

City of Coral Gables
CITY COMMISSION MEETING
January 26, 2016

ITEM TITLE:

A Resolution authorizing entering into a third amendment to the Amended and Restated Agreement with Merrick Center, Ltd. with regard to City owned property located at 353 Aragon Ave, Coral Gables, Florida, otherwise known as Gables Grand.

DEPARTMENT HEAD RECOMMENDATION:

Approval

BRIEF HISTORY:

Per Resolution 27794, the City (“Landlord”) and Merrick Center, Ltd., entered into a ground lease agreement dated October 22, 1991 amended and restated as of December 31, 1996, and further amended by that First Amendment dated as of December 18, 1998 and by Second Amendment dated January 5, 2004, with regard to City property located at 353 Aragon Ave, Coral Gables, FL otherwise known as Gables Grand (collectively referred to as the “Lease”). ERP Operating Limited Partnership and EQR-SWN Line Vistas, Inc. (collectively the Tenant) wishes to transfer its interest to SCG Atlas Gables Grand Plaza, L.L.C., a subsidiary of Starwood Capital Group (“Starwood”). The Lease calls for transaction rent of 20% of net proceeds to be paid to the City upon every sale or refinancing of the property; and calculation of net proceeds available for the transaction rent is made by subtracting from gross proceeds, among other things, “repayment of all reasonably documented Developer Equity, together with such amount as is necessary to provide Developer with an Internal Rate of Return (“IRR”) on the Developer Equity”.

Starwood, the successor to the current owner, has requested that the City enter into an amendment as it did for the benefit of the current owner (the second amendment) to set the equity IRR to be used for calculation of transaction rent on its eventual sale or refinancing in advance of its purchase of the leasehold interest as opposed to following it, as called for in the lease

The proposed third amendment terms relative to Starwood’s IRR are as follows:

- If the owner’s investment is unleveraged (i.e. a 100% equity investment, without debt); an IRR for developer equity of 7.0%.
- If the owner’s investment is leveraged (i.e. owner puts debt on the property), IRR for developer equity would be based on a sliding scale ranging from 11.0% at equity equaling 40% of capitalization to 15.0% at equity equaling 20% or less of capitalization. This would be calculated on a straight line basis, so that, for example, if equity were 30% of capitalization, the equity IRR would be 13.0%. Return on any equity in excess of the upper end of the percent of capitalization range would be calculated at the debt interest rate.
- Shifting of owner’s capitalization between different levels of leverage over time would be accounted for by a blended rate IRR.
- If equity exceeds 40%, equity IRR would be based on a blended rate of 11.0% applied to the 40% and an IRR equivalent to the fixed rate of debt financing attributed to the portion in excess of 40% (but not less than 7.0% for the overall blended rate).
- These rates would apply only to the new lessee. Subsequent lessees would be subject to the retroactive rate setting process in the lease, unless agreed otherwise at a later time.

The above IRRs would apply only to any sale or refinancing transaction by Starwood, and not to any sale or refinancing transaction of any subsequent owner following Starwood.

This modification is considered to be in the City's interest for the following reasons:

- The process undertaken to set the rates was the same as would have been undertaken immediately after the transaction.
- The above rates are considered to be reasonable estimates of market IRRs appropriate to unleveraged and leveraged investment in the property, at present, and reasonable in terms of what an appraisal process should indicate, which would be the back-up process if an agreement between the City and lessee could not be reached.
- With the rate(s) fixed at appropriate levels, there should be no offsetting diminution in transaction rent from future transactions.
- The modification will remove the risk, effort, and cost entailed in the rate setting process for the City, as well as for the successor lessee. The lessee has agreed to compensate the City's third party legal and consultant fees for setting the rate in advance.

City Manager recommends approval of the third amendment.

LEGISLATIVE ACTION:

Date.	Resolution/Ordinance No.	Comments
October 22, 1991	Resolution No. 27794	Approval of Lease
June 11, 1996	Resolution No. 29085	Approval of Right to Transfer
June 11, 1996	Ordinance No. 3185	Approval of Right to Transfer
December 16, 2003	Resolution No. 220-220	Approval of Second Amendment

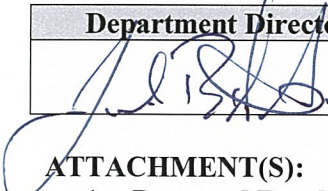
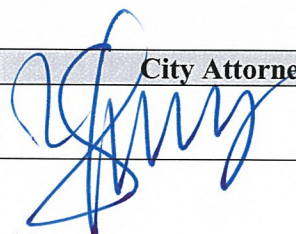
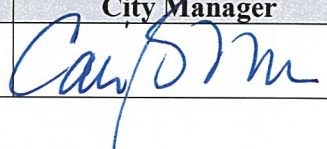
ADVISORY BOARD/COMMITTEE RECOMMENDATION(S):

Date.	Board/Committee	Comments
N/A		

FINANCIAL INFORMATION: (If Applicable)

No.	Amount	Source of Funds
N/A		

APPROVED BY:

Department Director	City Attorney	City Manager
		

ATTACHMENT(S):

1. Proposed Resolution with Proposed Third Amendment to Lease