671 Collins Avenue (Sagamore Hotel South Beach) (collectively, the "Developer"), saw an opportunity to partner with the City toward realizing this vision, and proposed a renovation and expansion to their existing properties; and

WHEREAS, as part of the redevelopment plan, the Developer proposed to design and engineer, subject to the City's direction and approval, certain pedestrian, vehicular and other improvements within that portion of the Lincoln Road right-of-way extending from Washington Avenue to the beachwalk; and

WHEREAS, the improvements are intended to beautify and transform Lincoln Road into a robust pedestrian plaza along the 200-300 Blocks, allow for a more convenient and safe public connection across the 100 Block of Lincoln Road to the beachwalk, and provide additional enhancements associated with pedestrian and vehicular entry, access, and loading for the Ritz-Carlton property; and

WHEREAS, on November 14, 2022, following a project presentation by the Developer, the FERC transmitted a favorable recommendation to the City Commission. Specifically, the FERC motion recommended that 1) the Administration and the Developer negotiate a development agreement for City Commission consideration; 2) the City Commission consider action to close the 200 and 300 Blocks of Lincoln Road to vehicular traffic and the partial closure of the 100 Block, subject to certain conditions and approval of a traffic study; and 3) the preparation of a maintenance agreement to address ongoing maintenance obligations for the 100 Block and the beachwalk; and

WHEREAS, on November 18, 2022, the LUSC discussed the project and transmitted a favorable recommendation to the City Commission. The LUSC motion recommended that the

Administration 1) work to finalize the traffic study and conduct the associated peer review; 2) verify project construction costs; and 3) negotiate the terms of a development agreement; and

WHEREAS, on November 30, 2022, the PSNQLC discussed the project and transmitted a favorable recommendation to the City Commission. The PSNQLC recommended that the Administration endeavor to finalize the traffic study and to conduct negotiations for a development agreement and a maintenance agreement; and

WHEREAS, on December 14, 2022, the Mayor and City Commission unanimously adopted Resolution No. 2022-32444, authorizing the Administration to engage in negotiations with the Developer in regard to a development agreement which would, among other terms, memorialize the framework for the Lincoln Road improvements, and directing the Administration to further analyze all aspects of the potential pedestrianization of the 200 and 300 Blocks of Lincoln Road and the reduction of vehicular traffic east of Collins Avenue; and

WHEREAS, the proposed public improvements and private property redevelopment is located within a local historic district, therefore requiring approval from the Historic Preservation Board (HPB), and accordingly, the Developer has submitted two separate, but related, applications for Certificates of Appropriateness to be reviewed and considered at upcoming HPB meetings; and

WHEREAS, Developer's participation in the Public/Private Project on the 100 Block is contingent upon the issuance of the Certificate of Appropriateness allowing the redevelopment of the Ritz-Carlton and Sagamore properties (the Private Project); and

WHEREAS, the Administration and Developer have negotiated the 100-300 Blocks of Lincoln Road Improvement and Maintenance Agreement Term Sheet, dated June 22, 2023 (the "Term Sheet"), a copy of which is attached as an exhibit to the Commission Memorandum accompanying this Resolution and reflects the key terms to be incorporated into a definitive Improvement and Maintenance Agreement (the "Agreement"), as discussed and negotiated by the parties to date, in connection with a public-private collaboration to construct improvements as shown in the Phase 1 Project and Phase 2 Project Concept Plans, which are also Exhibits to the Commission Memorandum; and

WHEREAS, pursuant to the Term Sheet:

- a) The City and Developer will collaborate on the Phase 1 Project Concept Plan for the 100 Block, which shall include:
 - i. Relocation and redesign of pedestrian paths and vehicular access from Collins Avenue to the beachwalk;
 - ii. Installation of landscaping features along the pedestrian paths and within the median;
 - iii. Installation of a "Morris Lapidus Arch"-inspired aesthetic design feature at the eastern edge of the Lincoln Road right of way;
 - iv. Construction of a public green amenity at the intersection of the beach access walk and beachwalk;
 - v. The replacement of water and sewer lines and improvements to the stormwater collection system; and
 - vi. The design of the Phase 1 Project shall be consistent with the Concept Plan.

