MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

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

FROM: Alina T. Hudak, City Manager

DATE: May 4, 2022

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AUTHORIZING THE CITY MANAGER TO DECLINE, IN WRITING, THE RIGHT OF FIRST OFFER TRANSACTION, AS REQUIRED PURSUANT TO THE TERMS OF SECTION 36.2 OF THE AGREEMENT OF LEASE (GROUND LEASE) BETWEEN THE CITY (OWNER) AND CLPF – LINCOLN, LLC (TENANT), INVOLVING THE SALE OF THE PROJECT LOCATED AT 1691 MICHIGAN AVENUE (THE LINCOLN) FOR THE TOTAL PURCHASE PRICE OF $92,500,000; FURTHER, RESCINDING RESOLUTION NO. 2014-28486, WHICH AUTHORIZED AN AMENDMENT TO THE GROUND LEASE FOR THE PURPOSE OF DEVELOPING A MINIATURE GOLF PROJECT AT THE LINCOLN WHICH WAS NEVER DEVELOPED.**

BACKGROUND

On January 5, 1998, the City issued RFP No. 20-97/98, seeking proposals for the development of Public-Private Parking Facilities. On July 7, 1999, the Mayor and City Commission adopted Resolution No. 99-23236, approving the Agreement of Lease and the Development Agreement between the City and Lincoln Plaza Partners, LLC, for the development of a mix-use project, located at Michigan and Jefferson Avenue, between Lincoln Lane and 17th Street (the “Land”).

An Agreement of Lease was executed between the City, as Owner/ground lessor, and Lincoln Plaza Partners LLC, a Florida limited liability company, as Tenant/ground lessee, dated September 1, 1999 (“Ground Lease”), under which Ground Lease Tenant agreed to develop a commercial project, consisting of an office building, a parking garage, and ground floor retail space (collectively the “Project”), which Project is currently located at 1691 Michigan Avenue, and commonly referred to as “The Lincoln” (the Land and Project will be collectively referred herein to as the “Premises”). Pursuant to the Ground Lease, Tenant leases the land from the City and Tenant holds ownership and title to the Project, and upon the expiration of the Ground Lease, ownership of, and title to the Project automatically vests in the City, without the payment of consideration.

The Ground Lease has an initial term of 50 years, expiring September 30, 2052, plus two automatic renewal options for 20 years each, unless the Tenant is in default or notifies the City within the last twenty-four (24) months of the end of the term in question, indicated they will not exercise their option.

On December 20, 2000, the Mayor and City commission adopted Resolution No. 2000-24220, approving the Sale and Assignment and Assumption of the Ground Lease from Lincoln Plaza Partners, LLC to LNR Jefferson, LLC. On October 5, 2005, LNR Jefferson, LLC changed its name to The Lincoln, LLC.

On or about July 18, 2006, The Lincoln LLC sold the Project and assigned its leasehold interest in the Land to Lincoln Miami Beach Investments, LLC, a Delaware limited liability company.

On November 17, 2006, Lincoln Miami Beach Investment, LLC changed its name to OIK Lincoln Miami Beach Investment, LLC, and thereafter, on June 17, 2009, merged with 1691 Michigan Ave Investment LP, a Delaware limited liability partnership.

On February 12, 2014, the Mayor and City Commission approved Resolution No. 2014-28486, authorizing the Mayor and City Clerk to execute Amendment No. 1 to the Ground Lease, modifying the Scope of Use under the Ground Lease by reducing the minimum number of parking spaces required for the parking garage facility, from 700 to 645 spaces; increasing the minimum number of parking spaces required to be maintained at all times for use by the general public from 100 to 155 parking spaces; and further increasing the monthly parking spaces for members of the general public from 50 to 75, in connection with the development of a miniature golf project at the sixth floor of the garage with the subtenant, City Middle, LLC. City Middle, LLC never developed the miniature golf project; therefore, Amendment No. 1 was never executed.

On January 13, 2016, the Mayor and City Commission adopted Resolution No. 2016-29268, declining the Owner's Reciprocal Right of First Refusal and approving the sale of the Project to CLPF-Lincoln, LLC, a Delaware limited liability company ("Tenant"), subject to the Administration's successful completion of its evaluation of the proposed purchaser. The Ground Lease was further assigned to Tenant by an Assignment and Assumption of Ground Lease dated April 8, 2016 (the Ground Lease, as amended and assigned, shall be referred to as the "Lease").

The Lincoln Project contains three principal uses: (i) a parking garage with 709 parking spaces, (ii) 43,166 square feet of ground retail space, and (iii) 118,658 square feet of office space.

ANALYSIS

On April 5, 2022, the City received an Offer Notice pursuant to Section 36.2 of the Lease, notifying the City that Tenant desires to sell its leasehold interest in the Premises.

Pursuant to Section 36.2(b) of the Lease, Tenant will not consummate any offer from a third party to purchase the Tenant's estate in the Premises ("Right of First Offer Transaction") until the earlier to occur: (i) the expiration of 45 days following Owner's receipt of this Offer Notice, or (ii) receipt by Tenant of a notice by Owner declining to consummate the Right of First Offer Transaction.

The Offer Notice contained the following information:

Owner of Ground Lease:	City of Miami Beach
Seller:	CLPF-Lincoln, LLC
Purchase Price:	$92,500,000 cash transaction

In accordance with Article 36.2 of the Lease, "Owner's Reciprocal Right of First Refusal", the City also has the right to elect, in writing, whether to consummate the Right of First Offer Transaction, at the same price and upon such other material terms set forth in the Offer Notice ("Offer"). The City has until May 20, 2022 to exercise in writing whether or not to consummate the Right of First Refusal.

The cost to reconstruct a facility of this size with a mixed-use concept will cost approximately $36M, plus tenant improvement and leasing fees. Considering that the Offer materially exceeds the cost to construct a City-owned parking, office, and retail facility and that the Project will revert to the City at the end of the Lease term, the City Manager recommends that the City decline the Right of First Offer Transaction.

Following the City's rejection of the Right of First Offer Transaction, pursuant to Section 10.5 ("Required Notices") of the Lease, the proposed transfer and/or sale of the Project requires written notice to the City, as Owner, with the identity of the transferor, transferee, nature of the transaction, percentage of interest conveyed and such other information requested by the City ("Notice of Sale"). The City will have sixty (60) days from receipt of the Notice of Sale to consent to the sale. Following receipt of the Notice of Sale, the City Administration will submit the proposed sale of the Project for approval by the City Commission, subject to the City Administration conducting its due diligence, at the sole expense of Tenant, to investigate whether or not the proposed purchaser qualifies as a "Permitted Buyer" under Section 10.3 of the Lease.

CONCLUSION

Based upon the foregoing, the City Manager recommends that the Mayor and City Commission adopt the Resolution approving and authorizing the City Manager to decline, in writing, the Owner's Right of First Refusal, relating to the purchase of The Lincoln for the total sales price of $92,500,000.00, as required pursuant to the terms of Article 36.2 of the Agreement; and rescinding Resolution No. 2014-28486, that authorized an amendment to the Lease, for the purpose of developing a miniature golf project at The Lincoln which was never developed.

Attachments

Resolution
"A" Offer Notice from Tenant