

C7 D A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, (1) WAIVING ON A 5/7TH VOTE AND PURSUANT TO SECTION 82-587(C) OF THE CITY CODE, THE REQUIRED ART IN PUBLIC PLACES ("AIPP") CONTRIBUTION AND APPROPRIATION FOR THE CONVENTION CENTER HOTEL PROJECT (THE "PROJECT") BEING DEVELOPED PURSUANT TO THE DEVELOPMENT AND GROUND LEASE AGREEMENT WITH MB MIXED USE INVESTMENT, LLC ("THE DEVELOPER"); (2) APPROVING THE ACCEPTANCE OF A FINANCIAL GUARANTEE BOND IN LIEU OF THE ART IN PUBLIC PLACES ("AIPP") CONTRIBUTION; AND (3) GRANTING THE DEVELOPER A ONE-YEAR PERIOD FROM SITE POSSESSION TO COORDINATE WITH THE ADMINISTRATION AND THE ART IN PUBLIC PLACES COMMITTEE ON A SATISFACTORY PROPOSAL FOR PUBLIC ART INSTALLATION(S) WITHIN THE HOTEL GROUNDS WHICH INSTALLATIONS SHALL BE SUBJECT TO THE APPROVAL OF THE CITY COMMISSION.

Applicable Area:



COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: February 26, 2025

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, (1) WAIVING ON A 5/7TH VOTE AND PURSUANT TO SECTION 82-587(C) OF THE CITY CODE, THE REQUIRED ART IN PUBLIC PLACES ("AIPP") CONTRIBUTION AND APPROPRIATION FOR THE CONVENTION CENTER HOTEL PROJECT (THE "PROJECT") BEING DEVELOPED PURSUANT TO THE DEVELOPMENT AND GROUND LEASE AGREEMENT WITH MB MIXED USE INVESTMENT, LLC ("THE DEVELOPER"); (2) APPROVING THE ACCEPTANCE OF A FINANCIAL GUARANTEE BOND IN LIEU OF THE ART IN PUBLIC PLACES ("AIPP") CONTRIBUTION; AND (3) GRANTING THE DEVELOPER A ONE-YEAR PERIOD FROM SITE POSSESSION TO COORDINATE WITH THE ADMINISTRATION AND THE ART IN PUBLIC PLACES COMMITTEE ON A SATISFACTORY PROPOSAL FOR PUBLIC ART INSTALLATION(S) WITHIN THE HOTEL GROUNDS WHICH INSTALLATIONS SHALL BE SUBJECT TO THE APPROVAL OF THE CITY COMMISSION.

RECOMMENDATION

Adopt the Resolution.

BACKGROUND/HISTORY

On July 25, 2018, the Mayor and City Commission adopted Resolution No. 2018-30425, approving the Lease between the City of Miami Beach (the "City") and MB Mixed Use Investment Holdings, LLC (the "Developer"), approving the construction and development of the Miami Beach Convention Center Hotel (the "Hotel Project") at the site (the "Site") located at the northeast corner of Convention Center Drive and 17th Street as defined in the Hotel Lease.

On November 6, 2018, more than sixty percent (60%) of the voters voting thereon in a City-wide referendum approved of the Lease as required by Section 1.03(b)(3) of the City Code.

On December 9, 2019, the City approved the Grand Hyatt Hotel brand pursuant to Section 13.3 of the Hotel lease.

On March 4, 2020, the City and the Developer entered into an early access agreement (the "Early Access Agreement") to grant access to the Developer to the Site and to certain other areas, so that the Developer could perform certain pre-construction activities (the "Early Work") that would accelerate the timeline for construction of the Hotel Project.

On March 13, 2020, the Developer notified the City they were asserting a Force Majeure event and an Economic Force Majeure event with respect to the COVID-19 pandemic.

On April 14, 2022, pursuant to the Early Access Agreement, the Hotel Developer's contractor mobilized on the Site and commenced the initial phases of the Early Work.

On May 25, 2022, the City approved a Fifth Amendment to the Management Agreement with Live Nation to provide for the closure of the Fillmore Miami Beach at the Jackie Gleason Theater during the construction of the Early Work Phase; and further approved a First Amendment to the Early Access Agreement between the City and the Developer to clarify the Developer's existing responsibility to pay for Live Nation's costs and expenses resulting from the temporary closure of the Fillmore during the Early Work Phase.

