



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Members of the Finance & Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: July 13, 2018

SUBJECT: **REVIEW OF THE CONVENTION HOTEL DEVELOPMENT AND
GROUND LEASE AGREEMENT IN ACCORDANCE WITH SECTION
82-37 OF THE CITY CODE**

Attached is Memorandum for the Convention Hotel Development and Ground Lease Agreement in advance of the Special Commission Meeting of next Tuesday, July 17, 2018.

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

**FIRST READING
PUBLIC HEARING**

DATE: July 17, 2018

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING FIRST READING/PUBLIC HEARING, A DEVELOPMENT AND GROUND LEASE AGREEMENT AS AUTHORIZED, RESPECTIVELY, UNDER SECTION 118-4 OF THE CITY CODE, SECTIONS 163.3220 - 163.3243, FLORIDA STATUTES, AND SECTION 82-37 OF THE CITY CODE, BETWEEN THE CITY AND MB MIXED USE INVESTMENT, LLC ("MIAMI BEACH CONNECT"), FOR THE DEVELOPMENT OF A CONVENTION HOTEL WITH UP TO 800 ROOMS AND RELATED FACILITIES, INCLUDING UP TO 60,000 SQUARE FEET OF CONFERENCE AND BALLROOM FACILITIES, AND UP TO 52,000 SQUARE FEET OF ACCESSORY RETAIL AND RESTAURANT FACILITIES TO SERVICE HOTEL GUESTS AND THE PUBLIC (THE "HOTEL"), ON AN APPROXIMATELY 2.6 ACRE SITE ON THE NORTHEAST CORNER OF 17TH STREET AND CONVENTION CENTER DRIVE, BOUNDED ROUGHLY BY THE MIAMI BEACH CONVENTION CENTER TO THE NORTH, 17TH STREET TO THE SOUTH, THE FILLMORE MIAMI BEACH AT THE JACKIE GLEASON THEATER TO THE EAST, AND CONVENTION CENTER DRIVE TO THE WEST (THE "LEASED PROPERTY"); DELINEATING THE CONDITIONS FOR THE DESIGN, CONSTRUCTION, EQUIPPING AND OPERATION OF THE HOTEL ON THE LEASED PROPERTY WITH NO CITY FUNDING THEREFOR; PROVIDING FOR A 99-YEAR TERM OF THE LEASED PROPERTY ONCE CERTAIN CONDITIONS ARE SATISFIED; PROHIBITING GAMBLING ESTABLISHMENTS ON THE LEASED PROPERTY; AND PROVIDING FOR ANNUAL BASE RENT TO THE CITY, AFTER THE HOTEL OPENS, OF THE GREATER OF MINIMUM FIXED RENT OR A FIXED PERCENTAGE OF THE GROSS REVENUES OF THE HOTEL, AMONG OTHER RENT; AND FURTHER SETTING THE SECOND PUBLIC HEARING AND FINAL READING OF THE DEVELOPMENT AND GROUND LEASE AGREEMENT FOR A TIME CERTAIN.**

BACKGROUND

On April 13, 2016, the Mayor and City Commission established the Mayor's Ad Hoc Blue Ribbon Steering Committee on the Convention Center Hotel (the "Committee"), chaired by Commissioner Ricky Arriola and Vice-chaired by Commissioner Kristen Rosen-Gonzalez.

On February 14, 2018, the Mayor and City Commission considered the Committee's report regarding potential options for a Convention Center Hotel development, including options with respect to a proposed Hotel's location, size, height, and related issues such as traffic mitigation, and the like. At the February 14, 2018 City Commission meeting, the Mayor and City Commission directed the Administration to prepare a Request for Proposal ("RFP").

On May 16, 2018, the Mayor and City Commission approved Resolution No. 2018-30310, authorizing the issuance of an RFP for the Convention Center Hotel for a lease of the approximately 2.6 acre site located adjacent to the Convention Center.

On May 17, 2018 the City issued Request for Proposals No. 2018-238-KB (the RFP) for the Development of a Convention Headquarter Hotel Adjacent to the Miami Beach Convention Center. A voluntary pre-proposal meeting was held on May 24, 2018.

