



**COMMISSION MEMORANDUM**

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: December 11, 2024

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH FLORIDA, AUTHORIZING: (1) THE CITY MANAGER TO EXERCISE THE RIGHT OF FIRST OFFER, IN ACCORDANCE WITH SECTION 36.2 AND EXHIBIT 36.2(A) OF THAT CERTAIN AGREEMENT OF LEASE, DATED AS OF DECEMBER 1, 1999 (GROUND LEASE), BETWEEN THE CITY (OWNER) AND LIPT COLLINS AVENUE, LLC, A DELAWARE LIMITED LIABILITY CORPORATION (TENANT), RELATING TO TENANT'S NOTICE TO THE CITY (OFFER NOTICE) OF ITS INTENT TO SELL TO MR PELICAN GARAGE, LLC, A FLORIDA LIMITED LIABILITY COMPANY, TENANT'S LEASEHOLD INTEREST IN THE GROUND LEASE AND TENANT'S TITLE AND INTEREST IN THE IMPROVEMENTS ON THE LAND LOCATED AT 1027-1041 COLLINS AVENUE (LAND), CONSISTING OF A PARKING GARAGE CONTAINING 278 PARKING SPACES AND APPROXIMATELY 3,350 SQUARE FEET OF GROUND FLOOR RETAIL SPACE (COLLECTIVELY, THE PROJECT), IN THE AMOUNT OF \$15,000,000.00 PLUS CLOSING COSTS; (2) AUTHORIZING THE CITY MANAGER TO DISAPPROVE THE SALE OF THE PROJECT TO THE PROPOSED PURCHASER IN ACCORDANCE WITH SECTION 10.5(A) OF THE GROUND LEASE; (3) AUTHORIZING THE CITY TO CONVERT THE PROJECT INTO A CONDOMINIUM FORM OF OWNERSHIP IN ORDER TO SECURE THE MUNICIPAL TAX EXEMPTION FOR THE GARAGE UNIT; AND (4) AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE ANY AND ALL DOCUMENTS AND AGREEMENTS IN CONNECTION WITH THE PURCHASE OF THE PROJECT AND THE CONDOMINIUMIZATION PROCESS.

**RECOMMENDATION**

The Administration recommends the Mayor and City Commission adopt the resolution.

**BACKGROUND/HISTORY**

On January 5, 1998, the City issued RFP No. 20-97/98, seeking proposals for the development of Public-Private Parking facilities (the "RFP"). On April 6, 1998, proposals from five (5) different development teams were submitted and evaluated by an Evaluation Committee, and on July 15, 1998, the City Commission authorized negotiations with four (4) of the proposed development projects.

As a result of said negotiations, on October 20, 1999, the Mayor and City Commission adopted Resolution No. 99-23372, approving an Agreement of Lease (the "Lease" or "Ground Lease"), a copy of which is attached hereto as **Exhibit 1** and Development Agreement between the City (also "Owner") and Pelican Development LLC ("Pelican Development") for Pelican Development to develop a parking garage ("Garage"), with ground floor retail space ("Retail Space"), not to exceed 5,000 square feet (the "Project") on the City-owned land located at 1027 Collins Avenue, Miami Beach, Florida and 1041 Collins Avenue, Miami Beach, Florida (the "Land"). The Lease was executed on December 1, 1999 ("Commencement Date"), for an initial forty (40) year term, commencing on the Commencement Date and expiring on the last day of the month in which the

40<sup>th</sup> anniversary of the Possession Date (January 10, 2000) shall occur, which ends on January 31, 2040 ("Fixed Expiration Date"), with one additional ten (10) year option, ending on January 31, 2050 (the "Term").

The Project received its Certificate of Occupancy on October 31, 2002, for the Garage, having 278 total parking spaces, and the Retail Space, having approximately 3,350 square feet. Pursuant to the Lease, Tenant is required to provide parking spaces for members of the general public at garage parking rates established by Tenant, which rates cannot be higher than the highest rate paid by any subtenant of the Project. On or about January 17, 2001, Pelican Development entered a sublease with E. Levy Corporation, Inc., for use of the entire Retail Space ("Retail Tenant").