On August 31, 2023, the completed Jackie Gleason Theater was turned back over to Live Nation by the Hotel Developer, and events recommenced in early October 2023.

On November 16, 2023, the Developer notified the City that they were asserting an Economic Force Majeure event due to impaired access to financial markets for development of projects in the United States similar to the Grand Hyatt Hotel project, which delayed their ability to raise the capital necessary for the full construction of the hotel project. On November 17, 2023, LTC 515-2023 advised the Mayor and City Commission that the Developer needed additional time to secure the remaining 12% of their capital raise for the Hotel project. Notwithstanding, the Developer has expended approximately \$20 million in private funding to complete the Early Work.

During discussions among the Redevelopment Agency ("RDA") staff and the Developer, the Developer requested a \$75 million capital contribution in the form of a grant from the RDA to cover the 12% financing deficit. The Developer stated that the project could not proceed without this additional capital contribution due to increased construction and interest costs. The grant could be funded from available cashflows generated within the RDA and would be subordinate to the RDA's outstanding Series 2015A Miami Beach Redevelopment Agency Tax Increment Revenue Bonds ("Series 2015A Bonds") and any bonds issued to refund those bonds.

On April 9, 2024, the early site work Certificate of Completion was issued, making the site available for the commencement of the vertical construction upon site possession by the Hotel developer.

Following various meetings of the Miami-Dade Board of County Commissioners ("BCC"), the City Commission and the RDA Board at which the grant agreement among the RDA, the Developer and the Public Finance Authority was discussed, approved, and modified, a grant agreement providing for up to \$92,500,000 in funding to allow for the expeditious development of the Hotel Project was approved by the BCC, the City Commission and the RDA Board, with the final necessary approval occurring at the November 20, 2024 meeting of the BCC.

The Developer has successfully secured executed term sheets with the lender for the construction loan and is now finalizing the loan documents with the selected lender. The bond documents for the RDA grant are substantially complete. All debt and equity sources for the full construction cost are expected to be secured by the end of March 2025. Loan closing and site possession will follow. Test piles are scheduled to begin in March, followed by augercast pile foundation work in April. The hotel is expected to open in late 2027.

ANALYSIS

Section 2.16 of the Development and Ground Lease Agreement stipulates that the Developer shall comply with the City's Art In Public Places ("AIPP") program requirements under Section 82-536 through 82-612 of the City Code, as applicable, and shall contribute to the City's AIPP fund the total of 1.5% of the "construction cost" of the Hotel Project, as such term is defined in Section 82-537 of the City Code, no later than date of execution of the Hotel Project General Contract by Lessee and the Hotel Project General Contractor, as required by the City Code.

The Developer plans to fulfill this obligation by offering specific artwork to be installed in public areas of the hotel, instead of making a monetary contribution to the AIPP fund. The total value of the art installed shall meet or exceed the required 1.5% of the construction cost, as confirmed through an appraisal.

In order to satisfy the AIPP possession condition in the Development and Ground Lease Agreement, the Developer proposes to provide a financial guarantee bond in lieu of the AIPP monetary contribution, which bond (or alternate form of guarantee acceptable to the City) shall remain in place until such time as the Developer deeds the artwork to the City or pays the amount of the required AIPP contribution (less the value of any artwork deeded to and accepted by the City). The proposed bond is presented in substantial form as Exhibit A, attached herein, and may be subject to final approval or modifications as necessary.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate?

(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

FINANCIAL INFORMATION

CONCLUSION

The Administration recommends approving a financial guarantee bond in lieu of the AIPP contribution and granting the Developer a one-year period from site possession to collaborate with the Administration and the AIPP Committee to develop a satisfactory public art proposal for installation(s) within the hotel grounds. The proposed art package, as endorsed by the AIPP Committee, will then be presented to the City Commission for final approval. The financial guarantee bond (or alternate form of guarantee acceptable to the City) shall remain in place until the Developer deeds the artwork to the City or pays the amount of the required AIPP contribution (less the value of any artwork deeded to and accepted by the City).