On June 7, 2018 the City Manager, via Letter to Commission (LTC) No. 323-2018, appointed an Evaluation Committee (the "Committee").

On June 14, 2018 the City received a responsive proposal from MB Mixed Use Investment, LLC, a joint venture between Turnberry and Terra Group.

On June 21, 2018, the Evaluation Committee convened to consider the responsive proposal and conduct oral presentations, and favorably recommended proceeding with the Miami Beach Connect proposal.

On July 2, 2018, the Mayor and City Commission approved Resolution No. 2018-30378, authorizing the Administration to negotiate a Development and Ground Lease Agreement, including a Room Block Agreement (collectively, the "Lease") with MB Mixed Use Investment, LLC, with said Lease subject to prior approval by the Mayor and City Commission before the final execution thereof.

On July 13, 2018, the Administration submitted the proposed Lease for the Finance and Citywide Projects Committee's review and input, in accordance with the requirements of Section 82-37(a)(1) of the City Code.

SUMMARY OF DEVELOPMENT AND GROUND LEASE AGREEMENT

The proposed Lease with MB Mixed Use Investment, LLC, a Florida limited liability company registered to transact business under the name Miami Beach Connect (hereinafter, "Miami Beach Connect") is attached hereto as **Appendix 1**. The Lease includes the following terms:

1. Description of Hotel Site/Leased Property

The proposed boundaries for the leased property are attached hereto as Appendix 2 (the "Leased Property"). The Leased Property generally consists of an approximately 2.6 acres on the northeast corner of 17th Street and Convention Center Drive, bounded roughly by the Miami Beach Convention Center to the North, 17th Street to the South, the Fillmore Miami Beach at the Jackie Gleason Theater to the East, and Convention Center Drive to the West.

2. Development and Funding of Hotel Project at Miami Beach Connect's Sole Cost

Miami Beach Connect shall be solely responsible for the development, design, construction, equipping and operation of a full-service convention hotel with up to, **and not-to-exceed**, 800 hotel rooms and related improvements ("Hotel"), including the design, construction and operation of an enclosed overhead pedestrian walkway or "Skybridge" connecting the Hotel and the MBCC

(collectively, as described more fully in the Lease, the “Hotel Project”). **The City shall not provide any City funding or City financing for the Hotel Project.**

3. Fillmore Miami Beach Rehearsal Room and 555 17th Street

The Fillmore Miami Beach at the Jackie Gleason Theater (the “Fillmore”) will remain in place and operational during and after the Hotel Project construction. As part of its construction obligations, Miami Beach Connect will be responsible for demolition of the 555 17th Street property and the Fillmore’s rehearsal or “black box” room, both of which are currently located on the Leased Property. Miami Beach Connect will also be responsible for certain Off-Site Improvements, including enclosure of the remaining portion of the Fillmore located outside the Leased Property.

4. Proposed Hotel Program

Consistent with the RFP requirements, the Hotel shall include the following program elements:

<u>Ballroom/Meeting Space</u>	<u>Sq. Feet</u>	<u>Food & Beverage</u>	<u>Seats</u>
Grand Ballroom	20,000	3-meal	400
Junior Ballroom	16,300	Lobby Lounge	150
Breakout Meeting	23,118	Pool Restaurant	65
Total	59,418	Rooftop	120
		Lobby Bar	100
Parking Spaces	320		

The 320 parking spaces adheres to the requirement of 0.4 parking spaces per room (including ancillary uses) in accordance with the City’s Land Development Regulations. Notwithstanding the maximum height permitted by the City’s Land Development Regulations, the Lease provides that **the maximum height of the hotel cannot exceed 185 feet.**

5. Lease Term

The Lease has a term of 99 years, commencing once certain development and financing conditions are satisfied, as set forth in Section 4.1(b) of the Lease (“Possession Conditions”). Specifically, the City will not deliver possession of the Leased Property to Miami Beach Connect until Miami Beach Connect has met certain key milestones and satisfied a number of conditions with regard to the development of the Hotel Project, including delivery of evidence that equity commitments and construction loan commitments required to build the Hotel Project are in place, verification that a management agreement with the initial Hotel Operator is in place, and evidence that all required governmental approvals for commencement of construction have been obtained.

