



City of Miami

Legislation

Resolution: R-18-0231

City Hall
3500 Pan American Drive
Miami, FL 33133
www.miamigov.com

File Number: 4103

Final Action Date: 6/8/2018

*

A RESOLUTION OF THE MIAMI CITY COMMISSION, WITH ATTACHMENT(S), DIRECTING THE CITY ATTORNEY TO PREPARE A PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF MIAMI, FLORIDA ("CHARTER") FOR CONSIDERATION AT THE SPECIAL ELECTION SCHEDULED FOR AUGUST 28, 2018 PROPOSING, UPON APPROVAL OF THE ELECTORATE, TO AMEND SECTION 29-B OF THE CHARTER, ENTITLED "CITY-OWNED PROPERTY SALE OR LEASE-GENERALLY," TO AUTHORIZE THE CITY COMMISSION, BY A FOUR-FIFTHS (4/5THS) AFFIRMATIVE VOTE, TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE THE CITY MANAGER TO EXECUTE BOTH AN ESCROW AGREEMENT ("ESCROW") AND THE FIFTH MODIFICATION TO THE LEASE AND DEVELOPMENT AGREEMENT ("FIFTH MODIFICATION") BETWEEN THE CITY OF MIAMI ("CITY") AND ESJ JI LEASEHOLD, LLC ("ESJ") FOR 19.35 ACRES OF CITY-OWNED WATERFRONT PROPERTY, AMENDING CERTAIN TERMS OF THE EXISTING LEASE, INCLUDING BUT NOT LIMITED TO, ADDITIONAL IMPROVEMENTS ON THE PROPERTY; MODIFICATION TO THE CURRENT REMAINING LEASE TERM ("TERM") OF APPROXIMATELY FORTY THREE (43) YEARS AND EXTENDING THE TERM TO 2099 WITH AN ADDITIONAL OPTION OF FIFTEEN (15) YEARS TO EXTEND THE LEASE TO 2114; PAYMENT OF ADDITIONAL ANNUAL RENT OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) INCREASING, ONCE THE PROPOSED HOTEL HAS STABILIZED, TO THE GREATER OF ONE MILLION TWO HUNDRED TWENTY THOUSAND DOLLARS (\$1,220,000.00) OR FIVE PERCENT (5%) OF ANNUAL HOTEL GROSS REVENUES FROM A FIFTY MILLION DOLLAR (\$50,000,000.00) HOTEL, WITH A MAXIMUM OF THREE (300) HUNDRED ROOMS AND ONE HUNDRED THIRTY (130) FOOT HEIGHT, AT ESJ'S EXPENSE AND OPTION, SUBJECT TO CITY APPROVALS AND SUCCESSFUL LAND USE AND ZONING CHANGES, AS NECESSARY; PROVIDING PARKING, RETAIL/RESTAURANT, AND MEETING ROOM SPACE; PROVIDING IMPROVEMENTS, REPAIRS, AND MAINTENANCE TO THE ICHIMURA-MIAMI JAPANESE GARDENS IN THE AMOUNT OF SEVEN HUNDRED THOUSAND DOLLARS (\$700,000.00); PROVIDING A CONTRIBUTION OF SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00), PAID OVER A TEN (10) YEAR PERIOD, FOR AFFORDABLE HOUSING; ESTABLISHING A REPAIRS RESERVE ACCOUNT; IMPLEMENTING A THREE PERCENT (3%) TRANSFER FEE OF GROSS SALE PROCEEDS; IMPLEMENTING A REFINANCING FEE OF ONE PERCENT (1%) OF LOAN PROCEEDS; PROVIDING A RENT CREDIT TO ESJ IN THE AMOUNT OF FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) FOR REIMBURSEMENT OF COSTS RELATED TO SHORELINE STABILIZATION AND IMPROVEMENTS NEEDED AS A RESULT OF EROSION FROM HURRICANE DAMAGE IN 2017; WITH RESTRICTIONS, REVERSIONS, AND RETENTION BY THE CITY OF ALL OTHER RIGHTS.

WHEREAS, the City of Miami (“City”) is the owner of that certain tract of land on Watson Island comprising approximately 19.35 acres and located at 1111 Parrot Jungle Trail, Miami, Florida (“Property”); and

WHEREAS, ESJ JI Leasehold, LLC (“ESJ”) and the City are parties to that certain Lease and Development Agreement, as modified from time to time (collectively, “Lease”) for the Property; and

WHEREAS, pursuant to the Lease, ESJ is leasing the Property from the City for the operation of a botanical garden and theme park attraction known as Jungle Island (“Jungle Island”); and

WHEREAS, the Lease was modified pursuant to a Third Modification to the Lease and Development Agreement (“Third Modification”) which modified the Lease definition for “Additional Improvements” to possibly include a themed hotel and related retail and entertainment, thereby providing ESJ with the potential opportunity to develop and operate a hotel on the Property, subject to approval of the electorate in a City-wide referendum and further subject to the approval of the State of Florida Board of Trustees of the Internal Improvement Trust Fund and any and all applicable laws, codes, and regulations, including but not limited to, the City’s Zoning Ordinance; and

WHEREAS, ESJ desires to develop a hotel, parking structure, and related improvements (collectively, “Hotel”) on the Property and requires an extension on the term of the Lease, which has approximately forty-three (43) years remaining, to obtain the financing necessary for the construction of the Hotel; and