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Manager

Sponsor(s)

Co-sponsor(s)

Condensed Title

Convention Center Hotel – Financial Guarantee Bond in Lieu of AIPP Monetary Contribution.
CM

Previous Action (For City Clerk Use Only)

EXHIBIT A
FINANCIAL GUARANTEE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That we MB Mixed Use Investment, LLC, a Delaware Limited Liability Company as Principal, and _____ a corporation duly authorized under the laws of the State of Florida to become surety on bonds and undertakings, as Surety, are held and firmly bound unto the City of Miami Beach, a municipal corporation, as Obligee in the full and just sum of _____ Dollars, (\$_____) lawful money of the United States of America (the "Penal Sum"), for which payment, well and truly to be made, the said Principal and Surety bind themselves, their heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal and Obligee have entered into that certain Development & Ground Lease Agreement dated July 31, 2018 (the "Lease") and the Principal agrees to: (1) obtain approval by the City of Miami Beach Commission, in accordance with the City of Miami Beach's Art in Public Places procedures, of Principal's proposed donation of works of art in satisfaction of Principal's obligations under Section 2.16 of the Lease (the "Donated Art") no later than April 1, 2026 (the "First Deadline"), or pay to Obligee the amount of the Penal Sum, (less the value of the Donated Art approved by the City of Miami Beach prior to the First Deadline) (the "First Payment"); and (2) to the extent any Donated Art is approved by the City of Miami Beach prior to the First Deadline, Principal shall install and obtain acceptance by the City of Miami Beach, in accordance with the City of Miami Beach's Art in Public Places procedures, of the Donated Art no later than the earlier of (A) the issuance of a final certificate of occupancy for the project required by the Lease and (B) April 1, 2028 (the "Second Deadline"), or pay to Obligee the amount of the Penal Sum, less any sums previously paid to Obligee in satisfaction of Section 2.16 of the Lease and less the value of the Donated Art accepted by the City of Miami Beach prior to the Second Deadline (the "Second Payment").

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, That if the said Principal shall timely pay to Obligee the First Payment, if any, and the Second Payment, if any, then this obligation shall be void, otherwise it shall be and remain in full force and effect.

The term of this bond is for a period beginning on the _____ day of _____, _____ and ending on the 1st day of April, 2028.

PROVIDED, that regardless of the number of years this bond remains in effect, in no event shall the aggregate liability of the Surety under this bond exceed the penal sum of this bond.

THIS BOND may be terminated by either,

- (a) release by Obligee, or
- (b) cancellation by either Principal and Surety to be effected by (i) giving Sixty (60) days' notice in writing by certified mail to: City Manager, City of Miami Beach, 1700 Convention Center Drive, 4th Floor, Miami Beach, Florida, 33139, and (ii) Principal providing Obligee with a replacement security, in a form reasonably acceptable to Obligee, prior to the effectiveness of such cancellation.

The Surety shall notify the Company of its obligation, if any, hereunder within sixty (60) days of notice by Company that the Principal has failed to perform its obligation hereunder.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their hands and affixed their seals this _____ day of _____.

Principal

Surety

_____, Attorney-in-Fact

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, (1) WAIVING ON A 5/7TH VOTE AND PURSUANT TO SECTION 82-587(C) OF THE CITY CODE, THE REQUIRED ART IN PUBLIC PLACES ("AIPP") CONTRIBUTION AND APPROPRIATION FOR THE CONVENTION CENTER HOTEL PROJECT (THE "PROJECT") BEING DEVELOPED PURSUANT TO THE DEVELOPMENT AND GROUND LEASE AGREEMENT WITH MB MIXED USE INVESTMENT, LLC ("THE DEVELOPER"); (2) APPROVING THE ACCEPTANCE OF A FINANCIAL GUARANTEE BOND IN LIEU OF THE ART IN PUBLIC PLACES ("AIPP") CONTRIBUTION; AND (3) GRANTING THE DEVELOPER A ONE-YEAR PERIOD FROM SITE POSSESSION TO COORDINATE WITH THE ADMINISTRATION AND THE ART IN PUBLIC PLACES COMMITTEE ON A SATISFACTORY PROPOSAL FOR PUBLIC ART INSTALLATION(S) WITHIN THE HOTEL GROUNDS WHICH INSTALLATIONS SHALL BE SUBJECT TO THE APPROVAL OF THE CITY COMMISSION.