6. Approval of Preliminary Design; Final Design Subject to City’s Design Review Process

The Lease includes approval by the City, in its proprietary capacity as owner of the Leased Property, of the initial preliminary concept design for the Hotel Project attached as Exhibit E to the Lease. In recognition that the design for the Hotel Project will evolve as part of the development process, the Lease also requires City’s approval of substantial design changes to the Hotel Project, including any change that materially affects the exterior façade or other exterior elements.

In addition, the final design for the Hotel Project shall be subject to review and approval by the City’s Design Review Board and, if applicable, the Planning Board. Miami Beach Connect shall be required to obtain all final, non-appealable regulatory approvals and/or permits that may be required for the Hotel Project, in the same manner as may be applicable to any other developer.

7. Use Restrictions/No Gambling

The Lease contains a use restriction to prohibit gambling on the Leased Property. Miami Beach Connect and/or subsequent owners of the Hotel may not own, operate or manage any establishment offering gambling or wagering in Miami-Dade County. The Lease further provides that the foregoing provisions cannot be subsequently amended without approval by the City Commission and approval by at least sixty percent (60%) of the voters voting thereon in a City-wide referendum.

8. Approved Brand/Hotel Operator

The hotel brand or “flag” of the Hotel must be an “Approved Brand,” which may include (i) Marriott (i.e., the Marriott, Marriott Marquis, Renaissance, Gaylord, Westin, Sheraton or JW Marriott brands), Omni, Hyatt Regency, La Meridien, Hilton and Intercontinental, or any other hotel brand Approved by the City. From and after the twentieth (20th) anniversary of the Opening Date, the Hotel may be operated by an “Upper Upscale” brand, as then rated by Smith Travel Research and generally recognized in the hospitality industry as an experienced convention center hotel brand, or may be operated by other than an Approved Brand, provided that the Hotel Operator must comply with the Hotel Standards set forth in the Lease.

Miami Beach Connect has indicated it intends to consider national hotel brand/operators with an established and consistently maintained reputation for quality operations. Brands to be considered include Marriott, Hyatt and Hilton. The Hotel Operator must either be an Approved Brand or a management company with a franchise agreement with an Approved Brand.

The Hotel Operator must operate the Hotel in accordance with the Hotel Standards and must comply with the Room Block Agreement, as set forth in Exhibit L of the Lease.

The initial brand/hotel operator selection is a condition which must be satisfied prior to City’s delivery to Miami Beach Connect of possession of the Leased Property.

9. Annual Rent Payments to the City

Commencing on the Opening Date and continuing throughout the Term of the Lease, the City will receive annual rent in the amount of the greater of (x) Minimum Fixed Rent or (y) Percentage Rent calculated as a percentage of the Gross Operating Revenues of the Hotel and a percentage of Gross Operating F&B Revenues of the Hotel.

Minimum Fixed Rent

The schedule of Minimum Fixed Rent payments for the first ten (10) years following the Rent Commencement Date is attached hereto as **Appendix 3**. These minimum guaranteed payments are included to provide the City with greater certainty for its internal planning/budgeting purposes as to the projected Lease revenues. The schedule of Minimum Fixed Rent is to be re-calculated after every ten (10) years to be 60% of the average of the annual rent over the prior ten years.

As noted in Appendix 3, the Minimum Fixed Rent, commencing in Year 5 of the Lease, shall be fixed at \$2 million, and shall be increased annually thereafter by two percent (2%). In recognition that the first four years following the Hotel’s opening represent a critical period for the establishment and success of a hotel operation, the City has agreed to receive, with respect to the Minimum Fixed Rent: \$400,000 in year 1, \$800,000 in year 2, \$1,200,000 in year 3, \$1,600,000 in year 4, and \$2,000,000 in year 5.

