

RESOLUTION NO. _____

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, AS REQUIRED PURSUANT TO SECTION 36.2 OF THE AGREEMENT OF THE LEASE DATED SEPTEMBER 1, 1999 ("GROUND LEASE") BETWEEN THE CITY ("OWNER") AND (1) NG 1601 WASHINGTON AVE LLC, A DELAWARE LIMITED LIABILITY COMPANY, (2) JBL 1601 WASHINGTON LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND (3) REVIEW AVENUE MIAMI, LLC, A DELAWARE LIMITED LIABILITY COMPANY (COLLECTIVELY, "TENANT"), THE CURRENT TENANT UNDER THE GROUND LEASE, INVOLVING THE PROPOSED SALE OF THE LEASEHOLD INTEREST IN THE PROJECT LOCATED AT 1601 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, FOR THE TOTAL PURCHASE PRICE OF \$82,000,000; AND FURTHER, PROVIDED (A) THAT THE ADMINISTRATION CONFIRMS AFTER COMPLETION OF ITS DUE DILIGENCE THAT RKR GAIA 2, LLC, CONTROLLED BY ROBERT RIVANI, AND 1601 WASHINGTON LANDLORD LLC, CONTROLLED BY MATHIEU MASSA, QUALIFY AS PERMITTED BUYERS AS DEFINED IN SECTION 10.3 OF THE GROUND LEASE, (B) THAT THE TENANT REIMBURSES THE CITY FOR ITS REASONABLE COSTS IN CONNECTION WITH THE PROPOSED SALE INCLUDING, WITHOUT LIMITATION, REIMBURSEMENT OF THE CITY'S DUE DILIGENCE COSTS, AND (C) THAT THE TENANT AND PERMITTED BUYERS EXECUTE THE CITY'S CLOSING DOCUMENTS, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE ANY AND ALL CLOSING DOCUMENTS ON BEHALF OF THE CITY.

WHEREAS, on June 23, 1999, the Mayor and City Commission adopted Resolution No. 99-23222, approving the development agreement with 16th Street Partners, LLC, a Florida limited liability company ("16th Street Partners"), to create a mixed-use project on land leased from the City located at Washington Avenue and 16th Street Partners (the Project); and

WHEREAS, in connection with said development agreement, on September 1, 1999, the City and 16th Street Partners executed a ground lease (the "Ground Lease"); and

WHEREAS, the Project was constructed as an eight story, high rise building with approximately 105,652 rentable square feet of office space, 28,483 rentable square feet of retail space and a 493-space parking garage (the "Garage"); and

WHEREAS, on November 8th, 2000, the Mayor and City Commission adopted Resolution No. 2000-24160, approving the First Amendment to the Agreement of Lease and First Amendment to the Development Agreement, to address particular issues found while transferring ownership rights at the time; and

WHEREAS, on or about May 24, 2006, 16th Street Partners assigned its leasehold interest to TAG Lincoln Place LLC, a Delaware limited liability company ("TAG"), and entered into a Master Sublease for the entire Project; and

WHEREAS, pursuant to the Master Sublease, 16th Street Partners, as the master subtenant, is responsible for the payment of all obligations of the tenant to the City under the Ground Lease; and

WHEREAS, on or about December 6, 2013, Andalex Holdings LLC, the owner of 100% of the membership interests of TAG, sold such membership interests of TAG to PKY Lincoln Place Holdings, LLC; and

WHEREAS, subsequent to said sale of membership interests, TAG changed its name to PKY Lincoln Place, LLC ("PKY"); and

WHEREAS, the Ultimate owner of PKY, Parkway Properties, Inc., a Maryland corporation (Parkway) merged with Cousins Properties Inc., a Georgia corporation ("Cousins Properties"); and

WHEREAS, on September 14, 2016, the Mayor and City Commission adopted Resolution No. 2016-29571, approving the sale of the Project by merger, authorizing the City Manager to decline, in writing, the Owner's Reciprocal Right of First Offer and further approve the sale of the ownership interest in PKY to a Cousins related entity; and

WHEREAS, pursuant to the merger, Lincoln Place Holdings, LLC, a Delaware limited company, assigned 100% of its membership interest to Cousins Lincoln Place Holdings, LLC, a Delaware limited liability company and PKY changed its name to Cousins Lincoln Place, LLC; and