WHEREAS, on July 25, 2018, the Mayor and City Commission adopted Resolution No. 2018-30425, approving the Lease between the City of Miami Beach (the "City") and MB Mixed Use Investment Holdings, LLC (the "Developer"), approving the construction and development of the Miami Beach Convention Center Hotel (the "Hotel Project") at the site (the "Site") located at the northeast corner of Convention Center Drive and 17th Street as defined in the Lease; and

WHEREAS, on November 6, 2018, more than sixty percent (60%) of the voters voting thereon in a City-wide referendum approved of the Lease as required by Section 1.03(b)(3) of the City Code; and

WHEREAS, on December 9, 2019, the City approved the Grand Hyatt Hotel brand pursuant to Section 13.3 of the Hotel lease; and

WHEREAS, on March 4, 2020, the City and the Developer entered into an early access agreement (the "Early Access Agreement") to grant access to the Developer to the Site and to certain other areas, so that the Developer could perform certain pre-construction activities (the "Early Work") that would accelerate the timeline for construction of the Hotel Project; and

WHEREAS, on March 13, 2020, the Developer notified the City they were asserting a Force Majeure event and an Economic Force Majeure event with respect to the COVID-19 pandemic; and

WHEREAS, on April 14, 2022, pursuant to the Early Access Agreement, the Hotel Developer's contractor mobilized on the Site and commenced the initial phases of the Early Work; and

WHEREAS, on May 25, 2022, the City approved a Fifth Amendment to the Management Agreement with Live Nation to provide for the closure of the Fillmore Miami Beach at the Jackie Gleason Theater during the construction of the Early Work Phase; and further approved a First Amendment to the Early Access Agreement between the City and the Developer to clarify the Developer's existing responsibility to pay for Live Nation's costs and expenses resulting from the temporary closure of the Fillmore during the Early Work Phase; and

WHEREAS, on August 31, 2023, the completed Jackie Gleason Theater was turned back over to Live Nation by the Hotel Developer, and events recommenced in early October 2023; and

WHEREAS, on November 16, 2023, the Developer notified the City that they were asserting an Economic Force Majeure event due to impaired access to financial markets for development of projects in the United States similar to the Grand Hyatt Hotel project, which delayed their ability to raise the capital necessary for the full construction of the hotel project; and

WHEREAS, on November 17, 2023, LTC 515- 2023 advised the Mayor and City Commission that the Developer needed additional time to secure the remaining 12% of their capital raise for the Hotel project; and

WHEREAS, during discussions among the Redevelopment Agency ("RDA") staff and the Developer, the Developer requested a \$75 million capital contribution in the form of a grant from the RDA to cover the 12% financing deficit, stating that the project could not proceed without this additional capital contribution due to increased construction and interest costs; and

WHEREAS, a prior Declaration of Official Intent is a legal mechanism that allows an issuer to use its own funds initially for project expenses and later reimburse itself with the proceeds from the sale of tax-exempt G.O. bonds; and

WHEREAS, the grant could be funded from available cashflows generated within the RDA and would be subordinate to the RDA's outstanding Series 2015A Miami Beach Redevelopment Agency Tax Increment Revenue Bonds ("Series 2015A Bonds") and any bonds issued to refund those bonds; and

WHEREAS, on April 9, 2024, the early site work Certificate of Completion was issued, making the site available for the commencement of the vertical construction upon site possession by the Hotel developer; and

WHEREAS, following various meetings of the Miami-Dade Board of County Commissioners (BCC), the City Commission and the RDA Board at which the grant agreement among the RDA, the Developer and the Public Finance Authority was discussed, approved, and modified, a grant agreement providing for up to \$92,500,000 in funding to allow for the expeditious development of the Hotel Project was approved by the BCC, the City Commission and the RDA Board, with the final necessary approval occurring at the November 20, 2024 meeting of the BCC; and

WHEREAS, the Developer has successfully secured executed term sheets with the lender for the construction loan and is now finalizing the loan documents with the selected lender, the bond documents for the RDA grant are substantially complete, all debt and equity sources for the full construction cost are expected to be secured by the end of March 2025, with loan closing and site possession to follow; and

WHEREAS, the hotel is expected to open in late 2027; and

WHEREAS, Section 2.16 of the Development and Ground Lease Agreement stipulates that the Developer shall comply with the City's Art In Public Places (AIPP) program requirements under Section 82-536 through 82-612 of the City Code, as applicable, and shall contribute to the City's Art in Public Places fund the total of 1.5% of the "construction cost" of the Hotel Project, as such term is defined in Section 82-537 of the City Code, no later than date of execution of the Hotel Project General Contract by Lessee and the Hotel Project General Contractor, as required by the City Code; and

WHEREAS, the Developer plans to fulfill this obligation by offering specific artwork to be installed in public areas of the hotel, instead of making a monetary contribution to the AIPP fund; and