Percentage Rent

Miami Beach Connect initially proposed percentage rent to equate to 2.5% of all Gross Operating Revenues of the hotel. During the contract negotiations with Miami Beach Connect, the percentage rent proposal was modified in three ways that represent a departure from the form of lease attached to the RFP, as well as the Portman lease approved by the City Commission three years ago: Miami Beach Connect proposes to 1) modify the definition of Gross Operating Revenues to exclude any room revenues received from guest loyalty stays and to define revenues generated by Online Travel Agencies (OTAs) to be net of commissions paid; 2) reduce the percentage rent on all food and beverage facilities to 1% of gross revenues on any facility that is unionized and 3) exclude from Gross Operating Revenues any operating revenues from subleased portions of the ground floor retail areas of the Hotel, provided that the City will receive 2.5% of the sublease rent for such areas. Please note that the proposed Portman hotel three years ago was also subject to unionization, and there was no reduction in the percentage of gross revenues on food and beverage facilities. The table below summarizes the changes in Miami Beach Connect's lease proposal:

		Over 30 years		Over 99 years	
	2027 (Yr 5)	Total	NPV @ 5%	Total	NPV @ 5%
Initial Proposal					
Minimum Fixed Rent	\$2.0m	\$71.3m	\$26.7m	\$560.2m	\$45.1m
Variable Rent	1.3m	\$54.9m	\$22.1m	\$403.5m	\$35.2m
Percentage Rent (2.5% Gross)	\$3.3m	\$126.2m	\$48.8m	\$963.7m	\$80.3m
Developer Revisions					
Unionized F&B Operations *	-\$0.6m	-\$24.6m	-\$9.5m	-\$187.6m	-\$15.7m
Excluding Loyalty Revenues & Net of OTA Commissions **	-\$0.1m	-3.8m	-1.5m	-29.4m	-2.4m
Revised Lease Values	\$2.5m	\$97.7m	\$37.8m	\$746.7m	\$62.2m

The reduced lease stream NPV of \$62.2 million over the term of the Lease equates to \$77,700 per room or \$24.4 million per acre. The modifications to the lease results in Percentage Rent of 1.9% of Gross Revenues.

10. Transaction Rent (For Sale of Hotel or Controlling Interest in Lessee)

The City will receive transaction rent in connection with the first three sales of the Hotel to a third party, including a sale effected by a transfer of a Controlling interest in the Lessee (i.e., in excess of 50% interest in the Lessee). Under the Lease, the City is to receive, as Transaction Rent, the lesser of \$2 million or 0.25% of the gross sales price for each such transaction, provided that the City shall only receive payment if the gross sales price is 120% of the development cost.

11. Development Budget and Finance Plan

Miami Beach Connect has estimated the preliminary development budget to be \$362 million and intends to finance the Hotel Project with an estimated 65% in debt and 35% in equity. Miami Beach Connect estimates it will invest up to \$20 million in the project and must provide a minimum equity contribution of \$10 million, with the remaining equity to be funded by third parties. Miami Beach

Connect has provided construction debt financing support letters from JP Morgan Chase Bank, HSBC, Wells Fargo, Regions Bank, among other banking institutions.

12. Development Schedule

If the Lease is approved by the voters in November of 2018, design and development would commence thereafter, and Miami Beach Connect anticipates the Hotel would open in September of 2022. The Lease includes outside dates by which certain key development activities must take place, including an Outside Possession Date, and Outside Opening Date. The City may terminate the Lease if any of the outside dates are not met. **The City has the right to terminate if the project has not been designed, permitted and financed within three years after the November 2018 referendum (excluding extensions for specified categories of delays).**

13. Room Block Agreement

Miami Beach Connect has agreed to the City's terms outlined in the City's proposed Room Block Agreement, which provides that a City-wide Event is defined in the same manner as the Miami Beach Convention Center booking policy whereby an event needs to use a minimum of 115,000 gross square feet of exhibit or meeting space in the Convention Center for not less than three (3) days and (ii) in connection with such event, requests 1,500 or more guest rooms on the peak night and 4,000 or more guest rooms in the aggregate be made available in hotels in the City (including the Hotel) and surrounding metropolitan areas. A City-wide Event also includes the annual Orange Bowl and any Super Bowl, even though they may not utilize the MBCC. Key terms of the Room Block Agreement include:

