MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Rafael A. Paz, City Attorney
DATE: January 31, 2024

SUBJECT: DISCUSS/TAKE ACTION/REFERRAL TO THE LAND USE AND SUSTAINABILITY COMMITTEE - PROPOSAL TO CONVERT THE CLEVELANDER TO A RESIDENTIAL PROJECT WITH NO OUTDOOR BAR/ENTERTAINMENT.

BACKGROUND/HISTORY

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? _X_ Yes ___ No

If so, specify name of lobbyist(s) and principal(s): Alexander Tachmes, Counsel of record for Clevelander

ANALYSIS

In 2021, in the case styled Clevelander Ocean LP v. City of Miami Beach, Case No. 2021-011642-CA-01 (Fla. 11th Cir. Ct.), the Clevelander filed a lawsuit against the City challenging certain alcohol hours and noise-related legislation enacted by the City Commission, among other claims. In March of 2023, the parties agreed to a stay of the case while the remaining issues continued to be worked out (i.e., potentially mooted). However, the case remains pending at this time.

In 2023, the Clevelander announced that it intended to pursue a Live Local application for the redevelopment of the property, in order to avail itself of the incentives the Florida Legislature has mandated for proposed developments that satisfy all of the requirements of the Live Local Act.

On or about January 11, 2024, counsel for the Clevelander advised me that the Clevelander is interested in exploring a global resolution of all of its prior disputes with the City.

If the Clevelander agrees to abandon its current outdoor entertainment establishment, the open air nature of which the City for years has asserted contributes to the party atmosphere in the heart of Ocean Drive, the concept is for the City Commission to consider approving to-be-

negotiated height and floor area ratio amendments for a proposed residential mixed use redevelopment of the Clevelander and the Essex House.

The above framework would not only resolve the parties' litigation and achieve the permanent shut down of the Clevelander's current 5 a.m. outdoor entertainment model, but it also means that the Clevelander would not proceed with any Live Local application. Accordingly, the proposed framework would ensure that the City Commission has the opportunity to remain in control of any zoning amendments it may be willing to authorize for full-time residential uses on the property, at its sole discretion, following substantial public vetting of the proposal, similar to other proposals the City Commission is currently considering to convert or limit transient uses and incentivize full-time residential development.

Ordinarily, I would convene an attorney-client session with the City Commission to obtain feedback from the City Commission with respect to any settlement proposal. However, an attorney-client session is not necessary here, as the concept for a negotiated settlement is one which would require a legislative solution, following public input and multiple public hearings, both for any amendments to the City's Land Development Regulations and any companion development agreement.

For these reasons, I request that the City Commission consider whether to refer this matter to the Land Use and Sustainability Committee, to initiate non-binding discussions with the Clevelander about whether there is a path forward to incentivize full-time residential uses at the property, with an end to the current 5 a.m. outdoor bar/entertainment operation, and direct the Administration and City Attorney's Office to develop a proposed term sheet for the Committee's consideration.

SUPPORTING SURVEY DATA

N/A

FINANCIAL INFORMATION

N/A

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?	**Does this item utilize G.O. Bond Funds?**
No	No

Legislative Tracking

Office of the City Attorney