- b) Contingent upon conditions precedent including but not limited to, satisfactory completion, peer review and approval of a traffic study, preparation of a Phase 2 Project Concept Plan and securing dedicated funding sources to cover all of the hard costs within 10 years of execution of the Agreement, the parties may proceed with the Phase 2 Project for the 200-300 Blocks, which shall include:
 - i. The pedestrianization of the 200-300 blocks of Lincoln Road through the removal of vehicular travel lanes, the relocation of the pedestrian access rights-of-way, alterations to the medians and incorporation of pedestrian pavement markings;
 - ii. Installation of landscaping features along the pedestrian path; and
 - iii. Subject to obtaining the necessary approvals from the City and Miami-Dade County, Florida (the "County"), the installation of two (2) new bus shelters on Washington Avenue to replace the bus stops along the 300 block of Lincoln Road.
- c) Phase 1 Project costs will not exceed \$12 million subject to annual increases based on the lower of the Consumer Price Index ("CPI") or 3%, and Phase 2 Project costs remain subject to further development;
- d) The City and Developer will share the hard and soft costs for the Phase 1 Project, with the following limitations:
 - i. The maximum amount of the city contribution in respect of the Phase 1 Project (the "Phase 1 City Contribution") shall be the lower of 50% of the Costs or \$4 million subject to annual increases (lower of CPI or 3%), of which \$1 million subject to annual increases (lower of CPI or 3%) will be devoted to the Water and Sewer Improvements. If Water and Sewer Improvements exceed \$1 million, City may, in its sole discretion, fully fund or reduce scope of Water and Sewer Improvements.
 - ii. Developer Contribution shall be no less than the total Phase 1 City Contribution (the "Phase 1 Developer Contribution").
- e) The City and the Developer will cooperate to seek funding from other agencies including, but not limited to, the State of Florida to cover at least the difference between the Costs and the aggregate amount of the Phase 1 City Contribution and Phase 1 Developer Contribution.
- f) The Developer has agreed to hire a lobbying team, at its sole cost and expense, to support the effort to secure State participation in the funding of the Phase 1 Project. Any funding from other agencies will first cover the Costs not funded by the City or Developer and then be applied to reduce the obligations of the City and Developer equally. The lobbying team will also seek funding for the Phase 2 Project. Lobbying for the Phase 2 Project will occur simultaneously with lobbying for the Phase 1 Project. Lobbying efforts will occur during not less than a twelve-month period.
- g) The City shall appropriate or otherwise secure funding from alternative sources for the Phase 1 Project by the date on which the Fiscal Year 2027 budget is approved by the Mayor and City Commission (the "Funding Deadline"). If the City does not secure the Phase 1 City Contribution by the Funding Deadline, as may be extended by mutual agreement of the parties, the Agreement and the Developer's obligations shall automatically terminate, the parties shall be released of any further liability or obligation except as otherwise provided in the Agreement.
- h) With regard to the Phase 2 Project, the Developer will be responsible for certain preliminary matters, including the preparation of a traffic study, concept plans and a budget for the contemplated 200/300 block improvements.

- i) If, within the ten (10) year period following the execution of the Agreement the City and the Developer secure dedicated sources of funding to cover all of the hard costs set forth in the Phase 2 Budget, the Developer will be responsible for the preparation and processing of the necessary HPB application for the Phase 2 Project and for funding the cost of the work of all design professionals, all as more specifically outlined in the Term Sheet attached to the Memorandum accompanying this Resolution.
- j) The Agreement may be terminated upon occurrence of either of the following:
 - i. Failure by the Developer to obtain HPB approval for the Private Project
 - ii. Failure by the City to meet the Funding Deadline (FY 2027 Budget); and

WHEREAS, funds to satisfy the Phase 1 City Contribution have not been identified, budgeted, or appropriated and would require action by the City Commission via a subsequent budget approval or amendment process taking into consideration various City priorities. The Administration recommends that the City Commission appropriate the Phase 1 City Contribution or otherwise secure funding from alternative sources by the conclusion of the Fiscal Year 2027 budget process; and

WHEREAS, on June 23, 2023, the FERC discussed the proposed improvements to the 100-300 Blocks of Lincoln Road and provided feedback as to monetary obligations and project funding sources and the parties' enduring maintenance and contractual responsibilities relative to improvements; and

WHEREAS, the FERC unanimously recommended that the City Commission approve the Term Sheet and proceed to negotiate the Improvement and Maintenance Agreement; and

WHEREAS, the FERC specifically recommended that the City Commission 1) allocate the proposed \$4 million City Contribution as part of the Fiscal Year 2024 Budget process; 2) accept the Developer's "Morris Lapidus Arch" -inspired aesthetic design feature for compliance with the City Code's Art in Public Places Program; 3) determine that the proposed Concession Agreement with Developer be coterminous with the term of the Developer's Phase 1 Project maintenance obligation, subject to further limitations including, but not limited to, a termination for default provision, which, if invoked by the City, would not result in termination of the Developer's maintenance obligations; and 4) determine that the term for the Developer's Phase 1 Project maintenance obligation be limited to fifteen (15) years; and

WHEREAS, outstanding and open items will require further negotiation and/or action by the City, Developer, or third parties, including the completion of traffic studies and land use board approvals, the verification of construction costs and stipulation to respective obligations for ongoing project maintenance, negotiation of a concession agreement to permit the Developer to operate concession facilities on public land, among other pending items; and

WHEREAS, in light of the favorable recommendation of the FERC and subject to the City Commission's discussion and recommendation as to policy and business issues, the Administration supports the City Commission's approval of the Term Sheet as a basis for continuing negotiations with the Developer.

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 accept the recommendation of the Finance and Economic Resiliency Committee at its June 23, 2023 meeting, direct the Administration to negotiate an Improvement and

Maintenance Agreement for the 100-300 Blocks of the Lincoln Road right-of-way, consistent with the 100-300 Blocks of Lincoln Road Improvement and Maintenance Agreement Term Sheet dated June 22, 2023, negotiated pursuant to Resolution No. 2022-32444, with the final agreement subject to the prior approval of the Mayor and City Commission; and further, authorize the City Manager to execute the necessary land use board applications related to the proposed improvements and substantially in accordance with the Concept Plans attached to the Term Sheet.

PASSED AND ADOPTED this _____ day of June, 2023.

ATTEST:

RAFAEL E. GRANADO, CITY CLERK

DAN GELBER, MAYOR

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

Mariano Acuna 6/26/2023
For City Attorney *RD* Date