- For City-wide Events that are to occur at least 30 months in the future, Miami Beach Connect will make available eighty percent (80%) of all guest rooms (and associated suites), for up to 14 nights per calendar month. Miami Beach Connect can book rooms in excess of that amount at its discretion, at the rate of its choosing.
- For City-wide Events that are to occur between 18 and 30 months in the future, Miami Beach Connect will make available eighty percent (80%) of all guest rooms (and associated suites) if rooms and space are available, and will make available for City-wide Events eighty percent (80%) of all guest rooms (and associated suites) for one consecutive four (4) day period each month. Miami Beach Connect will determine the four (4) day period and will notify City on a monthly basis. Miami Beach Connect may book rooms in excess of that amount at its discretion.
- For up to fourteen (14) nights per month, City may elect to require the Hotel to offer room block pricing at 105% of Miami Beach Connect's average group room rates. In addition, for up to six (6) special events per year, City may elect to require the Hotel to offer room block pricing at 100% of Miami Beach Connect's average group room rates.

14. Other Lease Terms

- Miami Beach Connect accepts the Leased Property in its "AS IS" condition.
- The Lease requires City review and/or approval of transfers of interests in excess of 25% of the Lease, and includes limitations with respect to transfers to Foreign Instrumentalities (foreign governments or Persons Controlled thereby), and delineates "Acceptable Owner" criteria with respect to such Transfers. Accordingly, the City would not have approval rights with respect to Transfers (or a series of Transfers, in the aggregate) of interests of less than 25%. As I note below in my conclusion, I would be more comfortable with the foregoing provision if the Lease is modified to i) prohibit any Transfers of ownership in excess of 10%

to a Prohibited Person, as defined in the Lease. This would ensure the City basic protections as to equity participation in the Hotel.

- City's rights and interest in the Lease will not be subordinate to any mortgage, lien or encumbrance placed on Miami Beach Connect's (or any subsequent owner's) interest in the Lease.
- **Miami Beach Connect is required to comply with the City's Art in Public Places program requirements set forth in the City Code, and must contribute 1.5% of the construction cost for the Hotel Project (approximately \$3.2 million) to the Art in Public Places fund, which may be used for Art in Public Places projects throughout the City.**
- The Lease also includes a variety of other terms, including with respect to maintenance and repair obligations, insurance requirements, obligations to reconstruct the Hotel in the event of force majeure or other casualty, indemnification in favor of the City, and remedies to the City in the event of default, including termination rights.

SUMMARY OF KEY CHANGES MADE DURING NEGOTIATIONS WITH MIAMI BEACH CONNECT:

1. As described above in Section 9, the primary change Miami Beach Connect has proposed during negotiations is a significant reduction in the Percentage Rent Due to the City in the event the Hotel is unionized. The Minimum Fixed Rent payable to the City, remains unchanged from the initial proposal. **As I explain more fully below, the Administration's preference is for 2.5% of the Gross Operating Revenues of the Hotel, including food and beverage revenues.**
2. Miami Beach Connect's proposal indicated it was willing to explore the possibility of a voluntary special assessment in the form of a 1% charge on room rentals, to be used by the City for joint marketing purposes to benefit the MBCC, the Hotel, and general tourism in the City. The City Attorney's Office has identified a number of legal concerns with the proposed concept and its implementation. Accordingly, the Lease now proposes payment to the City, as additional consideration under the Ground Lease, of an amount equal to 1% of room revenues, but only to the extent paid by Hotel guests as a voluntary surcharge and collected by the Lessee, with the proceeds thereof used for joint marketing purposes to benefit the MBCC, the Hotel, and general tourism in the City.
3. Miami Beach Connect has requested an expansion of the definition of Approved Brands after the twentieth year of the Term. As noted above, Approved Brands includes certain specified national operators, and any other brand Approved by the City. As proposed, from and after the twentieth anniversary of the Term, the Hotel may be operated by an "Upper Upscale" brand, as then rated by Smith Travel Research and generally recognized in the hospitality industry as an experienced convention center hotel brand, or may be operated by other than an Approved Brand (i.e., a non-branded Hotel), provided that the Hotel Operator must comply with the Hotel Standards set forth in the Lease.
4. Miami Beach Connect has requested revisions to the Hotel Standards, so as to provide that from and after the twentieth year of the Opening Date, the Hotel Standards may provide for a level of service and quality comparable to other convention hotels in the "Upper Upscale" brand category determined by Smith Travel Research, or, with respect to a non-branded Hotel, so as to maintain a 3.5-diamond rating from the American Automobile Association