WHEREAS, the total value of the art installed shall meet or exceed the required 1.5% of the construction cost, as confirmed through an appraisal; and

WHEREAS, in order to satisfy the AIPP possession condition in the Development and Ground Lease Agreement, the Developer proposes to provide a financial guarantee bond in lieu of the AIPP monetary contribution, which bond (or alternate form of guarantee acceptable to the City) shall remain in place until such time as the Developer deeds the artwork to the City or pays the amount of the required AIPP contribution (less the value of any artwork deeded to and accepted by the City); and

WHEREAS, the proposed bond is presented in substantial form as Exhibit 1, attached to the Commission Memorandum, and may be subject to final approval or modifications as necessary.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby waive on a 5/7th vote and pursuant to Section 82-587(c) of the City Code, the required AIPP contribution and appropriation for the Convention Center Hotel Project being developed pursuant to the Development and Ground Lease Agreement with MB Mixed Use Investment, LLC; (2) approve the acceptance of a financial guarantee bond in lieu of the AIPP contribution; and (3) grant the Developer a one-year period from site possession to coordinate with the administration and the AIPP Committee on a satisfactory proposal for public art installation(s) within the hotel grounds which installations shall be subject to the approval of the City Commission.

PASSED and ADOPTED this ____ day of _____, 2025

Steven Meiner, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

2/18/2025

EXHIBIT A
FINANCIAL GUARANTEE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS: That we MB Mixed Use Investment, LLC, a Delaware Limited Liability Company as Principal, and _____ a corporation duly authorized under the laws of the State of Florida to become surety on bonds and undertakings, as Surety, are held and firmly bound unto the City of Miami Beach, a municipal corporation, as Oblige in the full and just sum of _____ Dollars, (\$_____) lawful money of the United States of America (the "Penal Sum"), for which payment, well and truly to be made, the said Principal and Surety bind themselves, their heirs, executors, successors, administrators and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal and Oblige have entered into that certain Development & Ground Lease Agreement dated July 31, 2018 (the "Lease") and the Principal agrees to: (1) obtain approval by the City of Miami Beach Commission, in accordance with the City of Miami Beach's Art in Public Places procedures, of Principal's proposed donation of works of art in satisfaction of Principal's obligations under Section 2.16 of the Lease (the "Donated Art") no later than April 1, 2026 (the "First Deadline"), or pay to Oblige the amount of the Penal Sum, (less the value of the Donated Art approved by the City of Miami Beach prior to the First Deadline) (the "First Payment"); and (2) to the extent any Donated Art is approved by the City of Miami Beach prior to the First Deadline, Principal shall install and obtain acceptance by the City of Miami Beach, in accordance with the City of Miami Beach's Art in Public Places procedures, of the Donated Art no later than the earlier of (A) the issuance of a final certificate of occupancy for the project required by the Lease and (B) April 1, 2028 (the "Second Deadline"), or pay to Oblige the amount of the Penal Sum, less any sums previously paid to Oblige in satisfaction of Section 2.16 of the Lease and less the value of the Donated Art accepted by the City of Miami Beach prior to the Second Deadline (the "Second Payment").

NOW, THEREFORE, THE CONDITION OF THE OBLIGATION IS SUCH, That if the said Principal shall timely pay to Oblige the First Payment, if any, and the Second Payment, if any, then this obligation shall be void, otherwise it shall be and remain in full force and effect.

The term of this bond is for a period beginning on the _____ day of _____, _____ and ending on the 1st day of April, 2028.

PROVIDED, that regardless of the number of years this bond remains in effect, in no event shall the aggregate liability of the Surety under this bond exceed the penal sum of this bond.

THIS BOND may be terminated by either,

- (a) release by Oblige, or
- (b) cancellation by either Principal and Surety to be effected by (i) giving Sixty (60) days' notice in writing by certified mail to: City Manager, City of Miami Beach, 1700 Convention Center Drive, 4th Floor, Miami Beach, Florida, 33139, and (ii) Principal providing Oblige with a replacement security, in a form reasonably acceptable to Oblige, prior to the effectiveness of such cancellation.

The Surety shall notify the Company of its obligation, if any, hereunder within sixty (60) days of notice by Company that the Principal has failed to perform its obligation hereunder.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their hands and affixed their seals this _____ day of _____, _____.

Principal

Surety

, Attorney-in-Fact