

MIAMI BEACH

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OFFICE OF BUDGET AND PERFORMANCE IMPROVEMENT, Internal Audit
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INTERNAL AUDIT REPORT

TO: Jimmy L. Morales, City Manager
VIA: John Woodruff, Budget and Performance Improvement Director 
FROM: James J. Sutter, Internal Auditor 
DATE: November 10, 2014
AUDIT: Lincoln Place Lease Payments Follow-up Audit
PERIOD: January 1, 2013 to December 31, 2013

This report follows up on our previous Lincoln Place lease payments audit report issued on April 15, 2014 covering January 1, 2009 through December 31, 2012 which calculated that the tenant (TAG Lincoln Place LLC) owed the City \$394,735, \$53,856 and \$394,459 from unreported rental, parking and common area maintenance revenues respectively including late charges. The tenant's attorney provided additional documentation on June 6, 2014 whereby the City agreed to decrease the aforementioned total balance from \$843,050 to \$838,757 (see Exhibit A located at the end of this audit report for a summary breakdown of the corresponding calculations) to account for the agreement's section 3.3(c)(i)'s allowance of a 1,000 maximum square feet leasing office. The aforementioned late charges continue to be calculated through December 31, 2013 to remain in agreement with the initial audit report dated April 15, 2014 but they can be adjusted as necessary.

The findings below summarize the methodology applied by which the tenant was deemed to also owe the City \$184,852 for the 2013 calendar year which consists of \$81,972 in rent, \$14,793 in parking and \$86,196 in common area maintenance plus \$1,891 in total late charges as calculated through May 23, 2014 (the date that the 2013 percentage rent payment was received). When combined with the prior audit's reduced assessment amount of \$838,757, the tenant now owes the City a combined total of \$1,023,609 for the period of January 1, 2009 through December 31, 2013 as shown in Exhibit A. The City Administration should prospectively decide upon the appropriate course of action to pursue collection of this outstanding balance and to help prevent similar under reporting from occurring.

The City Attorney's Office has had several negotiation discussions with the tenant's attorney concerning the \$838,757 owed through December 2012 since the previous report's issuance but no agreement has been reached to date. If a consensus cannot be reached shortly, the City Attorney's Office among other options is considering filing a declaratory judgment action to obtain the court's legal determination of several debated agreement terms that resulted in the tenant's exclusion of these revenues from their annual true-up payments.

FINDINGS

1. Finding – *2013 Calendar Year Parent Company Rental Revenues were Excluded from the Annual Percentage Rent Calculations and Payment Resulting in the City being Owed \$82,819 including Late Charges*
Section 3.3 of the lease agreement summarized states that the tenant (TAG Lincoln Place LLC) is to remit percentage rent each year equal to 2.5% of annual project

revenues as triggered by the sale leaseback date (May 25, 2006). This section continues to define project revenue which among other items includes all revenue, payments, income received, escalation adjustments, rent and operating cost reimbursements, common area maintenance charges and parking revenues. There is also a provision stating that if any space in the building is leased, or used by the tenant, any affiliate, subtenant or by any other person at a rental which is less than fair market value of such space, the rent shall be increased by an amount equal to the difference between the rent being paid and the fair market rental value.

As determined during an April 7, 2014 site visit, the master subtenant's parent company (LNR 16th Street, LLC) occupied 90,954 rentable square feet (4,228 square feet for suite #185, 544 for suite #195, 9,014 for suite #200 and 19,542 each for the fifth, sixth, seventh and eighth floors less 1,000 maximum square feet allowed for an office per section 3.3(c)(i) of the 108,966 (109,422 + 544 - 1,000) total available rentable office square feet inside Lincoln Place or 83.45%. Furthermore, the only other office subtenant's (Teleperformance Group, Inc.) 2013 rent was calculated at \$36.05 per square foot which was used as a representation of fair market value. Internal Audit subsequently calculated the corresponding rent owed by multiplying the parent's 90,954 rentable square feet by \$36.05 and then again by 2.50% to determine the applicable percentage rent due.