- (“AAA”) (the “Hotel Standards”) as provided in the Lease. Previously, the City’s lease required a 4-diamond rating at all times.
5. Miami Beach Connect has requested an exclusivity provision with respect to the development of other hotels on City-owned or City-leased property, to permit the Convention Hotel to stabilize after it opens. As proposed, the City would agree to not permit any hotel with over 500 rooms to open on City-owned or City-leased property between 5th and 48st St, and the Atlantic Ocean to Biscayne Bay, for a period of ten (10) years following the Opening Date. By way of comparison, the final Portman lease included an 8-year exclusivity provision, between 5th and 41st Streets.
 6. Miami Beach Connect has requested modifications to the City’s Transfer Provisions and Acceptable Owner criteria, which are designed to ensure that any subsequent owner of the Hotel Project (i) does not own a Gambling Establishment (as prescribed in the Lease); (ii) is not a convicted felon or under a felony indictment, (iii) is not a Person or entity espousing terrorism, (iv) is not a Foreign Instrumentality or a Person Controlled thereby (other than those from listed countries or regions), (v) has the financial wherewithal to own and operate the Hotel, (vi) does not have a history of major violations of law; and (vii) has not filed for bankruptcy in the last five years). Given that Miami Beach Connect’s Minimum Equity Contribution is only \$10 million of its estimated \$100+ million equity required for the Hotel Project, these provisions are particularly important for the City to ensure that it has a role in determining who the City is ultimately doing business with, particularly for a project that is so integral to the success of the Miami Beach Convention Center. Although the City has rejected outright Miami Beach Connect’s various requests to eliminate criteria or the City’s Approval of Transfers, the City has agreed to make certain limited changes. For example, the City will only Approve Transfers in excess of 25% (instead of 10% percent, as previously set forth in City’s Lease). Similarly, with respect to the requirement that the proposed transferee not be a convicted felon (which previously applied to the transferee and persons owning 10% or more of the proposed transferee), the proposed Lease now increases the felony conviction threshold to persons owning 20% or more of the proposed transferee. Similarly, with respect to material violations of law (civil matters, not criminal), the proposed Lease limits this provision to violations of law that have resulted in a divestiture of a property owned by the transferee.
 7. Miami Beach Connect has proposed revisions to the definition of “Institutional Lender,” to broaden the pool of potential lenders for the Hotel Project. These provisions are also important to the City, as in the event of a Lessee default, the Institutional Lender has significant rights under the Lease and could step in and, through a leasehold mortgage foreclosure process, own the Hotel. Miami Beach Connect recently provided the City language regarding this issue, and the proposed revision is under review.
 8. Miami Beach Connect has requested a limitation of monetary remedies in the event of Miami Beach Connect’s default for failure to satisfy the Possession Date. The City’s RFP Lease provided for Lessee to pay the City the unfunded portion, if any, of the Minimum Miami Beach Connect Equity Contribution. The current Lease provides Lessee will pay or cause to be paid to the City the lesser of: (i) the unfunded portion, if any, of the Initial Lessee Minimum Equity Contribution; or (ii) the actual, documented costs and expenses paid by City to third parties in connection with this Lease, not to exceed \$500,000.00 in the aggregate.