WHEREAS, on December 23, 2016, 16th Street Partners transferred its leasehold to the following entities, as tenants in common: (1) NG 1601 Washington Ave LLC (NG 1601), a Delaware limited liability company (as to an 87.20% interest), indirectly controlled by the Nightingale Group, LLC, a real estate investor; (2) JBL 1601 Washington, LLC, a Delaware limited liability company (as to an 8.86% interest); and (3) Review Avenue Miami LLC, a Delaware limited liability company (as to a 3.94% interest); (collectively, "Tenant"); and

WHEREAS, on July 21, 2023, pursuant to Section 36.2 of the Ground Lease, entitled "Reciprocal Right of First Transaction", Tenant delivered an Offer Notice to the City, as Owner, with the following terms (the "ROFO"):

Owner of Ground Lease: City of Miami Beach

Seller: NG 1601 Washington Ave LLC,
A Delaware limited liability company

JBL 1601 Washington LLC,
A Delaware limited liability company

Review Avenue Miami, LLC,
A Delaware limited liability company

Sale Offer: \$82,000,000.00; and

WHEREAS, in accordance with Section 36.2 of the Ground Lease, the City has forty-five (45) days in which to elect, in writing, whether or not to consummate the ROFO, at the same price and upon such other material terms set forth in the Offer Notice; and

WHEREAS, if the City were to exercise the ROFO, the City would have to allocate the \$82 million required to close on the transaction, using up available funds and potentially requiring the City to revisit other projects currently contemplated for the benefit of City's residents; and

WHEREAS, considering that the Offer materially exceeds the cost to construct a City-owned parking, office, and retail facility, and that the Project will revert back to the City at the end of the Ground Lease term, the Administration recommends, in this instance, without any prejudice or waiver of its position with respect to any subsequent transaction during the 76 years, including renewal terms, remaining in the term of the Ground Lease, that the City decline the ROFO; and

WHEREAS, pursuant to Section 10.5 of the Ground 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 ("Required Information"); and

WHEREAS, the Offer Notice identified a possible sale of one hundred percent (100%) of Tenant's interests in the Project (the "Proposed Sale") to two proposed transferees: Robert Rivani ("Rivani") and/or entities owned by Rivani and Mathieu Massa ("Massa") and/or entities owned by Massa; and

WHEREAS, Tenant has otherwise provided the Required Information requested by the City to enable the City to conduct the necessary diligence to confirm the proposed transferees qualify as Permitted Buyers pursuant to Section 10.3(c) of the Ground Lease (the "City's Due Diligence"), including the names of the entities that will be used by Rivani and Massa in connection with the Proposes Sale (i.e., RKR GAIA 2, LLC and 1601 Washington Landlord LLC, respectively); and

WHEREAS, the City Administration is in the process of conducting the City's Due Diligence; and,

WHEREAS, provided that the City Commission rejects the ROFO and that the Administration determines that Rivani and Massa are Permitted Buyers following

completion of the City's Due Diligence, the Administration will confirm to Tenant that it may proceed with the Proposed Sale, conditioned upon Tenant's payment of the City's Due Diligence costs and execution by Tenant, RKR GAIA 2, LLC and 1601 Washington Landlord LLC of all required closing documents; and

WHEREAS, for the foregoing reasons, the Administration recommends that the Mayor and City Commission adopt this Resolution.

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that they Mayor and City Commission hereby authorize the City Manager to decline, in writing, the Owner's Right of First Offer Transaction, as required pursuant to Section 36.2 of the Agreement of Lease ("Ground Lease") between the City ("Owner") and (1) NG 1601 Washington Ave LLC, a Delaware limited liability company, (2) JBL 1601 Washington LLC, a Delaware limited liability company, and (3) Review Avenue Miami, LLC, a Delaware limited liability company (collectively, Tenant"), dated as of September 1, 1999, involving the sale of the leasehold interest in the project located at 1601 Washington Avenue, Miami Beach, Florida, based upon the sale price of \$82,000,000; and further, provided (a) that the Administration confirms after completion of its due diligence that RKR GAIA 2, LLC, controlled by Robert Rivani, and 1601 Washington Landlord LLC, controlled by Mathieu Massa, qualify as Permitted Buyers as defined in Section 10.3 of the Ground Lease, (b) that the Tenant reimburses the City for its reasonable costs in connection with the proposed sale including, without limitation, reimbursement of the City's due diligence costs, and (c) that the Tenant and Permitted Buyers execute the City's closing documents, authorize the City Manager and City Clerk to execute any and all closing documents on behalf of the City.

PASSED AND ADOPTED this _____ day of _____ 2023.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

10-13-23

Date