Next, late charges were added after being calculated from the April 1, 2014 due date through May 23, 2014 (the date that the 2013 percentage rent payment was received) at an annual interest rate of 7.25% which is comprised of 4.00% + 3.25% prime rate in accordance with lease agreement sections 3.3(b) and 4.1. The following table provides the pertinent figures in calculating the total 2013 calendar year rent monies due that was incorrectly omitted from the tenant's percentage rent calculations and payment:

Unreported Revenue from Parent	Percentage Rent	Rent Monies Due	Late Charges Due	Total Rent Monies Due
\$3,278,892	2.50%	\$81,972	\$847	\$82,819

2. *Finding - Unreported 2013 Calendar Year Parking Monthly Access Card Revenues were Excluded from the Annual Percentage Rent Calculations and Payment Resulting in the City being Owed \$14,946 including Late Charges*

Lincoln Place's parking garage provides revenues to the tenant through transient and monthly access card parking. Transient rates take effect after a five minute grace period expires ranging from a minimum of \$2 for the first hour up to \$20 for the day (\$25 for special events). Meanwhile, monthly access card parking customers are to be charged \$107 for Lincoln Place tenants and \$160.50 for non-tenants permitting them to park in any eligible unoccupied space. Additionally, building tenants have the option of continuously reserving a designated parking space at \$214 per month.

The parking garage is comprised of 493 total available spaces with one space on the fourth floor fenced off to be used solely for storage while 100 have to be reserved for public usage at all times (transient parking) thereby making only 392 available for monthly access card customers. The Property Manager stated during an April 7, 2014 site visit that all monthly access card spaces are always used as there is a continuous shortage of parking on property which most likely would have been alleviated if the agreement's section 6.1(b) requirement of providing at least 600 spaces would have

been satisfied.

As stated in finding #1, parking revenues are to be included in project revenues for which the annual 2.50% percentage rent calculations are to be based. In addition, free monthly parking was not provided in Teleperformance Group, Inc.'s lease so the tenant should have included all monthly parking access card revenues at the applicable fair market value rates listed above of \$107, \$160.50 or \$214 in their percentage rent calculations.

Internal Audit confirmed that the tenant did not include all their parking revenues in the percentage rent calculations as required in the lease agreement based on review of the parking figures provided by the tenant in the annual percentage rent calculation schedules, Parking Revenue vs. Expenses analysis, parking garage diagrams submitted as of February 1, 2014, etc. One assumption made in the absence of additional documentation was that the parking garage rental rates and amounts provided for February 1, 2014 were in effect throughout the 2013 calendar year.

The tenant's audited financial statements list the annual parking revenue amounts which immaterially differed from a supporting schedule showing each year's total transient and monthly parking revenues. Consequently, Internal Audit accepted the transient revenues as accurate and re-calculated the monthly access card parking fees based on the documentation provided as if all customers paid the established rates (except the Loews Hotel who is charged half price or \$80 per month for each of its five overnight spaces). The tables below provide a numerical breakdown as to the methodology used to calculate the amount of unreported parking revenues and the corresponding total parking monies due for 2013:

Reported Transient Parking Revenues	Calculated Monthly Garage Revenues *	Total Parking Revenues	Percentage Rent Reported Parking Revenues	Unreported Parking Revenues
\$870,654	\$547,290	\$1,417,944	\$826,195	\$591,749

* Per the tenant's provided February 1, 2014 records, the figures in this column are comprised of 26 building tenants paying \$214 per month for reserved spaces, 342 unreserved building tenants paying \$107 per month, five overnight spaces used by the Loews Hotel at \$80 per month and 19 outside customers paying \$160.50 per month.

Unreported Parking Revenues	Percentage Rent	Parking Monies Due	Late Charges Due as of 06/10/14	Total Parking Monies Due
\$591,749	2.50%	\$14,793	\$153	\$14,946

3. *Finding - Unreported 2013 Calendar Year Common Area Maintenance Revenues were Excluded from the Annual Percentage Rent Calculations and Payments Resulting in the City being Owed \$87,087*

TAG Lincoln Place LLC each year estimates the property's real estate taxes, insurance and operating expenses and allocates them proportionately to the building's tenants who pay a fixed monthly rate. At year end, a true-up occurs and each building tenant is charged or refunded monies based on the comparison of actual charges to those billed and paid. Common area maintenance or CAM is to include along with all operating expenses; wages, salaries and benefits of all employees engaged in the operation and management of the property; cost of all utilities not separately metered and paid directly

Internal Audit Report
Lincoln Place Lease Payments Follow-Up Audit
November 10, 2014

by tenants; cost of all insurance relating to the property; etc.