The Lease clarifies that the Lessee shall not discriminate and shall comply with City’s Human Rights Ordinance, and shall include City’s non-discrimination requirements in its agreement

with the Hotel Operator. However, Miami Beach Connect has requested that Lessee not be in default for discrimination committed by the Hotel Operator or Hotel Operator's employees so long as, in each case, Lessee is enforcing the terms of the Management Agreement to require Hotel Operator's compliance, which enforcement shall include termination of the Management Agreement after the third violation by the Hotel Operator of the non-discrimination requirements within any five (5) consecutive year period during the Term, as such violations have been finally determined by a court of competent jurisdiction.

9. The City's Lease provided that the City would maintain the MBCC at a standard of operation, with respect to its facilities, consistent with the average standard of facilities at other specified convention centers. Miami Beach Connect has requested for the City to expand the standard of operation to include facility standards, as well as operational standards, with Miami Beach Connect's remedy (if such standard is not cured within 180 days or if diligent efforts to commence a cure are not undertaken) being limited to suspension of the Room Block Agreement, until such time as the MBCC Standard of Operation is met. The City's lease provided only for a standard of operation with respect to the facility, but not operations.
10. The Lease now clarifies that, separate from the Outside Dates provided in the Lease, the Lessee is vested with development rights for a limited period of ten (10) years, and further includes additional provisions with respect to concurrency requirements, which provisions include Lessee's payment of all required impact fees, concurrency fees, and/or mobility fees at time of building permit. The City will prioritize capacity as of Effective Date over later projects, but the City cannot guarantee capacity. The Lease further clarifies that Lessee is responsible for improvements required to maintain the integrity of existing systems or to relocate utilities that connect to the Hotel Site.
11. To facilitate lender financing, Miami Beach Connect has proposed that the City waive its statutory Landlord lien rights as to furniture, fixtures & equipment ("FF&E") for the Project (as opposed to City taking a subordinated lien position). As a practical matter, the waiver (vs. subordination) of the City's statutory landlord's lien is not likely negatively to affect the City because in the event of a lessee default, a leasehold mortgagee is highly likely to protect its loan investment by exercising its cure rights and keeping the lease in good standing rather than abandoning its investment and instead proceeding against the personal property which otherwise would be subject to a subordinated landlord's lien. In the context of this transaction (with a construction loan in excess of \$200 million), it seems highly unlikely that the City would ever be in a position to pursue and prevail against the hotel FF&E. In addition, experience indicates that it is highly unlikely that a prospective leasehold mortgagee would make a loan with a subordinated (vs. waived) statutory landlord's lien.
12. The Lease includes modifications to clarify the First Leasehold Mortgagee's rights (with City maintaining its position that it will only provide a recognition and non-disturbance agreement to one leasehold mortgagee and to no other leasehold mortgagees, so as to minimize complications with multiple mortgagees and default/foreclosure/bankruptcy processes, and only require the City to recognize the first priority leasehold mortgagee).

ADDITIONAL CONSIDERATIONS

Voter Referendum Requirement

The Lease is contingent upon sixty percent (60%) voter approval in accordance with Section 1.03(b)(3) of the City Charter. The referendum is contemplated to occur on November 6, 2018. A draft of the ballot question is attached hereto as **Appendix 4**, and will be considered at the July 25, 2018 City Commission meeting.

Planning Analysis

A planning analysis, as required by Section 82-38 of the City Code, is attached hereto as **Appendix 5**.

Appraisal

An appraisal of the Leased Property, as required by Section 82-39 of the City Code, is in the process of being completed, and will be included in the materials for the second reading/public hearing relating to approval of the Lease.