On or about June 1, 2004, the Project was sold and transferred from Pelican Development to Ocean Blvd II, LLC, an Indiana limited liability company.

On or about May 27, 2010, the Project was sold and transferred from Ocean Blvd II, LLC to Pelican Investment Holdings, LLC, a Florida limited liability company.

On or about December 18, 2013, the Project was again sold and transferred from Pelican Investment Holdings, LLC to LIPT Collins Avenue, LLC, a Delaware limited liability company, the current tenant ("Tenant") for the total sum of \$22,500,000.00 in cash.

KTKL Settlements: The City and K.T.K.L. Corporation ("KTKL") settled a lawsuit filed by KTKL against the City under Circuit Court Case No. 97-2687 CA-03 ("KTKL Settlement Agreement"). KTKL was the original owner of one of the lots ("KTKL Lot"), which the City purchased to acquire the lands in connection with the development of this Project. Originally, pursuant to the purchase and sale agreement between KTKL and the City, dated as of November 18, 1993, ("KTKL Purchase Agreement"), as part of the consideration for a the sale of the KTKL Lot, KTKL wanted exclusive use of 28 spaces (3 of which were slated to be used to build a dumpster on the ground floor) at the Garage ("KTKL Spaces"), and also had the right to purchase the Garage if the City did not complete the construction of the Garage. The construction did not occur timely and, as a result, the parties entered into a settlement Agreement titled "KTKL Memorandum, approved by Agreed Order of Approval, dated July 27, 1999, under which KTKL relinquished its right to purchase back the KTKL Lot and, instead, leased the KTKL Spaces back to the City, based upon a net revenue formula. Thereafter, KTKL sued to enforce the KTKL Memorandum, citing that the payments they were receiving in connection with the KTKL Spaces were incorrect and thereafter the parties entered into a Settlement Agreement, dated September 15, 2010 ("KTKL Settlement"), a copy of which is attached hereto as **Exhibit 2**. Pursuant to the KTKL Settlement, the City pays KTKL a determined fixed annual payment for the balance of the thirty year period, through 2032, which amount goes up by 3% each year. When Tenant purchased the Project, Tenant paid the City \$250,000.00 ("Settlement Offer") as consideration for the City agreeing not to use the 28 KTKL Spaces, as Tenant needed the use of those spaces and the City was not using them at the time.

## **ANALYSIS**

Pursuant to Section 10.5 of the Lease ("Required Notices"), a proposed transfer and/or sale of the Project requires written notice to the Owner, with the identity of the transferor, transferee, nature of the transaction, percentage of interest conveyed and such other information requested by Owner (the "Notice of Sale"). On November 7, 2024, Tenant provided Owner with a Notice of Sale that Tenant intended to sell 100% of its leasehold interest in the Project (the "Sale"), and upon the request of the City Administration, provided the purchase and sale price as follows:

Owner of Ground Lease:	City of Miami Beach;
Seller:	LIPT Collins Avenue, LLC;
Proposed Purchaser:	MR Pelican Garage, LLC, a Florida limited liability company

Purchase Price: \$15,000,000.00.

A copy of the following documents relating to this proposed transaction are attached hereto as follows:

Offer Notice, attached hereto as **Exhibit 3**;

Notice of Sale, including the Section 10.5 disclosures, attached hereto as **Exhibit 4**;

Lease Purchase Agreement, attached hereto as **Exhibit 5**;

Title Commitment, attached hereto as **Exhibit 6**; and

Seller's Statement of Revenue and Expenses for the 2023 year as **Exhibit 7**.

Additionally, in accordance with Section 36.2 of the Lease ("Owner's Reciprocal Right of First Refusal"), the City has the right to elect, in writing, within 45 days after Owner's receipt of the Offer Notice (i.e. December 22, 2024), whether or not to consummate the Right of First Offer Transaction, at the same price "in cash" and upon such other material terms set forth in the Offer Notice.

