

RESOLUTION 2024-_____

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.

WHEREAS, on January 5, 1998, the City issued RFP No. 20-97/98, seeking proposals for the development of public-private parking facilities (the "RFP"); and

WHEREAS, 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; and

WHEREAS, 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") and Development Agreement between the City and Pelican Development, LLC for development of a project containing a parking garage ("Garage") with ground floor retail space ("Retail Space") not to exceed 5,000 square feet (collectively, the "Project"), on the City owned land located at 1027 Collins Avenue and 1041 Collins Avenue ("Land"), which Lease was executed on December 1, 1999, for an initial forty (40) year term, which ends on January 31, 2040, with one additional ten (10) year option (the "Term"); and

WHEREAS, the Project received its Certificate of Occupancy on October 31, 2002, with a seven story Garage having 278 total parking spaces and the Retail Space having approximately 3,350 square feet; and

WHEREAS, 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 not be higher than the highest rate paid by any subtenant of the Project; and

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

WHEREAS, 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; and

WHEREAS, 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 ("Tenant") for the total sum of \$22,500,000.00 in cash; and

WHEREAS, K.T.K.L. Corporation ("KTKL") was the original owner of one of the lots ("KTKL Lot"), which the City purchased to acquire the Land in connection with the development of the Project; and

WHEREAS, 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 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; and

WHEREAS, the construction did not occur timely, KTKL filed a lawsuit against the City, and the parties settled the lawsuit by entering 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; and

WHEREAS, thereafter, KTKL sued to enforce the KTKL Memorandum, citing that the payments they were receiving in connection with the KTKL Spaces were incorrect and the parties resolved the dispute and entered into a Settlement Agreement, dated September 15, 2010 ("KTKL Settlement"), a copy of which is attached to the City Commission Memorandum accompanying this Resolution; and

WHEREAS, pursuant to the KTKL Settlement, the City pays KTKL a fixed annual payment for the balance of the thirty year period, through 2032, which amount goes up by 3% each year; and

WHEREAS, 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 for its operations and the City was not using those spaces; and

WHEREAS, 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 Attorney's Office, 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; and
Purchase Price:	\$15,000,000.00; and

WHEREAS, 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; and

WHEREAS, pursuant to Section 10.5(a) of the Lease, within ten (10 working days from receipt of the Notice of Sale, the City may request additional information as part of its approval of the proposed Sale of the Project and to evaluate the proposed purchaser of the Project (the “City’s Due Diligence”), which information was requested by the City Attorney’s Office on November 18, 2024; however, as of the date this agenda item was prepared, the information had not been completely provided; and

WHEREAS, pursuant to Section 10.5(a) of the Lease, the City must approve or disapprove the proposed Sale within thirty (30) days from receipt of the additional information requested, which time period has not begun to run; and

WHEREAS, the Retail Space, currently subleased to E.D.Y., Inc., a Florida corporation and Hedyc, LLC, a Delaware limited liability company, related entities to the original retail subtenant, E. Levy Corporation, Inc. (collectively, “Retail Subtenant”), is currently used as a surf and bathing suit apparel retail store; and

WHEREAS, the Retail Subtenant pays rent, in the total sum of \$25,000.00/month and \$300,000.00/year; and for the calendar year 2023, the Garage earned a total of \$2,900,149.00, as evidenced from the 2023 Statement of Operating Revenues and Expenses, attached to the City Commission Memorandum accompanying this Resolution; and

WHEREAS, the 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; and

WHEREAS, in determining whether or not to recommend exercising the Owner’s Reciprocal Right of First Offer, City staff reviewed and compared revenue figures from the City-owned and managed 7th Street Parking Garage (“7th Street Garage”) to estimate potential revenue for the subject Project based upon City parking rates; and

WHEREAS, for fiscal year 2023-2024, the 7th 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, which based upon 646 parking spaces, produced a net revenue of \$380.00 per parking space; and

WHEREAS, based on fiscal year 2024 gross operating revenue per space for the 7th Street Garage, the City estimates that it will generate approximately \$105,000.00 in net revenues from the Garage (278 spaces x \$380.00 = \$105,084.00); and

WHEREAS, in 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; and

WHEREAS, 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; and

WHEREAS, 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 for 2023 of \$136,133.08, netting the City approximately \$268,866.92 for calendar year 2023; and

WHEREAS, the Property Appraiser's Office has the City's Land valued at \$10,570,000.00 and the Project improvements at \$5,300,000.00; and

WHEREAS, the Purchase Price of \$15,000,000.00 equates to approximately \$48,500.58/space, which is the approximate amount which the City's CIP Department has determined would cost to construct a new similar garage structure, without including the cost to purchase the land, assuming land would be available in the vicinity of the Pelican Garage; and

WHEREAS, considering the potential loss of 646 parking spaces from the 7th 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 of the Project 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; and

WHEREAS, 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 the municipal real estate tax exemption for the Garage unit; and

WHEREAS, in connection with the condominiumization process, the City Administration will need 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; and

WHEREAS, based upon the foregoing, the City Administration 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 Manager to convert the Project into a condominium form of ownership; 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 condominiumization process.

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: (1) authorize 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) authorize 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) authorize the City Manager to convert the Project into a condominium form of ownership in order to secure the municipal tax exemption for the Garage unit; and (4) authorize 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.

PASSED and **ADOPTED** this 11th day of December, 2024.

Steven Meiner, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney *[Signature]* 12/4/2024
Date