As stated in finding #1, CAM is to be included in project revenues for which the annual 2.50% percentage rent calculation is based but testing found that it was omitted. Consequently, Internal Audit used the amount of CAM (including janitorial and electricity expenses) listed on the tenant's provided annual Actual Operating Expenses Report used for the true-up to calculate the corresponding percentage rent monies due for 2013 including late charges as shown in the following table:

Unreported CAM Revenues	Percentage Rent	CAM Monies Due	Late Charges Due	Total CAM Monies Due
\$3,447,857	2.50%	\$86,196	\$891	\$87,087

JJS:MC:mc

Follow – up Limited Scope Audit Engagement performed by Senior Auditor Mark Coolidge

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cc: Kathie G. Brooks, Assistant City Manager
Max Sklar, Tourism, Cultural Affairs & Economic Development Director
Patricia Walker, Chief Financial Officer

Exhibit A – Final Computations for Amounts owed for Calendar Years 2009 to 2013

1. Rental Revenues Summary Analysis

Calendar Year	Parent Occupied Rentable Square Footage	Subtenant Rent per Square Foot	Unreported Revenue from Parent	Percentage Rent	Rent Monies Due	Late Charges Due	Total Rent Monies Owed
2009	90,954	\$36.50	\$3,319,821	2.50%	\$82,995	\$22,585	\$105,580
2010	90,954	\$37.50	\$3,410,775	2.50%	\$85,269	\$17,022	\$102,291
2011	90,954	\$38.50	\$3,501,729	2.50%	\$87,543	\$11,112	\$98,655
2012	90,954	\$35.00	\$3,183,390	2.50%	\$79,585	\$4,331	\$83,916
Subtotal			\$13,415,715		\$335,392	\$55,050	\$390,442
2013	90,954	\$36.05	\$3,278,892	2.50%	\$81,972	\$847	\$82,819
Total			\$16,694,607		\$417,364	\$55,897	\$473,261

2. Parking Revenues Summary Analysis

Calendar Year	Reported Transient Revenues	Monthly Access Card Revenues	Total Audited Parking Revenues	Total Reported Parking Revenues	Parking Revenues Difference	%age Rent	Parking Monies Due	Late Charges Due	Total Parking Monies Owed
2009	\$730,138	\$547,290	\$1,277,428	\$826,195	\$451,233	2.50%	\$11,281	\$3,070	\$14,351
2010	\$860,215	\$547,290	\$1,407,505	\$963,107	\$444,398	2.50%	\$11,110	\$2,218	\$13,328
2011	\$893,090	\$547,290	\$1,440,380	\$976,835	\$463,545	2.50%	\$11,589	\$1,470	\$13,059
2012	\$785,912	\$547,290	\$1,333,202	\$835,557	\$497,645	2.50%	\$12,441	\$677	\$13,118
Subtotal	\$3,269,355	\$2,189,160	\$5,458,515	\$3,601,694	\$1,856,821		\$46,421	\$7,435	\$53,856
2013	\$870,654	\$547,290	\$1,417,944	\$826,195	\$591,749	2.50%	\$14,793	\$153	\$14,946
Total	\$4,140,009	\$2,736,450	\$6,876,459	\$4,427,889	\$2,448,570		\$61,214	\$7,588	\$68,802

3. Common Area Maintenance (CAM) Revenues Summary Analysis

Calendar Year	Unreported CAM Revenues	Percentage Rent	CAM Monies Due	Late Charges Due	Total CAM Monies Owed
2009	\$3,391,770	2.50%	\$84,794	\$23,074	\$107,868
2010	\$3,452,403	2.50%	\$86,310	\$17,230	\$103,540
2011	\$3,314,607	2.50%	\$82,865	\$10,518	\$93,383
2012	\$3,401,576	2.50%	\$85,040	\$4,628	\$89,668
Subtotal	\$13,560,356		\$339,009	\$55,450	\$394,459
2013	\$3,447,857	2.50%	\$86,196	\$891	\$87,087
Total	\$17,008,213		\$425,205	\$56,341	\$481,546

4. Total Monies Owed (January 1, 2009 through December 31, 2013)

Calendar Year	Total Rent Monies Owed	Total Parking Monies Owed	Total CAM Monies Owed	Monies Owed Before Late Charges	Late Charges	Total Owed
2009	\$82,995	\$11,281	\$84,794	\$179,070	\$48,728	\$227,798
2010	\$85,269	\$11,110	\$86,310	\$182,689	\$36,470	\$219,159
2011	\$87,543	\$11,589	\$82,865	\$181,997	\$23,101	\$205,098
2012	\$79,585	\$12,441	\$85,040	\$177,066	\$9,636	\$186,702
Subtotal	\$335,392	\$46,421	\$339,009	\$720,822	\$117,935	\$838,757
2013	\$81,972	\$14,793	\$86,196	\$182,961	\$1,891	\$184,852
Total	\$417,364	\$61,214	\$425,205	\$903,783	\$119,826	\$1,023,609