The Project consists of a seven-story parking garage having 278 parking spaces and 3,350 square feet of retail space, currently sub-leased to E.D.Y., Inc., a Florida corporation and Hedyc, LLC, a Delaware limited liability company, related entities to the original retail subtenant (collectively, "Retail Subtenant"), a surf and bathing suit apparel retail store. The sublease with the Retail Subtenant pays rent, in the total sum of \$25,000.00/month and \$300,000.00/year, plus applicable sales and use tax, which is consistent with the market rent in the area, and the lease expires on August 31, 2027. For the calendar year 2023, the Garage Facility earned a total of \$2,900,149.00, as evidenced from the 2023 Statement of Operating Revenues and Expenses, attached hereto and made as part hereof as **Exhibit "7"**.

City of Miami Beach parking garage rates are set forth in Appendix A of the Miami Beach City Code and are below market for the benefit of its residents, visitors and surrounding businesses. In determining whether or not to recommend exercising the Owner's Reciprocal Right of First Offer, City staff has reviewed and compared revenue figures from the 7<sup>th</sup> Street City-owned garage ("7<sup>th</sup> Street Garage") to the potential revenue of the subject Project based upon City parking rates, in order to determine the return on investment based upon the purchase price. For fiscal year 2023-2024, the 7<sup>th</sup> Street Garage generated approximately \$2,344,000.00 in gross operating revenues and incurred operating expenses, in the approximate amount of \$2,100,000.00 (including approximately \$245,000.00 in repair costs), for a total net profit of approximately \$244,000.00, based upon 646 parking spaces, for a net revenue of \$380.00 per parking space. Based on fiscal year 2024 gross operating revenue per space for the 7<sup>th</sup> Street garage, the City estimates that it will generate approximately \$105,000.00 in net revenues from the Garage (278 spaces x \$380 = \$105,084.00).

#### **2023 Calendar Year Comparison:**

During calendar year 2023, the City received rent, in the annual amount of \$111,848.76, plus percentage rent equal to 2.5% of the Project revenue (based upon gross revenues for the year from the Project), in the total amount of \$60,259.07, for a total net revenue of \$172,107.83. Additionally, during calendar year 2023, the City paid the annual KTKL Settlement amount of \$136,133.08, which means that the City netted \$35,974.75 of revenue for the Project for calendar year 2023.

For comparison purposes, assuming the City owned/operated the Project in 2023, the City would have received \$300,000.00 from the Retail Subtenant plus approximately \$105,000.00 net operating revenues from the operation of the Garage, for a total annual net revenue of approximately \$405,000.00, less the total amount of the annual KTKL Settlement payment of \$136,133.08, netting the City approximately \$268,866.92 for calendar year 2023.

The Property Appraiser's Office has the City's Land valued at \$10,570,000 and the improvements at \$5,300,000, as evidenced from the Property Appraiser's Summary Reports attached hereto as **Exhibit 8**. The Purchase Price of \$15,000,000 equates to approximately \$48,500.58/space. To evaluate the offer, staff has obtained from the Capital Improvement Projects Department, the below chart with respect to the cost per space of constructing a parking garage in today's cost (**this does not include the cost to purchase the land**).

	Year	# of spaces	Office/Retail SF	Cost	Cost/Space	Cost Adjusted for Inflation	Cost/space adjusted for inflation
CITY OWNED							
Collins Park Parking Garage	2020	516	16,000	\$20,021,038	\$38,800	\$25,026,297.50	\$48,500.58

In addition to the determination of whether or not the City will exercise the Right of First Offer, Section 10.5(a) of the Lease further provides that the City, as part of its approval of the proposed Sale, may request additional information in connection therewith, and to evaluate the proposed purchaser of the Project (the "City's Due Diligence"), which information was requested on November 18, 2024 by the City Attorney's Office. Pursuant to Section 10.5 of the Lease, the City must approve or disapprove the proposed Sale within thirty (30) days from receipt of the additional information requested. City staff is in the process of its Due Diligence in connection with the proposed Sale and as of the date of preparation of this Memorandum, not all requested information had been received, as such, the thirty (30) days has not begun to run.