Public Revenue Impact

The Leased Property is currently a parking lot that generates 104,600 annually in revenues for the City, along with modest revenues paid to the City for the Fillmore's use of the rehearsal/"black box" room. If the site is developed with a hotel annual lease and tax revenue generated is estimated to be \$10.3 million by year five. Over time, the Hotel is estimated to generate:

- City: \$360 million (\$144 million NPV) over 30 years and \$2.4 billion (\$222 million NPV) over 99 years in lease payments, resort taxes, CRA revenues, property taxes and County CDT allocations to the City.
- County: \$117 million (\$41 million NPV) over 30 years and \$1.2 billion (\$82 million NPV) over 99 years in convention development taxes, local option sales taxes and property taxes.
- Schools: \$45 million (\$18 million NPV) over 30 years and \$340 million (\$29 million NPV) over 99 years in property taxes.
- State: \$278 million (\$107 million NPV) over 30 years and \$2.1 billion (\$177 million NPV) over 99 years in sales taxes.
- Total: \$806 million (\$312 million NPV) over 30 years and \$6.1 billion (\$513 million NPV) over 99 years in lease payments and taxes.

Refer to attached **Appendix 6**.

RECOMMENDATION

In my July 2, 2018 memorandum recommending that the Commission direct the Administration to negotiate a Development and Ground Lease Agreement with Miami Beach Connect, I explained that I felt comfortable recommending moving forward with only one bidder since the deal proposed was as good, if not better, than the deal we had received three years ago. Unfortunately, negotiations continue and I am concerned about the number of open items Miami Beach Connect desires to further negotiate. I do acknowledge that there are many positive aspects of the deal:

1. The Project incorporates the issues recommended by the Mayor's Blue Ribbon panel;
2. A maximum height of 185 feet;
3. 800 rooms, the Greater Miami Convention Visitor's Bureau (GMCVB's) as well as the Mayor's Blue Ribbon panel recommended target room number to support room blocks for convention events;

4. An efficient approach to vehicle circulation and traffic, by using the majority of the footprint of the site to internalize pickup and drop-offs, and to minimize impacts to 17th Street and Convention Center Drive;
5. A design that is compatible with the renovated MBCC and the surrounding area;
6. The utilization of a world class architect to produce an iconic design;
7. A resilient design that incorporates the use of solar power, green and blue infrastructure, native vegetation, and water & resource conservation;
8. Significant resort tax, property tax and CDT revenues, and the absence of any City funding, subsidy or financing for the project;
9. LEED Gold Certified Building; and
10. No need to tear down the Jackie Gleason Theater.

But I am troubled that the Lessee has sought to reduce its financial proposal by revising the definition of Gross Revenues and by reducing the rent percentage applicable to food and beverage from 2.5% to 1%. I appreciate the impact of unionization, but our deal three years ago included the 2.5% applied to all revenue despite unionization and included the broader definition of Gross Revenues. The impact of these changes is approximately a 23% reduction in the NPV of the rent paid under the lease.

Another issue that concerns me is the extent to which Miami Beach Connect continues to modify lease terms as proposed by the City related to Acceptable Owners, Approved Brands, Approved Transfers, Concurrency and several other more minor Issues. I am not comfortable with the extensive revisions that they have requested that modify the Lease that was provided in the RFP. While changes to terms may be standard in typical commercial transactions, this is a major civic project and the needs of the City and its residents must be protected.

In light of the foregoing, my recommendation is that the Mayor and City Commission hereby approve, following first reading/public hearing, the Development and Ground Lease Agreement attached hereto as Exhibit 1, but direct the Administration to seek lease financial terms consistent with the initial proposal (2.5% of Gross Revenues without any carveouts) and end any further negotiations of lease terms that are marked as "To Discuss" by the proposer in the current draft of the Lease. I would be more comfortable with the proposed Lease revisions, provided the Lease is modified to i) prohibit any transfers of ownership in excess of 10% to a Prohibited Person; and to ii) reach mutual agreement on the Institutional Lender definition consistent with the provision recently submitted by Miami Beach Connect for the City's review. The Administration shall provide an update at second reading and public hearing.

Exhibits:

- Appendix 1: Development and Ground Lease Agreement
- Appendix 2: Proposed boundaries for Leased Property
- Appendix 3: Summary of Proposed Minimum Fixed Rent
- Appendix 4: Draft Ballot Question
- Appendix 5: Planning Analysis
- Appendix 6: Summary of Public Revenue Impact