

## COMMITTEE MEMORANDUM

**TO:** Finance and Citywide Projects Committee Members

**FROM:** Jimmy L. Morales, City Manager

**DATE:** September 20, 2019

**SUBJECT:** A DISCUSSION REGARDING AN AMENDMENT NO. 1 TO AGREEMENT OF LEASE (AMENDMENT) BY AND BETWEEN THE CITY OF MIAMI BEACH (CITY OR OWNER) AND CLPF-LINCOLN, LLC (CLARION OR TENANT), INVOLVING THE MIXED-USE PROJECT LOCATED AT 1691 MICHIGAN AVENUE, MIAMI BEACH, FLORIDA A/K/A THE LINCOLN (PROJECT), CONTAINING A PARKING GARAGE, OFFICE SPACE AND GROUND FLOOR RETAIL SPACE (IMPROVEMENTS); SAID AMENDMENT PROVIDING CLARION THE OPPORTUNITY TO CREATE A VERTICAL SUBDIVISION OF THE IMPROVEMENTS INTO THREE PARCELS COINCIDING WITH THE CURRENT THREE USES OF THE IMPROVEMENTS, NAMELY, A GARAGE PARCEL, AN OFFICE PARCEL AND A RETAIL PARCEL.

### **HISTORY**

The City and Lincoln Plaza Partners LLC entered into an Agreement of Lease dated September 1, 1999 and recorded on September 3, 1999 in Official Records Book 18770, Page 447, for the mixed-use project commonly known as **The Lincoln, located at 1691 Michigan Avenue, Miami Beach.**

The City of Miami Beach (City or Owner) is the ground lessor/landlord. Since 1999, the lease has been assigned several times, and the current ground lessee/tenant is CLPF-Lincoln LLC, a Delaware limited liability company, an affiliate of Clarion Partners (an independent affiliate of Legg Mason) (Clarion or Tenant).<sup>1</sup>

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<sup>1</sup> The lease was assigned to LNR Jefferson, LLC, a Florida limited liability company, pursuant to an Assignment and Assumption Agreement recorded on June 5, 2001, in Official Records Book 19700, Page 3095. The lease was further assigned to Lincoln Miami Beach Investments, LLC, a Delaware limited liability company, subsequently known as 1691 Michigan Ave Investments LP, a Delaware limited partnership, by an Assignment and Assumption of Ground Lease recorded on July 20, 2006, in Official Records Book 24738, Page 4073. The lease was further assigned to Clarion, by an Assignment and Assumption of Ground Lease dated April 8, 2016, and recorded on April 15, 2016, in Official Records Book 30039, Page 4656, all in the Public Records of Miami-Dade County, Florida (collectively, as amended and assigned, the Lease).

Pursuant to the lease, Clarion leases the land from the City and Clarion holds ownership and title to the improvements. Upon the expiration of the lease, ownership of, and title to, the improvements automatically vests in the City, without the payment of consideration. The lease has an initial term of 50 years, expiring September 30, 2052, plus two renewal options for 20 years each.

The project contains three principal uses: a parking garage with 709 parking spaces, 43,166 square feet of retail space and 118,658 square feet of office space (improvements).

In 2018, the City received approximately \$500,000 in lease payments for this project.

### **SUMMARY OF THE TENANT'S REQUEST FOR A LEASE AMENDMENT**

Currently, the lease provides Clarion with the ability to create a leasehold condominium, consisting of a maximum of three condominium units (parking, retail and office), pursuant to the terms of the lease and the requirements of Chapter 718 of the Florida Statutes (the "Condominium Act"). The lease does not contemplate, and does not permit, any other type of subdivision, other than a leasehold condominium.

**Clarion is seeking to amend the lease to provide Clarion with the ability to create a vertical subdivision, which would permit Clarion to subdivide the improvements into three parcels (namely, a separate parking, retail and office parcel), without having to create a leasehold condominium structure that is subject to the requirements of the Condominium Act.**

The main benefit to Clarion with a vertical subdivision structure is that it would provide Clarion with more flexibility and operational control over the project. Specifically, a vertical subdivision structure would permit Clarion, or the then-existing tenant, to avoid having to create a condominium association and relinquish control in favor of the condominium association within the timeframes specified by the Condominium Act. In addition to greater control over decisions affecting common areas or shared components, the vertical subdivision structure would also give greater flexibility to Clarion with respect to operational issues or the allocation of costs, and would provide an additional option to Clarion with respect to prospective transfers or sales of the subdivided parcels.

**As proposed, this item comes down to the policy question of whether the City Commission is willing to accommodate the tenant's request to proceed with the proposed amendment to facilitate a vertical subdivision structure, without requiring any additional financial consideration, such as a share in the proceeds of any subsequent sale of the vertical subdivision parcels.** Under the proposed lease amendment, there is no financial or other benefit provided to the City in connection with the amendment (other than to clarify certain lease provisions to make sure the City is not adversely impacted by the vertical subdivision structure, particularly as it may relate to City's existing share of project revenues under the lease).

### **ANALYSIS**

In 2018, the Florida Legislature enacted Section 193.0237 of the Florida Statutes, which allows for a separate folio number to be provided for a parcel that is subject to a vertical

subdivision as part of a multi-parcel building. A vertical subdivision, if structured properly, accomplishes the same goals as a condominium regime, except that a vertical subdivision provides more flexibility for commercial projects.

A vertical subdivision means the legal structure which vertically and horizontally divides the improvements into parcels and shared facilities (common areas) via a master declaration of covenants, restrictions and reciprocal easements (Master Declaration). A parcel may consist of airspace legally described on a three dimensional basis and depicted on a survey or other graphic form. The vertical and horizontal boundaries of a parcel may change from level to level. The parcels and shared facilities are then governed by the terms and conditions set forth in the master declaration.

The proposed amendment, a copy of which is included, in substantial form, as Exhibit “1” hereto, includes vertical subdivision provisions to permit the subdivision, with the City’s prior written approval, of not more than three parcels, namely a garage parcel, an office parcel, and a retail parcel. The provisions are similar to the existing provisions in the lease that provide for creation of a leasehold condominium for up to three condominium units for the same project components.

**If Clarion creates a vertical subdivision of the improvements, it would also create and record a master declaration, defining each parcel and the shared facilities and applicable terms and conditions governing such vertical subdivision. Under the proposed lease amendment, the form and substance of the master declaration shall be subject to the prior written approval of the City.** The master declaration and related documents would address all of the issues that would ordinarily be contained in a declaration of condominium or which are otherwise specified by the Condominium Act, but with more flexibility to the tenant, particularly as it relates to the tenant’s retention of control of the project. Clarion has agreed to pay all reasonable costs of the City’s review of the proposed master declaration, including, but not limited to reasonable fees and costs of the City’s outside counsel.

The amendment also includes a few additional clarifying provisions, i.e., to ensure that a vertical subdivision does not adversely impact the City in terms of the project revenues that the City would otherwise be entitled to receive pursuant to the lease. In addition, the City would also have the right to review and approve the transfer or sale of any vertical subdivision parcels, in the same manner as would be applicable to the sale of a leasehold condominium unit under the existing terms of the lease. Ultimately, the City, as the ground lessor/landlord, would retain the same rights that are currently afforded to the City under the lease (whether the property is subdivided pursuant to a condominium structure or vertical subdivision structure). With regard to either option (condominium or vertical subdivision), any subdivision would be subordinate, and subject to, the existing ground lease, and title to the entire property and improvements will vest with the city at the expiration of the ground lease.

As this matter is highly technical and involves a concept that is not as recognizable as a leasehold condominium structure, City’s outside real estate counsel has been involved in the review and drafting of the amendment, and has opined that the vertical subdivision concept can be implemented under the current structure of the project, subject to approval of the governing documents, to ensure that the City’s rights under the lease are not compromised.

**One open policy question involves whether the City Commission is willing to proceed with the proposed amendment to facilitate a vertical subdivision structure, without requiring any additional financial consideration, such as a share in the proceeds of any subsequent sale of the vertical subdivision parcels.** To this end, it should be noted that the market value of this property, which is near Lincoln Road, has increased significantly since the City first approved the ground lease in 1999. In 2006, the project was sold for approximately \$74 million. Clarion subsequently acquired the lease for approximately \$109 million in 2016. Under the current lease, which was approved in 1999, the City does not receive any additional rent or otherwise participate in the proceeds of any sales of the project, or any portion thereof.<sup>2</sup>

In a prior discussion with Clarion's counsel, the City Manager recommended that the parties first focus on crafting the language for the vertical subdivision, to ensure the vertical subdivision structure would work for the City. Now that those issues have been vetted more fully, the Administration would be supportive of a direction to negotiate transaction rent or other financial consideration to the City, in exchange for City's agreement to amend the lease to facilitate vertical subdivisions as part of this project.

### **CONCLUSION**

Subject to the City's approval of the master declaration, the Administration recommends in favor of Clarion's request for the City to approve Amendment No. 1 to the Lease, providing Clarion with the ability to create a vertical subdivision of the Improvements into three parcels coinciding with the current three uses of the Improvements, namely, a garage parcel, an office parcel, and a retail parcel. The Administration would also be supportive of a direction to negotiate financial consideration as part of the proposed lease amendment.

JLM/SMT/BM/MMM

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<sup>2</sup> Most recently, in the City's 99 year lease for the Convention Headquarter Hotel, the City included transaction rent provisions, for the City to share in the proceeds with respect to certain sales of the project.