Considering the cost to purchase land in the area, if such land were even available, and the cost of construction for a new parking garage along with the potential loss of 646 parking spaces from the 7<sup>th</sup> Street Garage, projected to occur in 2026, the purchase of this Project at \$15,000,000.00 would be a positive offset for City parking spaces in the immediate area.

The City would need to pay the KTKL Settlement amount through 2032 regardless of whether or not the City opts to purchase the Project; however, the term of the Lease, assuming that Tenant exercises the ten-year option, would expire on January 30, 2050. Although the City will receive the Project at no cost at the end of the Lease Term, the City has a present need for these parking spaces and the purchase price is actually less than the purchase price when the Tenant purchased the Project in 2013/2014.

Considering the potential loss of 646 parking spaces from the 7<sup>th</sup> Street Garage, projected to occur in 2026; the fact that the City will be gaining yearly revenue in the amount of \$268,866.92, instead of \$35,974.75 following payment of the KTKL Settlement payments; the purchase price of \$15,000,000.00 equates to the approximate cost to construct a new similar parking garage structure; and the purchase would address the City's immediate need for parking at the standard City rates near the Project location, the City Administration recommends purchasing the Project at this time at the proposed purchase price plus any closing costs associated with the purchase transaction

Following the purchase of the Project, the City would promptly proceed to convert the Project to a condominium form of ownership in order to secure a municipal real estate tax exemption for the Garage unit. In connection with the condominiumization process, the City Administration to secure a survey and the City's Legal Department will prepare the condominium documents and record them in the Public Records of Miami-Dade County, Florida.

In the event that the Mayor and City Commission do not authorize the City to purchase the Project in cash pursuant to the Lease, the City Administration would need to decline, in writing, the Right of First Offer Transaction, as required pursuant to the terms of Section 36.2 of the Lease; and approve the Sale of the Project to the Proposed Purchaser, MR Pelican Garage, LLC, a Florida limited liability company, upon satisfactory completion of the City's Due Diligence in connection

with the Sale, and reimbursement by Tenant of the City's Due Diligence costs; and further, the City Manager would need to be authorized to execute any and all closing documents on behalf of the City in connection with the proposed sale of the Project.

### **FISCAL IMPACT STATEMENT**

The City would have the funds to purchase the project, in the amount of \$15,000,000.00, plus closing costs, in the approximate amount of \$450,000.00 (3% of sales price), and the cost to secure a survey and recording fees for the Condominiumization process, estimated not to exceed \$1,000.00.

### **Does this Ordinance require a Business Impact Estimate?** (FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

### **FINANCIAL INFORMATION**

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### **CONCLUSION**

The Administration therefore recommends: (1) authorizing the City manager to disapprove of the proposed sale of the Project; (2) authorizing the City manager to exercise the Right of First Offer, in accordance with Section 36.2 and Exhibit 36.2(a) of the Lease for the purchase of the Project, in the amount of \$15,000,000.00 plus closing costs; (3) authorizing the City to convert the Project into a condominium form of ownership; and further, (4) authorizing the City Manager and City Clerk to execute any and all documents and agreements in connection with the purchase of the Project and condominiumization process.

### **Applicable Area**

South Beach

**Is this a "Residents Right to Know" item,  
pursuant to City Code Section 2-17?**

Yes

**Is this item related to a G.O. Bond  
Project?**

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

If so, specify the name of lobbyist(s) and principal(s):

### **Department**

Facilities and Fleet Management

### **Sponsor(s)**

**Co-sponsor(s)**

**Condensed Title**

Exercise the Right of First Offer to Purchase Parking Garage at 1027-1041 Collins Avenue. FF