

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2016-29

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 (*TO SET THE EQUITY IRR FOR FUTURE TRANSACTION RENT*).

WHEREAS, pursuant to Resolution No. 27794, passed and adopted on October 22, 1991, the City (“Landlord”) entered into a lease with Merrick Center, Ltd. for City owned property at 353 Aragon Avenue, Coral Gables, Florida, (otherwise known as Gables Grand) and later amended and restated on December 31, 1996, and further amended by the First Amendment dated December 18, 1998 authorized by Ordinance 3185 and Resolution 29085 dated June 11, 1996, and then by Second Amendment dated January 5, 2004 as authorized by Resolution No. 2003-220 adopted on December 16, 2003 (collectively the “Lease”); and

WHEREAS, ERP Operating Limited Partnership and EQR-SWN Line Vistas, Inc. (collectively the Tenant) has requested that the City authorize the transfer of its lease interest to SCG ATLAS GABLES GRAND PLAZA, L.L.C., a subsidiary of Starwood Capital Group (“Starwood”); and

WHEREAS, the Lease (Section 2.5(c)) calls for transaction rent of 20 percent 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”; and

WHEREAS, 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; and

WHEREAS, the proposed third amendment terms are: If the owner’s investment is unleveraged (i.e. a 100 percent equity investment, without debt); an IRR for developer equity of 7.0 percent; 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 percent at equity equaling 40 percent of capitalization to 15.0 percent at equity equaling 20 percent or less of capitalization; This would be calculated on a straight line basis, so that, for example, if equity were 30 percent of capitalization, the equity IRR would be 13.0 percent; Return on any equity in excess of the upper end of the percent of capitalization range would be calculated at the debt interest rate; If equity exceeds

40 percent, equity IRR would be based on a blended rate of 11.0 percent applied to the 40 percent and an IRR equivalent to the fixed rate of debt financing attributed to the portion in excess of 40 percent (but not less than 7.0 percent for the overall blended rate); Shifting of owner's capitalization between different levels of leverage over time would be accounted for by a blended rate IRR; and

WHEREAS, 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; and

WHEREAS, 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; and the lessee has agreed to compensate the City's third party legal and consultant fees for setting the rate in advance;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. That the foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon the adoption hereof.

SECTION 2. That the Third Amendment to the Lease (the "Amendment") is hereby approved in substantially the form attached hereto as Exhibit "A."

SECTION 3. That the City Commission does hereby authorize the City Manager to execute the Amendment with such modifications to the form attached hereto as Exhibit "A" as may be approved by the City Manager and City Attorney that are necessary to implement the intent of this resolution.

SECTION 4. That this resolution shall become effective immediately upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS TWENTY-SIXTH OF JANUARY, A.D., 2016.
(Moved: Quesada / Seconded: Lago)
(Yeas: Keon, Lago, Quesada, Slesnick, Cason)
(Unanimous: 5-0 Vote)
(Agenda Item: H-7)

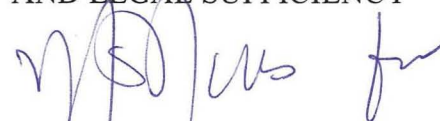
APPROVED:


JIM CASON
MAYOR

ATTEST:


WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY


CRAIG E. LEEN
CITY ATTORNEY