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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Kathie G. Brooks, Interim City Manager 

DATE: November 9, 2012

SUBJECT: **A DISCUSSION TO CONSIDER PRICING OPTIONS AND FUNDING REQUIREMENTS IN CONNECTION WITH THE RELOCATION OF THE EXHAUST VENTING INSTALLED BY THE PENNSYLVANIA AVENUE GARAGE RETAIL TENANT, PENN 17, LLC.**

BACKGROUND

On April 13, 2011, the Mayor and City Commission passed Resolution No. 2011-27647, approving a Lease Agreement, as amended on February 8, 2012 and June 6, 2012, respectively (the Lease), having a term of nine (9) years and 364 days, between the City, the Redevelopment Agency (RDA) and Penn 17, LLC (the Tenant), for use of approximately 7,655 square feet of ground level retail space at the Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida, for a restaurant (primary use), with ancillary uses for a bakery, a bar/café, and a book and gift shop. The Resolution also approved the execution of a Pre-Lease Due Diligence Review Agreement, granting the Tenant a maximum of six (6) months following approval of the Lease, in which to reserve its leasing rights while advancing design and plan development and consulting with the City's Planning and Building Departments in order to ascertain the feasibility of obtaining a full building permit prior to actual commencement of the Lease. During the first full year of rent, the annual Base Rent is \$574,125, plus Common Area Maintenance costs of \$101,690 (paid monthly at \$47,844 plus \$8,474, respectively, for a total of \$56,318 monthly).

As has been reported on previous occasions, the challenges in converting the Premises for use as a restaurant proved considerably more complex, time-consuming and substantially more costly than originally anticipated by the Tenant, particularly related to the engineering and permitting of the venting for the kitchen exhaust, installing a system of multiple grease traps, the build-out of the storage room and the design of the structural slab, restoration of the existing structural slab in the retail space following partial demolition to install the plumbing, and addressing additional flood-proofing criteria. The Tenant's plans underwent extensive revisions to address comments and concerns raised by the City's Planning and Building Departments, as well as certain other regulatory agencies, as part of the permitting review process. Ultimately, according to the Tenant, more than \$5 million has been spent to improve the Premises.

On September 24, 2012, the Tenant received a Temporary Certificate of Occupancy (TCO) for its restaurant, Cooper Avenue.

ANALYSIS

On August 17, 2012, as the build-out of Cooper Avenue was nearing completion, the City was contacted by the New World Symphony (NWS), which expressed major concerns over the venting locations of the Tenant's kitchen exhaust and steam vent from the dishwashers, which both direct into the service alley between the Garage and NWS. The NWS believes the kitchen

exhaust could potentially permeate the performance hall every time the loading dock doors are opened (which are directly opposite the kitchen exhaust vent). As noted earlier, given the structural and architectural constraints of the building, identifying a feasible location to run the kitchen exhaust proved to be among the most challenging of the design issues, involving extensive input from Planning, Building and other regulatory entities in the final approved plan.

Following an extensive series of meetings with representatives from the NWS and the Tenant's management and design team to figure out options for mitigating odors emanating from the exhaust venting, the NWS has instead demanded that the City and Tenant explore design alternatives for redirecting the kitchen exhaust in its entirety, away from the alley. Although it was unknown if there was a problem, in an abundance of caution the City authorized the tenant to direct its architect to develop several alternatives to address the NWS's concerns.

On September 10, 2012, the City entered into a Letter Agreement with the Tenant pertaining to the engagement of architectural/engineering services, at a not-to-exceed cost to the City of \$25,000, in order to develop conceptual design options and preliminary pricing estimates to modify the exhaust venting system for the City's consideration and approval. The Letter Agreement further to include services for the preparation of detailed plans and specifications (including any layouts, architectural, mechanical, structural, electrical and other plans, drawings and construction documents in sufficient detail to obtain any and all appropriate regulatory permits), as may be reasonably required by the City's Building Department in order to process and review Tenant's permit application for such modification as approved.

Subsequent to the opening of the Cooper Avenue restaurant it has been determined that there is odor in the alleyway between the garage and concert hall. While it is not known if the odors do permeate the inside of the performance hall, the Administration is exploring options for the relocation of the vents.

Therefore, on September 21, 2012 the Tenant's Architect, Design 3 Architecture, (Architect) presented two options for redirecting the Tenant's exhaust in order of feasibility, complexity and cost as follows:

Option 1 – Total Estimated Minimum Cost: \$59,000

The most feasible, the least complex and most cost-effective approach provides for maintaining the existing location of the exhaust fans on the cover slab over the garbage room. This provides for a stable working platform by which to maintain and service the fans and duct work. The ducting and exhaust vent leading to the exterior of the building facing the New World Symphony's loading dock, would be rerouted 90 degrees to the north and discharge directly above the garage entrance located on 17th Street.

Option 2 – Total Estimated Minimum Cost: \$181,000

The most complex and costliest of the solutions and the least feasible, (primarily in terms of the anticipated operational disruption for the Tenant due to the construction involved), involves the complete relocation and re-engineering of the exhaust ducting, extending it south and then west to discharge over the garage exit on Pennsylvania Avenue. This would also require the construction of an elevated concrete pad over the flood panel storage enclosure, to relocate and support the exhaust fans needed to drive the exhaust through the ducting.

It should be noted that the New World Symphony views Option 2 as the only choice, as it

extends the exhaust discharge the furthest away from the service alley.

In the event the City opts to contribute financially to the re-direction of the vents, the Administration has identified savings from the original construction budget of the Pennsylvania Avenue Garage (RDA Fund 365) that can be made available to proceed with either Option.

At the Commission Meeting on October 24, 2012, the Administration recommended adopting a resolution appropriating an amount not to exceed \$250,000 to provide the greatest amount of flexibility to remedy this issue in the most feasible manner. The Administration also recommended that the City Commission authorize the Interim City Manager to negotiate an agreement with the Tenant to proceed with the design, permitting and construction of the modifications, based on either Option 1 or 2.

The City Commission expressed concern in making a decision based on estimates which were only preliminary in nature and without having the benefit of truly evaluating the options as presented. The Commission also suggested that more efficient and/or cost-effective solutions may be available, including the option of carbon filtration, which should be explored further before coming back with a recommendation. To this end, the Administration was asked to provide a more detailed report, complete with cost estimates, to be discussed at the next meeting of the Finance and Citywide Projects Committee (FCWPC).

Accordingly, on October 25th, the Administration verbally asked the Tenant to have its Architect explore the possibility and cost associated with modifying its exhaust system to incorporate a carbon filtration system to further mitigate any residual odors venting into the alley. A follow-up request for the cost estimate was sent via email on October 29th. On November 1st, the tenant informed the Administration that the Architect's quote on a filter system is being developed. On November 5th, the Tenant informed us that the quote is anticipated by mid-week.

Staff is also working on conducting a peer review of Options 1 and 2 in order to determine their respective viability and effectiveness as well as verify and possibly value-engineer the cost estimates associated with each option. The analysis will also explore other available solutions, if any, including, but not limited to, options for the New World Symphony to consider, such as the installation of a commercial air curtain over its loading dock door.

During the October 24th Commission discussion, the Administration expressed concerns about the probability of obtaining additional options and having them analyzed and available for review by the FCWPC by November 9th. The Administration will continue to pursue information regarding options and the related costs and hopes to have sufficient information as soon as possible.

RECOMMENDATION

In order to effectively complete this review as thoroughly as possible, the Administration recommends reporting back to the FCWPC at its next scheduled meeting on December 20, 2012.

KGB/MS/AP/KOB