WHEREAS, the City and ESJ desire to enter into both an Escrow Agreement (“Escrow”) and a Fifth Modification to the Lease and Development Agreement (“Fifth Modification”), both in substantially the attached form, which will modify the current remaining lease term (“Term”) of approximately forty three (43) years and extend the Term from the year 2060 to the year 2099 and include a fifteen (15) year option to extend the Lease to the year 2114; providing additional annual rent payment of Two Hundred Fifty Thousand Dollars (\$250,000.00) and, once the Hotel has stabilized, increasing to the greater of One Million Two Hundred Twenty Thousand Dollars (\$1,220,000.00) or Five Percent (5%) of annual gross revenues from the Hotel with a minimum cost of Fifty Million Dollars (\$50,000,000.00), with a maximum of Three Hundred (300) rooms and a height of one hundred thirty (130) feet, at ESJ’s expense and option, and a design subject to City approval and successful land use and zoning changes, as necessary, with said rent being in addition to the currently received rent; providing parking spaces sufficient to meet zoning ordinance requirements; further providing ancillary improvements consisting of retail and/or restaurant space of up to ten thousand (10,000) square feet and meeting room space of up to thirty thousand (30,000) square feet; with the aggregate payment of Seven Hundred Thousand Dollars (\$700,000.00) towards the Ichimura-Miami Japanese Gardens (“Japanese Gardens”) for construction of a walkway to Jungle Island, necessary repairs, and maintenance of the Japanese Gardens; payments totaling Seven Hundred Fifty Thousand Dollars (\$750,000.00) over a ten (10) year period to be used for affordable housing; establishing a reserve account for capital repairs of Two Hundred Thousand Dollars (\$200,000.00) per year; implementing a transfer fee of Three Percent (3%) of gross sales proceeds if the Property is transferred or assigned; implementing a refinancing fee of One Percent (1%) of the refinancing loan proceeds if the Property is refinanced after the initial refinancing; providing a rent credit to ESJ in the amount of Five Hundred Thousand Dollars (\$500,000.00) to be credited as

reimbursements for costs related to shoreline stabilization and improvements needed as a result of erosion from hurricane damage in 2017; and

WHEREAS, pursuant to Section 3(f)(iii) of the Charter of the City of Miami, Florida, as amended ("Charter"), entitled "Powers," and Section 29-B of the Charter, entitled "City Owned Property Sale or Lease-Generally," the City needs two (2) independent appraisals affirming the fair market value of the Hotel as reflected in the Fifth Modification; and

WHEREAS, the Lease with ESJ will be subject to such other restrictions, reversions, and retention by the City of all other rights; and

WHEREAS, regardless of the referendum result, ESJ shall pay the following: One Hundred Thousand Dollars (\$100,000.00) to the City immediately thereafter the referendum results; and, Thirty Five Thousand Dollars (\$35,000.00) to the Liberty City Community Revitalization Trust per year for the duration of the Lease commencing January 1st, 2021; and

WHEREAS, upon referendum approval by the City's residents, ESJ shall: establish a special restricted affordable housing account in the amount of Six Hundred Fifty Thousand Dollars (\$650,000.00), for payment to the City of Three Hundred Thousand Dollars (\$300,000.00) upon issuance to ESJ of any building permit, with payment to the City of the remaining Three Hundred Fifty Thousand Dollars (\$350,000.00) upon issuance to ESJ of a TCO for the Hotel; and

WHEREAS, ESJ shall provide, pay for, and maintain a dedicated trolley route for Jungle Island, subject to the City's approval of the route's path and stops, commencing January 1st, 2020;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The City Attorney is directed to prepare a proposed amendment to the Charter for consideration at the Special Election scheduled for August 28, 2018 proposing, upon approval of the electorate, to amend Section 29-B of the Charter, entitled "City-Owned Property Sale or Lease-Generally," to authorize the City Commission, by a four-fifths (4/5ths) affirmative vote, to waive competitive bidding and authorize the City Manager to execute both the Escrow and the Fifth Modification between the City and ESJ for the Property, amending certain terms of the existing Lease, including but not limited to, additional improvements on the Property; modification to the Term of approximately forty three (43) years and extending the term to 2099, with an additional option of fifteen (15) years to extend the lease to 2114; payment of additional annual rent of Two Hundred Fifty Thousand Dollars (\$250,000.00) increasing, once the Hotel has stabilized, to the greater of One Million Two Hundred Twenty Thousand Dollars (\$1,220,000.00) or Five percent (5%) of annual gross revenues from the Hotel, with a maximum of Three Hundred (300) rooms and a one hundred thirty (130) foot height, at ESJ's expense and option, subject to City approvals and successful land use and zoning changes, as necessary; providing parking, retail/restaurant, and meeting room space; providing improvements, repairs, and maintenance to the Japanese Gardens in the amount of Seven Hundred Thousand Dollars (\$700,000.00); providing a contribution of Seven Hundred Fifty Thousand Dollars (\$750,000.00) paid over a ten (10) year period for affordable housing; establishing a repairs reserve account; implementing a Three Percent (3%) transfer fee of gross sale proceeds; implementing a

refinancing fee of One Percent (1%) of loan proceeds; providing a rent credit to ESJ in the amount of Five Hundred Thousand Dollars (\$500,000.00) for reimbursements of costs related to shoreline stabilization and improvements needed as a result of erosion from hurricane damage in 2017; with restrictions, reversions, and retention by the City of all other rights.

Section 3. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.¹

APPROVED AS TO FORM AND CORRECTNESS:


Victoria Méndez, City Attorney 6/12/2018

¹ If the Mayor does not sign this Resolution, it shall become effective at the end of ten (10) calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission.