MIAMIBEACH

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COMMISSION MEMORANDUM

TO: Honorable Mayor Dan Geber and Members of the City Commission

FROM: Alina T. Hudak, City Manager

DATE: July 28, 2021

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 1 TO THE LEASE AGREEMENT DATED MAY 25, 2018 BETWEEN THE CITY (LANDLORD) AND THE COLONY THEATER CAFE, INC. (TENANT), FOR THE USE OF APPROXIMATELY 1,371 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1040 LINCOLN ROAD; SAID AMENDMENT APPROVING THE FIRST THREE (3) YEAR RENEWAL OF THE LEASE AND PROVIDING RENT RELIEF FOR THE PERIOD FROM JANUARY 1, 2021 THROUGH FEBRUARY 28, 2024, IN ORDER TO ADDRESS THE FINANCIAL IMPACT THAT THE COVID 19 PANDEMIC HAS HAD ON TENANT'S OPERATIONS.**

RECOMMENDATION
The Administration recommends approving the Resolution.

BACKGROUND
On January 28th, 2009, the Mayor and City Commission adopted Resolution No. 2009-26994 approving a lease agreement between the City and Colony Theater Café, Inc. d/b/a Segafredo (Tenant), for a 1,371 square feet City-owned facility known as the Colony Theater Café. The initial lease term was for a period of three (3) years, commencing November 1, 2008 and ending October 31, 2011, with two (2), three (3) year renewal terms. The lease was extended for both renewal terms with the second and final renewal term expiring October 31, 2017.

Thereafter, the Tenant requested a new lease agreement with the City. The Administration presented this matter at the December 16, 2016 Finance and Citywide Projects Committee (FCWPC) meeting and the FCWPC recommended in favor of negotiating a new lease agreement with Colony Theater Café.

Pursuant to Resolution No. 2017-29834 the City executed a new lease agreement with Tenant on May 25, 2018 for an initial term of three (3) years with two (2) additional three (3) year renewal terms commencing retroactively on March 1, 2018 and ending February 28, 2021. Subsequently, the City and Tenant entered into a month to month agreement, commencing on March 1, 2021 and ending on July 30, 2021.

ANALYSIS
Prior to expiration of the Agreement, the Tenant expressed an interest to exercise the first renewal term for a period of three (3) years, with modifications to the financial terms. Accordingly, the City and Tenant entered into a month to month agreement, commencing on March 1, 2021 and ending

on July 30, 2021. The Tenant has expressed concerns in meeting the current rent requirements under the Agreement. The initial base rental rate was $200.55 per square foot (PSF) with a 2% annual increase throughout the term. In addition to the base rent, the Tenant is subject to an annual percentage of gross receipts payment equal to 7% of total gross receipts above their annual base rent calculation.

Per the renewal option of the Agreement, the landlord conducted a property appraisal (April 2021), which determined the market rent structure at this location to be $250.91 PSF. This number was primarily derived from demand and existing leases for tenants currently opened and operating on Lincoln Road. The table below indicates tenancy comparables utilized in the appraiser's valuation analysis. It is important to note, these comparables are based on pre-existing leases and not post pandemic leases.

LINCOLN ROAD LEASE COMPARABLES								
		LEASE INFORMATION						
NO.	Property Address	TENANT NAME	LEASE DATE	SIZE (GLA)	INITIAL RENT/SF	LEASE TYPE	COMMENTS
S	Subject Property						
1	904 Lincoln Road	Confidential	2020	2,668	$130.00	Net	This is a five month lease of a pop-up space. This was a gross lease, which we have adjusted downward by $20.00 per square foot to reflect a triple net lease.
2	618 Lincoln Road	Confidential	2019	1,800	$211.54	Net	The operating expenses at this property were $38 psf.
3	900 Lincoln Rd	Confidential	2017	4,544	$263.00	Net	The operating expenses at this property were $50 psf.
4	920 Lincoln Road	Confidential	2017	1,200	$320.00	Net	The operating expenses at this property were $35 psf. This was a small restaurant space.
5	612 Lincoln Road	Confidential	2017	650	$330.00	Net	This space has direct frontage on Lincoln Road.
STATISTICS							
Low				650	$130.00		
High				4,544	$330.00		
Average				2,131	$250.91		
Complied by Cushman & Wakefield Regional							

The Tenant has argued that Lincoln Road has been in a downward trend since 2018 and the COVID-19 pandemic has exponentially impacted foot-traffic and Tenant sales. Furthermore, this is observed by the increased vacancies along Lincoln Road which thrives predominately on the tourist markets. The Tenant feels they would need a percentage of gross receipts agreement for six (6) years at eight (8%) percent of the total monthly gross receipts in order to weather the impact and regrow its market base.

The Administration has taken into consideration the current state and past trends of Lincoln Road and opined that a six-year percentage of gross sales agreement would be excessive. The future stabilization and growth of Lincoln Road cannot be determined based on the recent impact of the pandemic. Nevertheless, the Administration recognizes that the Tenant has been significantly affected and would recommend exercising the first option of three years at a percent of gross sales. Furthermore, in the event the City, in the City Manager's sole discretion, approves the third renewal term, the City (prior to this term expiring) will reevaluate the state of the market and the trend of Lincoln Road to further determine if a restructure of the rents should be considered to the third and final renewal of three years. At that time, the Tenant may reject the option if Tenant is unable to meet the required rent structure proposed by the City. Notwithstanding the foregoing negotiations, the City, at the City Manager's sole discretion, may opt not to approve the second renewal term.

The monthly rental terms of the current Lease are as follows:

- Base Rent - $18,987
- Property Taxes - $2,529
- Insurance - $85
- Dumpster Room - $638
    - Total yearly rent of $264,000
- Per the current lease, Tenant is to pay seven percent (7%) of Tenant's gross receipts for each contract year, less the total paid annual Base Rent amount for such contract year. This represents approximately $3.8M in yearly sales. However, Tenant has not reached this threshold and the 7% has not been paid. Tenant is currently generating approximately $1.5M in yearly sales.

For contract year 2020/21 the Tenant was unable to meet full rental obligations due to the COVID-19 pandemic and the loss impact of tourism on Lincoln Road. Although the Tenant received rent abatement of $188,961 from the City as part of the COVID-19 relief, the sales are not yet strong enough to sustain the current rents under the Agreement. The Tenant has continued making monthly payments in good faith in the amount of $5,000 monthly until the renewal negotiations are completed.

This Amendment will include the following essential terms:

- The first renewal term will commence retroactively on March 1, 2021 and end on February 28, 2024
- The current rent structure stipulated above will be replaced with eight percent (8%) of monthly gross receipts, retroactively commencing January 1, 2021.
    - Tenant is projected to pay approximately $156,000/year in gross revenues or $156 PSF, reflecting a reduction of approximately $108,000/year in rent
    - As Tenant's sales grow, so will Tenant's monthly rent
    - Lincoln Road is currently holding an average of 55% to 60% occupancy
    - The COVID-19 pandemic and Delta Variant continue to strain the tourism and retail markets, with no indication this trend will improve over the next year or two
- Landlord will evaluate the market and determine new rent structure for third and final term 120 days prior to expiration

CONCLUSION

Based upon the foregoing, it is recommend that the Mayor and City Commission adopt the Resolution approving and authorizing the Mayor and City Clerk to execute Amendment No. 1 to the Agreement; said Amendment approving the first renewal term for a period of three years and providing rent relief for the period from January 1, 2021 through February 28, 2024, in order to address the financial impact that the COVID-19 pandemic has had on Tenant operations.

Attachments

Exhibit "I" – Amendment No. 1

Resolution