

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A FIRST AMENDMENT TO THE AGREEMENT OF LEASE (“GROUND LEASE”) BETWEEN THE CITY, AS OWNER, AND CLPF – LINCOLN, LLC (“CLPF”), AS TENANT, INVOLVING THE PROJECT LOCATED AT 1691 MICHIGAN AVENUE (PROJECT SITE); SAID AMENDMENT, AMONG OTHER TERMS, CLARIFYING THAT CERTAIN INDIRECT NON-CONTROLLING INTERESTS IN TENANT MAY BE HELD THROUGH INVESTMENT FUNDS AND PUBLICLY TRADED COMPANIES THAT ARE ORGANIZED UNDER THE LAWS OF THE UNITED STATES OR ANY STATE THEREOF, PROVIDED THAT ALL OFFICE OF FOREIGN ASSET CONTROL (“OFAC”) REGULATIONS ARE SATISFIED; AND APPROVING THE SALE OF THE IMPROVEMENTS LOCATED AT THE PROJECT SITE FROM CLPF TO 1691 MICHIGAN AVENUE PROPERTY OWNER, L.P. (“PROPOSED BUYER”), FOR THE TOTAL SALES PRICE OF \$92,500,000, SUBJECT TO THE ADMINISTRATION’S SUCCESSFUL COMPLETION OF ITS EVALUATION OF THE PROPOSED BUYER IN ACCORDANCE WITH ARTICLE 10 OF THE GROUND LEASE, AND PAYMENT TO THE CITY OF ITS REASONABLE COSTS INCURRED IN CONNECTION WITH THE PROPOSED SALE INCLUDING, WITHOUT LIMITATION, REIMBURSEMENT OF THE CITY’S DUE DILIGENCE COSTS; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AMENDMENT AND ANY AND ALL CLOSING DOCUMENTS RELATED TO THE SALE.**

**WHEREAS,** on January 5, 1998, the City issued RFP No. 20-97/98, seeking proposals for the development of Public-Private Parking Facilities; and

**WHEREAS,** 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 mixed-use project, located at Michigan and Jefferson Avenue, between Lincoln Lane and 17<sup>th</sup> Street (the “Land”); and

**WHEREAS,** 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 shall be collectively referred to herein as the “Premises”); and

**WHEREAS,** 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 therefor; and

**WHEREAS,** 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); and

**WHEREAS**, on December 20, 2000, the Mayor and City Commission adopted Resolution No. 2000-24220, approving the sale of the Project and the Assignment and Assumption of the Ground Lease from Lincoln Plaza Partners, LLC to LNR Jefferson, LLC, which entity later changed its name to The Lincoln, LLC; and

**WHEREAS**, 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; and

**WHEREAS**, 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; and

**WHEREAS**, 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 (the "Original First Amendment"), 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; and

**WHEREAS**, the miniature golf project was never developed; therefore, the Original First Amendment was never executed; and

**WHEREAS**, 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; and

**WHEREAS**, 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"); and

**WHEREAS**, on April 5, 2022, the Tenant provided notice to the City ("Offer Notice") of its desire to sell its leasehold interest in the Premises to a third party and offering the City, as required by Section 36.2 of the Ground Lease, the right to purchase the Tenant's leasehold interest for the sum of \$92,500,000 and upon other terms specified in the notice (the "Right of First Offer Transaction"); and

**WHEREAS**, on May 4, 2022, the Mayor and City Commission adopted Resolution No. 2022-32136, declining the Right of First Offer Transaction and further rescinding Resolution No. 2014-28486 (i.e., the Resolution pursuant to which the Mayor and City Commission had approved the Original First Amendment for the purpose of authorizing the development of a mini golf project which ultimately was not developed); and

**WHEREAS**, on May 17, 2022, the City provided Tenant with a countersigned Offer Notice rejecting the Right of First Offer as authorized by Resolution 2022-32136; and

**WHEREAS**, on June 7, 2022, the City received written notice from Tenant pursuant to Section 10.5 of the Ground Lease requesting the City's consent to a proposed sale of one hundred percent (100%) of Tenant's leasehold interest to 1691 Michigan Avenue Property Owner, L.P., a Delaware limited partnership that will be owned by a fund managed by Starwood Capital Group, one of the world's leading private real estate firms, with approximately \$115 billion in assets under its management (the "Proposed Buyer"); and

**WHEREAS**, pursuant to Section 10.6(b) of the Ground Lease, if the sale is consummated, its effectiveness will be subject to delivery of certain documents to the City, including an assignment and assumption agreement in form and substance satisfactory to the City; and

**WHEREAS**, the Proposed Buyer has requested that the Ground Lease be amended pursuant to a First Amendment to Agreement of Lease: said amendment, among other terms, (a) clarifying that certain non-controlling interests in Tenant may be owned by foreign instrumentalities indirectly through investment funds and publicly traded companies that are organized under the laws of the United States or any State thereof provided that all Office of Foreign Asset Control Regulations are satisfied, (b) allowing for the creation of mezzanine debt in connection with financing or refinancing transactions, and (c) eliminating provisions that temporarily excuse the payment of percentage rent by a transferee following a foreclosure; and

**WHEREAS**, the City Manager does not object to the terms proposed to be included in the First Amendment to Agreement of Lease and, subject to the Administration's successful completion of its evaluation of the Proposed Buyer, the City Manager recommends approving Tenant's sale of one hundred percent (100%) of its leasehold interest in the Project to the Proposed Buyer for the total sales price of \$92,500,000 and on such other terms as are not less favorable to Tenant as those that were included in the Offer Notice.

**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 approves a first amendment to the Agreement of Lease between the City of Miami Beach and CLPF – Lincoln, LLC: (a) clarifying that certain non-controlling interests in Tenant may be owned by foreign instrumentalities indirectly through investment funds and publicly traded companies that are organized under the laws of the United States or any State thereof provided that all Office of Foreign Asset Control Regulations are satisfied, (b) allowing for the creation of mezzanine debt in connection with financing or refinancing transactions, and (c) eliminating provisions that temporarily excused the payment of percentage rent by a transferee following a foreclosure; and further approves the sale of the Tenant's leasehold interest in the Project from CLPF –Lincoln, LLC to 1691 Michigan Avenue Property Owner, L.P. ("Proposed Buyer"), for the total sales price of \$92,500,000, subject to the Administration's successful completion of its evaluation of the Proposed Buyer in accordance with article 10 of the Ground Lease, and payment to the city of its reasonable costs incurred in connection with the proposed sale including, without limitation, reimbursement of the city's due diligence costs; and further authorizes the Mayor and City Clerk to execute the amendment and any and all closing documents related to the sale.

**PASSED and ADOPTED** this \_\_\_\_ day of July, 2022.

\_\_\_\_\_  
Dan Gelber, Mayor

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

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



\_\_\_\_\_  
City Attorney

7-1-22

\_\_\_\_\_  
Date